UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO
DENVER DIVISION

GREG LOPEZ, et. al, *Plaintiffs*, v. JENA GRISWOLD Colorado Secretary of State, et. al, *Defendants*.	Case No. 1:22-cv-0247-JLK PLAINTIFFS' TRIAL SUMMATION AND REQUEST FOR JUDGMENT

Plaintiffs submit this Trial Summation Brief pursuant to the Court's Order (ECF 115), along with proposed findings of fact and conclusions of law (Exhibit 1). Plaintiffs are entitled to judgment on both claims in their Amended Complaint (ECF 46) under Fed. R. Civ. P. 52.

I. PLAINTIFFS HAVE STANDING AND THEIR CLAIMS ARE NOT MOOT.

As once and future candidates and a donor, plaintiffs have standing, and their claims are not moot.

A. All three plaintiffs have standing.

Article III standing requires a plaintiff to suffer "an injury in fact" that is "traceable to the challenged conduct and likely to be redressed by the lawsuit." *Biden v. Nebraska*, 600 U.S. 477, 489 (2023). "If at least one plaintiff has standing, the suit may proceed." *Id*.

Plaintiff Lopez has standing. He ran for statewide office in the past and intends to run again in 2026. *See* Trial Tr. Vol. 1, 44-46, 48-51. Because of his inability to self-finance his campaign (in contrast to recently successful gubernatorial candidates), and the state party's neutral stance during primaries, he relies almost entirely on individuals to fund his campaigns. *Id*. at 46-49, 53, 75-78, 83-85, 88. Lopez explained how Colorado's individual campaign contribution limits

prevent him from meeting the high financial costs, especially travel expenses, for running a competitive campaign. *Id*. at 52-53, 55-60, 67-75, 77-78, 87-88; Trial Ex. 17. Section 4 puts him in a no-win situation because he must rely on standard-level contributions to spend the funds he needs to be competitive. *See* Trial Tr. Vol. 1, 81-83. Said differently, if Lopez doubles the contribution limits, then he is not allowed to spend the money he needs to run a competitive race. *Id*.

Plaintiff Pelton has standing. He is a state senator and intends to seek reelection in 2026. *Id*. at 105-09. Even though he is the incumbent, the Contribution Limits restrain Pelton's ability to run a competitive campaign due to high costs, especially travel expenses for his rural district. *Id*. at 109-121, 124-25; Trial Ex. 17. He also testified that because of his poor relationship with the state party's leadership, he does not expect party support and anticipates the state party will oppose his reelection by recruiting a primary challenger to defeat him in the next election. *See* Trial Tr. Vol. 1, 122-24. Consequently, he will rely more on individual contributors to run a competitive campaign.

Plaintiff House has standing. He has been involved in Colorado politics both as a candidate, political party leader, and, for many years, a financial contributor. *Id*. at 138-42. House has contributed and will continue contributing to candidates for various Colorado offices in the future. *Id*. at 138-42, 152-53. He explained his desire to contribute more than the contribution limits allow, and that he contributed the maximum amount allowed under the contribution limits in numerous election cycles. *Id*. at 143, 145-52; Vol. 2, 206-07. And with respect to Section 4's asymmetric campaign contribution scheme, House testified that in past election cycles he wanted to contribute double the standard contribution limits to his preferred candidates if allowed, just as

donors to the opponents of House's candidates were permitted to do by Colo. Const. Art. XXVIII § 4 ("Section 4"). *See* Trial Tr. Vol. 1, 153-61.

Because all plaintiffs have suffered a First Amendment injury, traceable to Colorado law that can be redressed with a favorable ruling in this lawsuit, they have standing to bring their claims.

B. Plaintiffs' claims are not moot.

Plaintiffs brought this suit seeking relief before the 2022 election, but their claims are not moot. Indeed, their claims "fit comfortably within the established exception to mootness for disputes capable of repetition, yet evading review." *Federal Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007).

The "capable of repetition, yet evading review" mootness exception applies when "(1) the challenged action ended too quickly to be fully litigated and (2) a reasonable expectation exists for the plaintiff to again experience the same injury." *Rio Grande Found. v. Oliver*, 57 F.4th 1147, 1166 (10th Cir. 2023) (cleaned up).

The Supreme Court routinely employs this mootness exception in election cases. *See, e.g., Davis v. Federal Election Comm'n*, 554 U.S. 724, 735 (2008). Indeed, "[e]lection cases often fall within this exception, because the inherently brief duration of an election is almost invariably too short to enable full litigation on the merits." *Porter v. Jones*, 319 F.3d 483, 490 (9th Cir. 2003) (collecting cases).

"Challenges to election laws may readily satisfy the first element [of the mootness exception], as injuries from such laws are capable of repetition every election cycle yet the short time frame of an election cycle is usually insufficient for litigation in federal court." *Rio Grande Found.*, 57 F.4th at 1166 (citing *Wis. Right to Life*, 551 U.S. at 462). "The second prong of the capable of repetition exception requires a reasonable expectation or a demonstrated probability

that the same controversy will recur involving the same complaining party." *Wis. Right to Life*, 551 U.S. at 463 (internal quotation marks and citations omitted). This prong's "bar is not meant to be high." *Rio Grande Found.*, 57 F.4th at 1166 (citing *Honig v. Doe*, 484 U.S. 305, 318 n.6 (1988)). "[T]he same controversy [is] sufficiently likely to recur when a party has a reasonable expectation that it will again be subjected to the alleged illegality." *Wis. Right to Life*, 551 U.S. at 463 (internal quotation marks and citations omitted). "[A] statement expressing intent to engage in the relevant [conduct] might suffice." *Rio Grande Found.*, 57 F.4th at 1166 (citing *Davis*, 554 U.S. at 736). Indeed, in *Davis*, the candidate plaintiff challenged a campaign finance law and did not make his jurisdiction-sustaining intentions known until he made a public statement shortly before filing his U.S. Supreme Court *reply* brief. 554 U.S. at 736. The Supreme Court noted the plaintiff's intent to "self-finance another bid for a House seat," and, on that basis alone, the Court was "satisfied that [his] facial challenge [was] not moot." *Id*.

All three plaintiffs testified they either intend to run for office again or continue donating money to state candidates. Thus, the relevant Colorado campaign finance laws will continue to burden their First Amendment rights in coming elections. Their testimony "expressing intent to engage in the relevant [conduct]" is more than enough evidence to overcome any mootness questions. *Rio Grande Found.*, 57 F.4th at 1165.

II. COLORADO'S INDIVIDUAL CONTRIBUTION LIMITS ARE UNCONSTITUTIONAL.

A. The contribution limits are subject to closely drawn scrutiny.

"[C]ontribution limitations are permissible as long as the Government demonstrates that the limits are 'closely drawn' to match a 'sufficiently important interest.'" *Randall v. Sorrell*, 548 U.S. 230, 247 (2006) (plurality op.) (citing *Buckley v. Valeo*, 424 U.S. 1, 25 (1976) (per curium)); *see also Thompson v. Hebdon*, 589 U.S. 1 (2019) (per curiam) (directing courts to

apply *Randall* to contribution limit challenges). The Supreme Court "has recognized only one permissible ground for restricting political speech: the prevention of '*quid pro quo*' corruption or its appearance." *Federal Election Comm'n v. Ted Cruz for Senate*, 596 U.S. 289, 305 (2022). Once the government establishes that the restriction furthers this interest, *Randall*, 548 U.S. at 247, it must meet *Randall*'s unique tailoring criteria. *Id.* at 253-61. First, *Randall* tailoring asks whether there are "danger signs" that contribution limits are too low. *Id.* at 248-49. If so, the Court must conduct an independent review of the evidence, following the factors set out in *Randall*, to decide whether the limits are too restrictive. *Id.* at 254-61.

"Closely drawn" scrutiny and strict scrutiny are "pretty close but not quite the same thing." *Riddle v. Hickenlooper*, 742 F.3d 922, 931 (10th Cir. 2014) (Gorsuch, J., concurring). "Closely drawn" scrutiny requires an "important" government interest and a "narrowly tailored" law. *Randall*, 548 U.S. at 247, 261. Strict scrutiny requires a "compelling" government interest and a "narrowly tailored" law. *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011) ("*AFE*") (internal quotation marks omitted). Here, once Colorado establishes that its laws further the prevention of *quid pro quo* corruption or its appearance, "closely drawn" scrutiny requires following *Randall*'s tailoring requirements.[1]

This standard does not change because Colorado enacted its contribution limits by ballot initiative amending the constitution instead of a statute. *See* Trial Tr. Vol. 1, 7. But it does mean

[1] The Court raised a question at trial about "the relevance of historic understandings of corruption" and whether "founding intent warrant[s] consideration in parsing the contours of political speech under the First Amendment." Trial Tr. Vol. 1, 8. While courts "can consider [a law's] history and tradition" as they "consider[] the scope of the First Amendment," *Vidal v. Elster*, 602 U.S. 286, 301 (2024), the Supreme Court's decision in *Randall* and cases like *Ted Cruz for Senate* provide the rubric for First Amendment analysis of campaign finance laws. The only kind of "corruption" relevant to the campaign-finance context is *quid pro quo* or its appearance. *Ted Cruz for Senate*, 596 U.S. at 305.

that any deference a court might otherwise give to "the legislature" because of its ability to make "empirical judgments" about "the costs and nature of running for office" does not matter here. *Randall*, 548 U.S. at 248. The public has no expertise in running a campaign and is even less likely than incumbents to "diligently" ensure limit levels are adequate for competitive elections. *Id*. at 261. So under *Randall*, implementing the contribution limits as a constitutional amendment by ballot initiative cuts against their validity.

B. The contribution limits do not serve a legitimate anticorruption interest.

1. Colorado must prove its contribution limits serve a constitutional purpose.

Colorado bears the burden of proving its unusually low limits further the legitimate interest of preventing *quid pro quo* corruption or its appearance. Defendants produced no evidence of *quid pro quo* corruption in Colorado from campaign contributions either before or after enacting Article XXVIII. "Because the Government is defending a restriction on speech as necessary to prevent an anticipated harm, it must do more than simply posit the existence of the disease sought to be cured." *Ted Cruz for Senate*, 596 U.S. at 307 (internal quotation marks omitted). "It must instead point to record evidence or legislative findings demonstrating the need to address a special problem," as the Supreme Court has "never accepted mere conjecture as adequate to carry a First Amendment burden." *Id.* (cleaned up).

To this end, "it remains [the judiciary's] role to decide whether a [law] is constitutional." *Id.* at 313.[2] Colorado must prove that the Contribution Limits "further[] a permissible anticorruption goal," and this Court must "exercise" its "independent judicial judgment" in deciding whether Colorado has met that burden. *Id.* (quoting *Randall*, 548 U.S. at 248-49).

[2] The Court asked at trial "who is to decide [whether *quid pro quo* corruption or its appearance exists]?" Trial Tr. Vol. 1, 8-9. "Are we governed by the opinion of experts or is that a public policy decision, which any governmental unit has the right to address?" *Id*.

Here, Colorado "is defending [its] restriction on speech as necessary to prevent an anticipated harm"—the existence or appearance of *quid pro quo* corruption involving campaign contributions. *Ted Cruz for Senate*, 596 U.S. at 307. But every state in the union anticipates this harm and nearly 25% of them have no contribution limits. *See* Trial Ex. 1. The First Amendment burden the contribution limits place on plaintiffs' political freedoms must be "justified." *Ted Cruz for Senate*, 596 U.S. at 305. Colorado "must prove at the outset that it is in fact pursuing a legitimate objective. It has not done so here." *Id*.

2. Section 4 fatally undermines Colorado's purported anticorruption interest.

Colorado "has not shown that [its contribution limits] further[] a permissible anticorruption goal, rather than the impermissible objective of simply limiting the amount of money in politics." *Ted Cruz for Senate*, 596 U.S. at 313. "In general, the government can't prove a compelling interest when a policy has exceptions that cut against its proffered goal." *Nat'l Republican Senatorial Comm. v. Federal Election Comm'n*, _ F.4th _, 2024 U.S. App. LEXIS 22607 at *34–*35 (6th Cir. 2024) (en banc) (Thapar, J., concurring) (citing *Fulton v. City of Philadelphia*, 593 U.S. 522, 542 (2021); *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546-47 (1993)). That problem exists here. Colorado cannot explain "why it has a particular interest in" adopting unusually low contribution limits to limit *quid pro quo* corruption or its appearance "while making them" twice as large if a candidate agrees to limit spending. *Fulton*, 593 U.S. at 542.

The contribution limits are among the lowest in the nation—by a lot. *See* Trial Ex. 1. But Colorado does not always require candidates to follow them. Rather, Section 4 allows candidates to double these limits *so long as* they agree to limit their overall campaign spending. *See* Colo. Const. Art. XXVIII § 4. Indeed, the Tenth Circuit has already ruled that Section 4 exists "to

encourage candidates to limit their expenditures." *Lopez v. Griswold*, No. 22-1082, 2023 U.S. App. LEXIS 3421, at *1 (10th Cir. Feb. 13, 2023).

Not only is this interest impermissible, *see Ted Cruz for Senate*, 596 U.S. at 313, it "flatly undermines the government's anti-circumvention arguments." *Nat'l Republican Senatorial Comm.*, _ F.4th _, 2024 U.S. App. LEXIS 22607 at *34 (Thapar, J., concurring). "Either [Colorado] is openly tolerating a significant" risk of *quid pro quo* corruption in exchange for candidates limiting their spending, or the contribution limits "are in no real sense" designed to prevent corruption. *Ted Cruz for Senate*, 596 U.S. at 313. The "latter answer [is] more persuasive," *id.* at 312, and it renders the contribution limits unconstitutional.

In fact, the problem is worse than simply doubling the limits. If donors can double their contributions only when limiting a candidate's total spending, then the purported risk of *quid quo pro* corruption increases because each maximum contribution constitutes a larger portion of the candidate's total spending. Thus, not only does Section 4 undermine Colorado's purported interest in the contribution limits because it grants a significant exception unrelated to a legitimate anticorruption goal, *see Fulton*, 593 U.S. at 542, it makes the alleged problem worse in exchange for the "impermissible objective" of "limiting the amount of money in politics." *Ted Cruz for Senate*, 596 U.S. at 313. Section 4 reveals Colorado's true interest in the contribution limits. And in doing so, it dooms them in their entirety.

3. *There is no evidence the contribution limits prevent* quid pro quo *corruption or its appearance*.

Even if Section 4's existence did not eviscerate Colorado's purported anticorruption interest, the defendants failed to produce any "record evidence or legislative findings" that the contribution limits prevent *quid pro quo* corruption or its appearance. *Id*. at 307 (quotation marks omitted).

Colorado produced no evidence of *quid pro quo* corruption involving campaign contributions before enacting the contribution limits. *See* Trial Tr. Vol. 5, 926, 933-35; Trial Ex. 4 at 8-10 (Request Nos. 18-20); Trial Ex. 6 at 2-3 (Interrogatory 1). In fact, Colorado cannot identify a single *investigation* into alleged *quid pro quo* corruption from a contribution. *Id.*; Trial Ex. 4 at 1-3 (Interrogatory 1). Stephen Bouey, a 15-year veteran from the Secretary of State's office, testified that he has never seen "any complaints about *quid pro quo* corruption and campaign contributions," Trial Tr. Vol. 5, 926, has never seen any enforcement actions related to *quid pro quo* corruption, *id.*, and cannot find any past examples of *quid pro quo* corruption in "internal Secretary of State files." *Id.* at 933-34. The record lacks any evidence whatsoever of any kind of *quid pro quo* corruption in Colorado involving campaign contributions. *See id.* at 926-35; Trial Ex. 4-6, 44-47.

Colorado's evidence matches the plaintiffs' experience as well. All three plaintiffs—each of whom is actively involved in Colorado state politics and elections—testified that they are unaware of a single incident of *quid pro quo* corruption in Colorado electoral politics. Trial Tr. Vol. 1, 88, 125-26, 177-78. And Richard Wadhams, a former state Republican Party chairman and active participant and media pundit of Colorado state politics, Trial Tr. Vol. 4, 632-35, is likewise unaware of a single incident of campaign *quid pro quo* corruption either before or after the contribution limits were enacted. *Id.* at 668.

Only the former politicians who testified for the defendants said otherwise. *See* Trial Tr. Vol. 5, 829-34; Trial Tr. Vol. 6, 970-72. However, those two witnesses did not understand what *quid pro quo* corruption is. When asked to describe the incidents of *quid pro quo* corruption that they experienced, former Colorado state legislators Kerry Donovan and Bernie Buescher described

routine lobbyist and constituent interactions that they mistook for nefarious transactions.[3] *Id.*; *Ted Cruz for Senate*, 596 U.S. at 308. Senator Donovan even admitted "hesitancy" in calling her experience with a lobbying group "*quid pro quo*" corruption because that term has "a pretty specific definition." Trial Tr. Vol. 5, 829. In reality, all Senator Donovan described was an interest group explaining that they would not endorse her if she did not support legislation that the group cared about. *Id.* at 830.

Buescher, likewise, described nothing that looks like *quid pro quo* corruption. He testified that after announcing his support of anti-payday lending bill, "a busload of folks from Mesa County showed up in [his] office and yell[ed] at [him] about taking away their right to borrow money." Trial Tr. Vol. 6, 961-62. And then he testified that he had some donors who were payday lenders and that "if [he] had gotten pressure from them, [he] would have given money back." *Id.* What Buescher described is not an example of *quid pro quo* corruption. Indeed, there was not even a transaction. A busload of protestors came to Buescher's office, yelled at him about an issue they cared about, and *he still did not change his position or return any contributions. Id.* Far from proving that *quid pro quo* corruption is a problem with campaign contributions, both Donovan and Buescher simply showed why campaign contributions are protected by the First Amendment: donors care about where candidates stand on the issues

[3] Even if Senator Donovan described an example of *quid pro quo* corruption, her testimony lacked credibility. She did not consider reporting the incident to the Secretary of State, *id.* at 831, and could not remember the name of the lobbying group. *Id.* at 831-32. She purportedly remembered when the event happened, what was said, how much money was at stake, what the issue was, but not the individual who made the alleged request. *Id.* at 832-33. It is inconceivable that Senator Donovan cannot remember the person or group that made the alleged illegal offer of *quid pro quo* money to her if that experience left such a lasting impression that she remembers every other detail of the encounter a decade later.

because a donation is a way to express support for that candidate. And no one wants to support a candidate that works against them on the issues they care most about.

Colorado also cannot show that the contribution limits prevent the appearance of *quid pro quo* corruption either. Dr. David Primo explained that Colorado's contribution limits "have no meaningful effects on *quid pro quo* corruption or the appearance of corruption." Trial Tr. Vol. 2, 225. Dr. Primo reached that conclusion in his extensive, peer-reviewed study that analyzed the relationship between state campaign-finance laws and the public's trust and confidence in government over 30 years. He found that contribution limits do not affect the public's perception of government. Trial. Ex. 119, 120, 121, 122. As Dr. Primo summarized: "If a state were to eliminate all contribution limits and public funding systems today, it should expect nothing much to happen with regard to trust and confidence in state government." Trial Tr. Vol. 2, 274.

Colorado attempted to refute Dr. Primo with expert testimony from Dr. Abby Wood, but to no avail. Dr. Wood criticized Dr. Primo's research design as unreliable. But while Dr. Wood held herself out as an expert on quantitative research design, she failed to detect a significant error in her own study that she created for the trial—a mistake that "if you asked 100 statisticians, can you do this, they would say no." Trial Tr. Vol. 2, 284. Dr. Wood acknowledged her error only after Dr. Primo discovered it, but she insisted that it did not change her criticism of Dr. Primo's research. Trial Tr. Vol. 6, 1045-46. Even so, Dr. Wood admitted that, unlike Dr. Primo, her own trial research had not successfully undergone peer review and she would not submit some of her research to peer review because it was "not robust enough." *Id.* at 1058. Consequently, Dr. Wood wants the Court to trust her faulty analysis that is inadequate for peer review instead of the expert opinions that Dr. Primo formed through research that withstood peer

review and was published by the University of Chicago press. This argument—like her testimony—falls flat.

At bottom, Colorado did not establish a "sufficiently important interest" to justify the contribution limits. *Randall*, 548 U.S. at 247 (internal quotation marks omitted). Therefore, the laws are unconstitutional.[4]

C. The contribution limits are too low under *Randall*.

Even if the Court holds the contribution limits serve an interest in preventing *quid pro quo* corruption or its appearance, Colorado's limits are unconstitutionally low under *Randall*. "[C]ontribution limits that are too low can . . . harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders, thereby reducing democratic accountability." *Thompson*, 589 U.S. at 4 (quotation marks omitted). Under *Randall*, courts engage in a two-step inquiry to determine whether a state's contribution limits are too low. 548 U.S. at 249, 253. First, the court looks for "danger signs" that "generate suspicion that [the limits] are not closely drawn." *Id.* at 250. Second, the court "review[s] the record independently and carefully with an eye toward assessing the statute's 'tailoring,' that is, toward assessing the proportionality of the restrictions." *Id.* Contribution limits survive this second step only when the state demonstrates the limits are "closely drawn to meet its objectives" without unduly burdening electoral competition. *Id.* at 254.

[4] The Court asked whether the Supreme Court's "observation in [*AFE*] that the State of Arizona still had, presumably, constitutional campaign contribution limits to mitigate the threat of corruption or appearance thereof inform how [it] should analyze each claim." Trial Tr. Vol. 1, 7-8. The answer is no. Because the Contribution Limits do not further a legitimate anticorruption interest, it follows that the limits have no "marginal corruption deterrence" either. *See AFE*, 564 U.S. at 725. While that issue might be relevant if Colorado justified the contribution limits as a "prophylaxis-upon-prophylaxis" method of combating *quid pro quo* corruption, that is not the issue in this case. *See Ted Cruz for Senate*, 596 U.S. at 306-07.

1. The contribution limits display constitutional "danger signs."

Contribution limits raise constitutional "danger signs" if they "are substantially lower than both the limits [the Supreme Court has] previously upheld and comparable limits in other States." *Randall*, 548 U.S. at 253. And these "danger signs" are larger when contribution limits are "not adjusted for inflation," *Thompson*, 589 U.S. at 6, because that "means [the limits] [will] soon be far lower" relative to other states. *Randall* 548 U.S. at 252. Here, the contribution limits display very large "danger signs."[5]

First, the contribution limits are "substantially lower than . . . the limits [the Supreme Court] ha[s] previously upheld." *Thompson*, 589 U.S. at 5. Colorado admits this fact. Trial Ex. 4 at 8 (Admission 16). Colorado's individual contribution limit for statewide office per election cycle (*i.e.*, primary and general elections combined) is $1,450. *See* 8 CCR 1505-6 § 10.17.1(b)(1); CRS 1-45-103.7(3), (4). "The lowest campaign contribution limit [the Supreme] Court has upheld remains the limit of $1,075 per two-year election cycle for candidates for Missouri state auditor in 1998. That limit translates to over $1,600 in [2019] dollars." *Thompson*, 589 U.S. at 5 (internal citations omitted). By now, after recent record inflation, Colorado's "limit is well below" the lowest individual contribution limit ever approved by the Supreme Court. *Randall*, 548 U.S. at 251.

Second, Colorado's "individual-to-candidate contribution limit is 'substantially lower than . . . comparable limits in other States.'" *Thompson*, 589 U.S. at 5 (quoting *Randall*). Only

[5] The Court asked, "How much should each danger sign, as described in *Randall v. Sorrell* weigh in determining whether a campaign contribution limit is constitutionally burdensome?" Trial Tr. Vol. 1, 6. Because each danger sign exists here, their weight is irrelevant. But in *Randall*, the lack of inflation indexing was supplemental to the first two danger signs, indicating that the first two are the most important. *Randall*, 548 U.S. at 251-52. Inflation also appears as part of *Randall*'s "five sets of considerations" to consider "taken together" after determining the danger signs are present. *Id.* at 261.

Delaware, with a population more than five times smaller than Colorado,[6] "impose[s] limits on contributions to candidates for statewide office at or below" Colorado's individual limits. *Randall*, 548 U.S. at 250; Trial Ex. 1. Otherwise, Colorado imposes the lowest contribution limits in the nation on candidates for Secretary of State and the state legislature. *See* Trial Ex. 1.

Third, Colorado "fail[ed] to index for inflation." *Randall*, 548 U.S. at 252; *Thompson*, 589 U.S. at 6. Colorado designed its inflation adjustment to ensure its low limits will "soon be far lower" in "real dollars." *Randall*, 548 U.S. at 250, 252. Two things make this happen: rounding and resetting. Colorado adjusts for inflation every four years, but it "round[s] down to the nearest lowest" $25. Colo. Const. Art. XXVIII § 3(13). That means Colorado only adjusts for inflation *if* inflation causes the limit to increase by at least $25. Anything less results in no adjustment at all. Then Colorado resets the calculation. It examines inflation for the next four-year period in isolation, without accounting for cumulative inflation from when the law was enacted in 2002 or the immediately previous four-year period, which is lost due to the rounding down provision. *See* Trial Tr. Vol. 4, 565-80; Trial Tr. Vol. 5, 874, 876; Trial Ex. 40. Consequently, beginning from when the contribution limits were enacted in 2002 through the end of time, inflation could be 4.9% every four-year period and neither the statewide nor legislative contribution limit would ever increase. Trial Tr. Vol. 4, 580. Indeed, by rounding down and resetting the adjustment every four years, Colorado ensures the contribution limits—which are already among the lowest in the nation—will "decline in real value each year." *Randall*, 548 U.S. at 261.

The evidence bears this out. From 2002 to 2022, cumulative inflation escalated 64.7%, while the statewide and legislative contribution limits only increased 45% and 12.5%, respectively. *See*

[6] *See* U.S. Census Bureau, *Resident Population for the 50 States, the District of Columbia, and Puerto Rico: 2020 Census*, available at https://perma.cc/H9RV-8WWL.

Trial Tr. Vol. 4, 579-83, 688; Trial Ex. 40. Current statewide and legislative individual contribution limits would be 14% and 47% higher, respectively, if they were adjusted for inflation every four years without rounding down. *Id*. And at their current levels, inflation could stay at 11% every four-year period for eternity and the legislative limits *will never increase*. *See* Trial Tr. Vol. 4, 582. Indeed, the legislative limits increased for the first time only in 2023 after historic inflation—over 20 years after the Contribution Limits were enacted. *See* Trial Tr. Vol. 4, 576; Trial Ex. 40; *compare* 8 CCR 1505-6 § 10.17.1(b)(2) (2023) *with* Colo. Const. Art. XXVIII § 3(1)(b) (2002).

Despite this, the defendants contend that Colorado does adjust for inflation, even if imperfectly. They essentially argue that any adjustment, no matter how small, meets *Randall*'s inflation adjustment requirement and that plaintiffs simply quibble over the amount. *See* Trial Tr. Vol. 1, 34; Vol. 5, 866, 870-76, 881-82.

But *Randall* requires more inflation responsiveness than Colorado law allows. True, *Randall* and *Thompson* examined states that had no contribution adjustment at all. 548 U.S. at 261; 140 U.S. at 6. But in both cases, the Court discussed inflation because failing to adjust means that "limits which are already suspiciously low will almost inevitably become too low over time." *Randall*, 548 U.S. at 252. And Colorado's scheme ensures the same result. Colorado's scheme ensures its limits will continue to decline relative to other states. It does not simply round to the nearest $25 so that some cycles the adjustment might be slightly more than inflation, and other cycles slightly less. Nor does it make sure that any rounding smooths out over time by accounting for cumulative inflation that may be lost from rounding. Instead, Colorado guarantees that its contribution limits will "decline in real value each year," *id.* at 261, without any possibility of catching up. The Supreme Court's worry that "future legislation will be necessary

to stop that almost inevitable decline" exists here just as it did in *Randall*. In fact, that worry is even stronger here because the contribution limits were enacted as an amendment to Colorado's constitution, *see* Trial Tr. Vol. 4, 565-67, making it impossible for the legislature to "diligently police the need for changes" as the discrepancy grows. *Randall*, 548 U.S. at 261.

"In sum, [Colorado's] contribution limits are substantially lower than both the limits [the Supreme Court has] previously upheld and comparable limits in other States." *Randall*, 548 U.S. at 253. Plus, its "failure to index for inflation means that [Colorado's] levels [will continue to be] far lower than [nearly all other states] regardless of the method of comparison." *Id*. at 252. "These are danger signs that [Colorado's] contribution limits may fall outside tolerable First Amendment limits." *Id*. at 253. This Court "consequently must examine the record independently and carefully to determine whether [Colorado's] contribution limits are 'closely drawn' to match the State's interests." *Id*.

2. The contribution limits do not pass Randall*'s tailoring requirements.*

Whether the contribution limits are "narrowly tailored" depends on five factors: (1) whether the limits "will significantly restrict the amount of funding available for challengers to run competitive campaigns;" (2) whether political parties must abide by the same low limits as individual contributors; (3) whether "the lack of tailoring in the" rules governing "volunteer services" allows regulators to apply "broad definitions" of contributions to "expenses [campaign] volunteers incur, such as travel expenses, in the course of campaign activities" in States with "very low" contribution limits; (4) whether the limits are indexed for inflation; and (5) whether there is any "special justification" that might warrant low limits. *Id*. at 248-61.

The evidence shows the contribution limits "are too restrictive." *Id.* at 253. "These five sets of considerations, taken together, lead" to the conclusion that Colorado's "contribution limits are not narrowly tailored," *id*. at 261, and are therefore unconstitutional.

a. The contribution limits significantly restrict the amount of funding available for challengers to run competitive campaigns.

Colorado's contribution limits make it more difficult for challengers to compete with incumbents. "[T]he critical question concerns … the ability of a candidate running against an incumbent officeholder to mount an effective *challenge*." *Id*. at 255. "[T]ypically," a "challenger must bear" "higher costs" "to overcome the name-recognition advantage enjoyed by an incumbent." *Id*. at 256. The record shows that the contribution limits significantly restrict the amount of funding for a challenger to run a competitive campaign against an incumbent.

Ben Engen explained that challenging an incumbent is difficult and contribution limits make it harder, especially for first-time candidates.[7] *See* Trial Tr. Vol. 4, 604-07, 614-31, 681-92. The contribution limits unduly harm challengers' ability to raise money, which prevents them from promoting their candidacy to voters and, therefore, conducting a competitive campaign. *Id*. To illustrate, individuals donate nearly 70% of the number of contributions made to first-time candidates in legislative races. *Id*. at 620. But incumbents collect only half of their contributions from individuals. *Id*. Incumbent legislators, instead, receive contributions from lobbyists that control small donor committees, which can contribute over 13-times more money than individuals. *Id*. 620-26; *compare* 8 CCR 1505-6 § 10.17.1(b)(2) *with* § 10.17.1(c)(2).

[7] While Engen defined "incumbent" to include not just candidates running for their same office, but also candidates that had previously established incumbency-level name recognition from prior races, this view aligns with the Supreme Court's overarching concern in *Randall* that incumbents have advantages from already being in the public eye. *Randall*, 548 U.S. at 256.

Defendants' former politician witnesses exemplify this fact. *See* Trial Tr. Vol. 5, 822-27; Vol. 6, 963-70.

Furthermore, the contribution limits have the insidious effect of discouraging potential first-time candidates from running for office due to an incumbent's fundraising advantage and the inability to overcome the messages produced from opposition independent expenditure committees ("IECs"). Trial Tr. Vol. 4, 620-31, 681-82, 686-87. Indeed, a first-time state senate candidate must raise "at least" 20% more money than an incumbent to win the race. *Id*. at 626-27. Thus, because a first-time candidate is dependent on individual donors and an incumbent is not, a challenger's potentially competitive race ends before it even begins due to the ingrained fundraising advantage incumbents have with the contribution limits. *Id*. at 620-31. That is, unless a challenger is wealthy enough to self-fund his campaign and does not need to rely on individual contributors. *Id*. at 689-91; Vol. 1, 173-77.

Dr. Christopher Bonneau explained that low contribution limits are "more likely to hurt challengers than incumbents," without "any benefits" of preventing corruption or increasing "political trust." Trial Tr. Vol. 3, 387-89. "[C]ampaign spending is not the only thing that determines outcomes of elections, but you can't win an election if you don't spend money, and you can't spend money if you don't raise it. So, unless you're independently wealthy and you're going to fund your own campaign, [low contribution limits are] a huge impediment." *Id*.

Incumbents and their challengers do not start their races on a level playing field. *Id*. at 378. Incumbents are "known to voters" due to their "higher name recognition," "well-established funding base and funding network," which gives them a "significant" fundraising advantage, and the ability to use their public office to ingratiate themselves with voters. *Id*. at 378-79.

Low contribution limits make challengers less competitive because they "make it more difficult for challengers to raise money," which inhibits their ability to increase name-recognition, publicize their policy positions, hold events and travel to meet voters. *Id*. at 379-80. Campaigns that have money to spend on advertising and messaging "increase[s] [ ] voter knowledge." *Id*. at 381. And "when voters are more knowledgeable, they're more likely to participate." *Id*. If it is "important for elections to be competitive and [ ] voters [to] have meaningful choices, [then] [challengers] need to raise money in order to make that happen," which is "very difficult" with low contribution limits. *Id*. at 380.

Colorado's limits create these anti-competitive effects. Dr. Damon Cann explained how this effect appears across four different dimensions. First, Colorado has one of the lowest rates of contestation during its primaries, *see* Trial Ex. 123, which is "attributable to the low contribution limits" in place. Trial Tr. Vol. 3, 459-60; Trial Ex. 129. Second, Colorado's low limits also affect the rate of contestation in general elections, decreasing the amount contested general elections by about 3% relative to a state with no contribution limits. Trial Tr. Vol. 3, 470-71; Trial Ex. 130. That means, with less restrictive contribution limits, "tens of thousands [more] Coloradans" would have a choice at the ballot box each election cycle. Trial Tr. Vol. 3, 472-73. Third, Colorado's limits decrease the amount candidates raise, specifically decreasing the average amount a challenger can raise in a state House race by about $40,000. *Id.* at 480; Trial Ex. 131. And fourth, because challenger spending has a higher marginal value than incumbent spending, Colorado's limits make challengers less competitive. Trial Tr. Vol. 3 at 484-86, 489-90, 493-94; Trial Ex. 127, 128. The effect is that the contribution limits reduce the expected vote share of a challenger, on average, by approximately 3%. While that does not "chang[e] 30 or 40 elections a

year" in the State House, it does possibly mean "changing one or two, maybe three." Trial Tr. Vol. 3, 495. And that affects the electoral representation of hundreds of thousands of Coloradans.

Accordingly, the evidence creates "a reasonable inference that the contribution limits are so low that they pose a significant obstacle to candidates in competitive elections," *Randall*, 548 U.S. at 256, and that they "significantly restrict the amount of funding available for challengers to run competitive campaigns." *Id.*at 253. Therefore, this factor "counts against the constitutional validity of the contribution limits." *Id*. at 256.

Defendants' expert, Dr. Douglas Spencer, argues that no matter how permissive or restrictive individual campaign contributions limits are, incumbent politicians almost always win reelection. *See* Trial Tr. Vol. 6, 1119-24. But that misses the point.

Under *Randall*, what matters is challenger competitiveness, not incumbent reelection rates. 548 U.S. at 248-49, 253, 255-56. And with good reason—the incumbent success rate is not the best measure of electoral competitiveness. *See* Trial Tr. Vol. 3, 384. Indeed, the incumbent success rate treats "an incumbent who wins with 85% of the vote . . . the same as an incumbent who wins with 51% of the vote." *Id*. But no one thinks these elections are equally competitive. *Id*. at 384-85. Better indicators of competitiveness are whether the challenger's vote percentage "beat the spread" by outperforming the incumbent's vote percentage relative to the incumbent's partisan voter registration advantage, high approval rating, or margin of victory in the previous election. *Id*. at 385-87.[8]

[8] Dr. Spencer also claims Colorado has some of the most competitive elections in the country. *See* Trial Tr. Vol. 6, 1124-25. But he defines a race as competitive when two or more candidates vie for the same seat, without regard to the closeness of the outcome. *See* Trial Tr. Vol. 6, 1124. Under his view, a 51%-to-49% race is just as competitive as an 85%-to-15% race. Not only is that assessment absurd, but Spencer also fails to account for, and has no knowledge of, how easy it is for a candidate to appear on a Colorado ballot. *Id*. at 1125. Indeed, it is very

Indeed, courts should focus on how competitive a race is, rather than the binary win-loss result. As *Randall* explained, contribution limits that are too low "reduc[e] democratic accountability" by making it harder for challengers to "mount[] effective campaigns." 548 U.S. at 248-49. But an "effective campaign" that increases "democratic accountability" is not just one in which a challenger wins. *Id*. at 249. "[W]hen an incumbent faces a close election, that . . . can change the incumbent's future choices and behaviors." Trial Tr. Vol. 3, 473. This causes an incumbent to "update" his or her "beliefs about the preferences of their constituency." *Id.* at 473-74. Thus, an effective challenger can increase "democratic accountability" even if the incumbent ultimately wins.

b. Political party contributions have practical limitations that mitigate their theoretical impact on competitive races.

Randall held political parties should be permitted to donate more funds to their candidates than individual contributors to help the candidate run competitive campaigns. 548 U.S. at 256-59. Here, the contribution limits allow political parties to contribute more money to candidates than they allow individuals to donate. *Compare* 8 CCR 1505-6 § 10.17.1(b) *with* Colo. Const. Art. XXVIII §3(d); 8 CCR 1505-6 § 10.17.1(j). But this fact just slightly helps Colorado's case. Practical limitations along with the emergence of IECs make Colorado's political parties—even with higher contribution limits—nothing more than "a whisper." *Randall*, 548 U.S. at 259.

Beginning with practical limitations, both major political parties are traditionally not involved in primary elections, making party contributions significantly less important in one-party districts that do not have competitive general elections. *See* Trial Tr. Vol. 1, 170-71; Vol. 4,

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easy to become a candidate in a Colorado election. *See* Trial Tr. Vol. 4, 612-14. Often, people that have no intention of campaigning appear on the ballot just to present a choice for voters. *Id*.

637-38. And state parties do not have the financial resources to donate the maximum amount permitted under Colorado law to all their candidates. *See* Trial Tr. Vol. 1, 164; Vol. 4, 645-56. Indeed, even in 2022, the year of its highest spending level since the contribution limits were enacted, the Colorado Democratic Party did not have enough money to contribute the maximum amount permitted to their candidates from the governor at the top of ballot, down to candidates for the state house of representatives. *See* Trial Vol. 4, 654-56. So instead of donating directly to candidates, parties typically concentrate their spending on their own efforts to "get out the vote" and promote specific candidates. *See* Trial Tr. Vol. 1, 168-69, 184; Vol. 4, 640-43.

Accordingly, party contributions only benefit *some* candidates in *some* circumstances. For example, parties avoid contributing to candidates in races they deem to be uncompetitive. *See* Trial Tr. Vol. 1, 162-63, 184-86; Vol. 4, 647-48. But that only exacerbates democratic accountability problems. Because if party money only flows to certain races, underdog challengers trying to run a competitive race will not benefit from party contributions. Consequently, candidates struggling to "run a competitive election," *Randall*, 548 U.S. at 253, rely even more on individual contributions.

Parties also actively oppose some of their candidates due to intraparty disputes. Indeed, Colorado Republicans' chairman opposes Pelton and will likely recruit his challenger for the next primary election. *See* Trial Tr. Vol. 1, 122-24. So, the state party will not only refuse to contribute to Pelton, but also actively oppose him. *Id*. In such circumstances, a candidate like Pelton will rely even more on individual contributions.

The source of election-related spending has also changed dramatically since *Randall*, undermining the weight of this factor. *Randall* held party contributions were relevant because they "represent[ed] a significant amount of total candidate funding" in "competitive races." 548

U.S. at 254. Subsequently, however, *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 365-66 (2010), altered the landscape by allowing unlimited independent expenditures. Individual contributions to political parties are limited. *See* 8 CCR 1505-6 § 10.17.1(d). Contributions to IECs are not. Thus, IECs can amass greater resources, and, consequently, assert greater influence in elections. *See* Trial Tr. Vol. 4, 681-82, 686-87. And since *Citizens United*, IECs have eclipsed the parties' role in election spending. In 2008, IECs had no role in Bernie Buescher's surprise defeat. *See* Trial Ex. 154, 159, 163. But in the 2022 four-year election cycle, IECs spent nearly $122.8 million supporting and opposing various statewide and legislative candidates, while political parties at the state and local level contributed just over $1.7 million to candidates. *See* Trial Ex. 83, 84. Now, more than ever, party contributions do not necessarily "represent a significant amount of total candidate funding," *Randall* 548 U.S. at 254; Trial Tr. Vol. 4, 667-68, 681-82, 686-87, and so this factor should have little weight.

c. The contribution limits' treatment of volunteer services is not properly tailored.

Randall faulted Vermont for failing to exclude "volunteer expenses" from its definition of a contribution because some expenses (such as mileage) add up quickly and could cause a volunteer to exceed the contribution limit without realizing it. "That combination, low limits and no exceptions [for volunteer expenses], means that a gubernatorial campaign volunteer who makes four or five round trips driving across [Vermont] performing volunteer activities coordinated with the campaign can find that he or she is near, or has surpassed, the contribution limit." *Randall*, 548 U.S. at 260. "Such supporters will have to keep careful track of all miles driven." *Id*. "And any carelessness in this respect can prove costly, perhaps generating a headline, 'Campaign laws violated,' that works serious harm to the candidate." *Id*. "These sorts of problems are unlikely to affect the constitutionality of a limit that is reasonably high." *Id*. "But

[Vermont's] contribution limits [were] so low, and its definition of 'contribution' so broad, that [its contribution limits] may well impede a campaign's ability effectively to use volunteers, thereby making it more difficult for individuals to associate in this way." *Id*.

Colorado law does the same thing. The text of both laws match verbatim. Vermont "exclude[d] from its definition of 'contribution' all 'services provided without compensation by individuals volunteering their time on behalf of a candidate.'" *Id*. at 259 (quoting Vt. Stat. Ann., Tit. 17, § 2801(2) (2002))); *compare* Colo. Const. Art. XXVIII §2(5)(b) (same); *see also* Trial Tr. Vol. 5, 882-83. Like Vermont, Colorado "does not exclude the expenses [ ] volunteers incur, such as travel expenses, in the course of campaign activities." *Randall*, 548 U.S. at 259; *compare* Colo. Const. Art. XXVIII §2(5)(b); 8 CCR 1505-6 § 1.6.2. "And, unlike the Federal Government's treatment of comparable requirements, [Colorado] has not (insofar as [plaintiffs] are aware) created an exception excluding such expenses." *Randall*, 548 U.S. at 259 (citing the federal statutes that exclude "from the definition of 'contribution' volunteer travel expenses up to $1,000 and payment by political party for campaign materials used in connection with volunteer activities"). Indeed, defendants admit that compensation for a volunteer's mileage is not "specifically exempt" from qualifying as an individual campaign contribution and that individuals should seek legal counsel to determine if they should report mileage reimbursements as contributions. Trial Tr. Vol. 5, 917. These facts alone should end the inquiry in plaintiffs' favor on this *Randall* factor.

Even so, Colorado attempts to engineer a constitutional solution to this issue by claiming that the volunteer expenses identified in *Randall* (like mileage) are not considered contributions under *Keim v. Douglas County School District*, 399 P.3d 722 (Colo. App. 2015). *See* Trial Tr. Vol. 1, 32; Trial Ex. 359. But neither *Keim* nor any other Colorado authority addresses volunteer

expenses. Nor does *Keim* adopt a limited definition of "contribution" that excludes volunteer expenses, as Colorado argued at trial. Trial Tr. Vol. 1, 32. If *Keim* had done so, presumably the Secretary of State's representative would not refuse to answer questions about what is considered as a contribution. Yet that is what happened. *See* Trial Tr. Vol. 5, 887 (explaining there "is an *argument* that they would not have to report volunteer mileage" with "the caveat that I'm not in a position to provide legal advice." (emphasis added)).

This lack of clarity compounds the problem. "[A]mbiguous" rules "offer[] only uncertainty. *Wyo. Gun Owners v. Gray*, 83 F.4th 1224, 1248 (10th Cir. 2023). "And uncertainty amidst the threat of sanction chills the exercise of First Amendment rights." *Id*. at 1249. A campaign cannot risk the "costly" mistake of violating the law during a campaign, "perhaps generating a headline, 'Campaign laws violated,' that works serious harm to the candidate." *See Randall*, 548 U.S. at 260. So campaigns face uncertainty—because of Colorado's "very low limits"—which "impedes a campaign's ability effectively to use volunteers." *Id.*

This is not a fanciful problem. Coloradans report ostensible volunteer expenses as individual campaign contributions. For example, reported expenses include mileage for driving 116 miles to attend a political committee meeting for a candidate and providing a personal home to serve as a meeting space for a candidate. *See* Trial Ex. 50, 51. Not only that, but defendants are also uncertain whether these activities are contributions. *See* Trial Tr. Vol 5, 917-24. Defendants are not even sure if clipboards that a volunteer donates to a campaign for vote canvasing is a contribution subject to the contribution limits. *See* id. at 911-14. This is exactly the problem *Randall* requires states avoid. 548 U.S. at 260 ("Such supporters will have to keep careful track of all miles driven, postage supplied (500 stamps equals $200), pencils and pads used, and so forth.").

Even if it's merely *unclear* that volunteer expenses are exempt from the definition of contributions, candidates, contributors, and volunteers "need certainty and direction." *Wyo. Gun Owners*, 83 F.4th at 1249. It is not a campaign speaker's job to decipher how to comply with Colorado's byzantine campaign finance laws. '"The First Amendment does not permit laws that force speakers to retain a campaign finance attorney.'" *Id*. at 1250 (quoting *Citizens United*, 558 U.S. at 324). The government cannot expect them to "accept greater First Amendment burdens to remain in compliance" with the contribution limits. *Id*. This "lack of tailoring" is "an added factor counting against the constitutional validity of [Colorado's] contribution limits." *Randall*, 548 U.S. at 260.

d. The contribution limits are not adjusted for inflation.

The contribution limits do not adjust for inflation. As discussed above, Colorado ensures the limits will always "decline in real value each year," *Randall*, 548 U.S. at 261, because of its rounding provision, which resets the calculation every cycle so that the cumulative effects of inflation (missed from rounding down) never factor into the adjustment. The result is stark.

Since 2002, cumulative inflation has increased 64.7%, Trial Tr. Vol. 4, 579-81, 583, 688, but the limits for statewide and legislative office have only increased 45% and 12.5%, respectively. *Id.* at 580-82; Trial Ex. 40. Indeed, current statewide and legislative limits would be 14% and 47% higher, respectively, if they were adjusted for inflation every four years without rounding down. *Id*. That disparity resembles the 20% decline in real value that *Randall* criticized. 548 U.S. at 261. This factor cuts strongly against Colorado.

Colorado, of course, understands how inflation adjustments should work. Indeed, Colorado annually adjusts civil penalties for inflation without a counterproductive rounding system. *See e.g.*, CRS 25-7-122(b)(I) (air quality violations); CRS 25-8-608(1) (water quality violations);

CRS 31-16-101(1)(b) (municipal ordinance violations). And Colorado's minimum wage is adjusted annually "for inflation" and the state "must round up, to the nearest cent, any fractional cents yielded by the inflation adjustment," fully accounting for inflation and then some. 7 CCR 1103-1 § 8.9. But Colorado chose a different path for the contribution limits that forces them to fall behind inflation.

Indeed, because of the $25 rounding requirement, the legislative limits increased for the *first time* in 2023 to $450 per election cycle. *Compare* 8 CCR 1505-6 § 10.17.1(b)(2) (2023) *with* Colo. Const. Art. XXVIII § 3(1)(b) (2002). The Supreme Court criticized Alaska for going the same period of time without adjusting its limits. *Thompson*, 589 U.S. at 6. And the fact that Colorado might *sometimes* make an adjustment after historically high inflation does not solve this problem. *See id.* (faulting Alaska for relying on legislators to realize that the contribution limits were not keeping up with inflation). For the legislative caps to ever adjust again, inflation must be more than 11% over four years. *See* Trial Tr. Vol. 4, 582. That is approximately a 2.7% annual rate. *Id*. at 582-83. Accordingly, inflation must be higher than the Federal Reserve's annual 2% inflation target and sustain that inflationary pace while the Fed tries to lower it over four years. *Id*. at 583.

Colorado's argument that it sufficiently adjusts for inflation ignores the Supreme Court's reason for focusing on inflation at all. "A failure to index limits means that limits which are already suspiciously low will almost inevitably become too low over time." *Randall*, 548 U.S. at 261 (internal citation omitted). That same problem exists here, even if at a slightly slower pace than *Randall* or *Thompson*. And the problem creates real difficulties for candidates. "[T]he bread-and-butter approach of meeting voters face-to-face, sending them mailings, and reaching them by television and radio remain, and the costs of those methods inevitably rise over time."

Thompson v. Hebdon, 7 F.4th 811, 822 (9th Cir. 2021). "As the cost of living rises so does the cost of campaigning." *Id.* These increased costs include the cost of fuel needed to travel across the vastness of Colorado to meet constituents. *See* Trial Tr. Vol. 1, 56-60, 67-70, 117-19; Trial Ex. 17. And unless the contribution limits actually keep up with inflation, these "limits which are already suspiciously low will almost inevitably become too low over time" and prohibit challengers from financing competitive campaigns. *Randall*, 548 U.S. at 261.

Finally, *Randall* and *Thompson* worried that a law that did not adjust for inflation "'impose[d] the burden of preventing the decline upon incumbent legislators who may not diligently police the need for changes in limit levels to ensure the adequate financing of electoral challenges.'" *Thompson*, 589 U.S. at 6 (quoting *Randall*, 548 U.S. at 261). But this problem is worse in Colorado.

Unlike legislators, who may "have 'particular expertise' in matters related to the costs and nature of running for office," *Randall*, 548 U.S. at 248, Colorado enacted these limits (and the inflation adjustment scheme as well) by popular vote as a state constitutional amendment. *See* Colo. Const. Art. XXVIII. Even if legislators monitored the "need for changes," they cannot legislate a solution to the problem. 589 U.S. at 6. And if expecting elected officials to monitor issues of public policy is too difficult, *see id.*, then requiring the general public to stay abreast of the costs of campaigning and subsequently amend Colorado's constitution every few years is unthinkable. That Colorado imposed these low limits by constitutional amendment made it certain that the limits will "decline in real value" over time, which cuts against the law even more. *Randall*, 548 U.S. at 261.

e. There is no "special justification" for the contribution limits.

Colorado admits it has no "special justification" to "warrant a contribution limit so low or so restrictive as to bring about the serious associational and expressive problems" described in *Randall*. 548 U.S. at 261; Pretrial Order (ECF 97) at 4. Colorado's campaign finance program manager testified that he reviews every campaign finance complaint, and that during his approximately 15-year tenue, none of them have concerned *quid pro quo* corruption and campaign contributions. *See* Trial Tr. Vol. 5, 909-10, 926-35. And the documentary evidence produced by Colorado during discovery had no historical evidence of *quid pro quo* corruption and campaign contributions in the State. *Id.*; Trial Ex. 4-6, 44-47. Indeed, there is no evidence that "corruption (or its appearance) in [Colorado] is significantly more serious a matter than elsewhere." *Randall*, 548 U.S. at 261.

* * *

"These five sets of considerations, taken together, lead [] to [the] conclu[sion] that [Colorado's] contribution limits are not narrowly tailored. Rather, the [contribution caps] burden[] First Amendment interests by threatening to inhibit effective advocacy by those who seek election, particularly challengers; . . . they hamper participation in campaigns through volunteer activities; [ ] they are not indexed for inflation;" and there is no "special justification" for them. *Id*. And while the law does not "mute the voice of political parties," *id*., this is cold comfort for a candidate that must finance his campaign with low individual contributions because his political party is either unable or unwilling to contribute to him.

At bottom, Colorado "does not point to a legitimate statutory objective that might justify these special burdens." *Id*. at 261-62. And the contribution limits "disproportionately burden[] numerous First Amendment interests." *Id.* at 262. Therefore, they are unconstitutional.

III. COLORADO'S ASYMMETRIC CAMPAIGN CONTRIBUTION SCHEME IS UNCONSTITUTIONAL.

Section 4 is an asymmetric campaign contribution scheme. It requires candidates that do not limit their spending to abide by Colorado's contribution limits and "activate[s] . . . a scheme of discriminatory contribution limits" if a non-limiting candidate spends too much. *See Davis*, 554 U.S. at 740. Asymmetric campaign contribution schemes trigger strict scrutiny because "imposing different contribution . . . limits on candidates vying for the same seat is antithetical to the First Amendment." *Id*. at 743-44; *see also Riddle*, 742 F.3d at 929. The Supreme Court has "never upheld" a law that "raises the limits only for [one candidate] and does so only when" his or her opponent spends a certain amount of money. *Davis*, 554 U.S. at 738. This Court should not do so either.[9]

Under Section 4, when someone announces her candidacy for public office, she must declare whether she will limit her spending on speech and accept Section 4's terms. *See* Section 4(3); CRS 1-45-110(1). "If a candidate accepts the applicable spending limit and another candidate for the same office refuses to accept the spending limit," then the "applicable contribution limits [in 8 CCR 1505-6 § 10.17.1] shall double for any candidate who has accepted the applicable voluntary spending limit" as long as a "non-accepting candidate has raised more than ten percent of the applicable voluntary spending limit." Section 4(4) and (5).[10]

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[9] The plaintiffs explained why Section 4 is unconstitutional in their summary judgment briefing, *see* ECF 72, 75, 78, and in their supplemental briefing, *see* ECF 82, 85. Although Rule 52 does not require renewing motions for judgment as a matter of law like Rule 50 because the case is submitted to a jury, the plaintiffs, "out of an abundance of caution," renew their motions and incorporate the arguments in those motions here. *See Dupree v. Younger*, 598 U.S. 729, 738 (2023).

[10] The Court asked about "the consequences of reneging on a pledge to limit campaign expenditures." Trial Tr. Vol. 1, 8. There seems to be no consequences for a candidate that retains contributions that double the ordinary contribution limits after withdrawing from Section 4's spending limits. Colorado law is silent on the obligations of a candidate in these circumstances.

The Supreme Court has repeatedly held that this kind of differential treatment is subject to strict scrutiny. *Davis*, 554 U.S. at 740; *AFE*, 564 U.S. at 748-49. "The logic of *Davis* largely controls [the] approach to this action." *AFE*, 564 U.S. at 736. "Much like the burden placed on speech in *Davis*, the [differential contribution limits] 'imposes an unprecedented penalty on any candidate who robustly exercises [his] First Amendment right[s]" by raising funds exceeding 10% of the voluntary spending limit. *Id.* The First Amendment *prohibits* the government from putting a limit on the total fundraising of a candidate. *Buckley*, 424 U.S. at 58. But under this scheme, if a candidate does not agree to a spending limit and then raises a mere 10% of that limit, his or her opponent can *double* their contributions. Thus, Section 4 gives a candidate only two choices: "abide by a limit on . . . expenditures or endure the burden that is placed on [the right to spend] by the activation of a scheme of discriminatory contribution limits." *Davis*, 554 U.S. at 740. Under *Davis*, such a law "cannot stand unless it is justified by a compelling state interest." *Id.*

The Tenth Circuit already ruled that Section 4 "was intended to encourage candidates to limit their expenditures." *Lopez*, 2023 U.S. App. LEXIS 3421 at *1. Limiting expenditures is not a permissible state interest. *See Ted Cruz for Senate*, 596 U.S. at 305, 313. And it strains credulity that a law that doubles contribution limits furthers the goal of preventing *quid pro quo* corruption or its appearance.

Colorado never addressed these issues. Instead, the defendants claim Section 4 does not impose a burden on First Amendment rights. *See* ECF 76. They are wrong.

And Colorado had no answer for this question during discovery. *See* Trial Ex. 4 (¶¶ 1-3). Therefore, it is reasonable to conclude that candidates can retain and utilize their larger contributions without consequence if they withdraw from Section 4's spending limits, which makes the provision even more illegitimate.

The Court does "not need empirical evidence to determine that [Section 4] is burdensome." *AFE*, 564 U.S. at 746 (citing *Davis*, 554 U.S. at 738-40). Asymmetric campaign contribution schemes burden a candidate's First Amendment rights *per se* and are subject to strict scrutiny. *See Davis*, 554 U.S. at 738-40; *AFE*, 564 U.S. at 746-49; *Riddle*, 742 F.3d at 929. And Section 4 imposes such an asymmetric scheme because it penalizes a candidate for raising too much money by doubling that contribution limit for that candidate. "Ultimately, the [*Davis*, *AFE*, and *Riddle*] law[s] failed because [they] imposed different contribution limits on candidates vying for the same seat." *Riddle*, 742 F.3d at 929 (internal punctuation marks omitted). Only "uniform contribution limit" laws can be "constitutional," *id*., and a law that increases the contribution limit for only one candidate if her opponent raises too much money is anything but uniform.

In denying summary judgment, the Court ruled the harm Section 4 imposed on plaintiffs' First Amendment rights was "directly related to whether the [contribution limits] are categorically too low to pass U.S. Constitutional muster." Order at 3 (ECF 88). Under this analysis, Section 4's constitutionality depends on whether the contribution limits are constitutional. *Id*. And because the claims against the contribution limits are "too bound up with disputed facts," *id*. at 3 n.3, the Court denied the parties' summary judgment motions and reserved its ruling on Section 4 until trial. *Id*. at 4. Plaintiffs maintain that Section 4 is unconstitutional as a matter of law, regardless of the constitutionality of the contribution limits. *See supra* at 30-32 & n.9.

But even under the Court's reasoning, Section 4 is unconstitutional. The government cannot force candidates to limit their "overall campaign expenditures." *Buckley*, 424 U.S. at 58. And the government cannot force candidates to comply with "contribution limits that are too low." *Randall*, 548 U.S. at 248-49. Thus, Section 4 offers candidates an unconstitutional Hobson's

choice—no matter what they choose, the law violates their Frist Amendment rights. Because Colorado's contribution limits are too low, *see supra* § IIC, Section 4 forces candidates to choose either unconstitutionally low contribution limits or an unconstitutional expenditure limitation. Regardless of their choice, candidates must suffer a First Amendment injury to run for public office. Section 4 is plainly unconstitutional.

IV. CONCLUSION

The Court should find for the plaintiffs on both counts (ECF 46 at 7-10), declare the contribution limits and the asymmetric contribution scheme are unconstitutional, and permanently enjoin defendants from enforcing these laws.

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Respectfully submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO
DENVER DIVISION

GREG LOPEZ, et. al, *Plaintiffs*, v. JENA GRISWOLD Colorado Secretary of State, et. al, *Defendants*.	Case No. 1:22-cv-0247-JLK PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs submit the following proposed findings of fact and conclusion of law in accordance with this Court's order and Fed. R. Civ. P. 52.

PROPOSED FINDINGS OF FACT

I. PARTIES AND BACKGROUND

A. Plaintiffs

1. Plaintiff Greg Lopez is a former candidate for statewide office in Colorado. Trial Tr. Vol. I, 43. Lopez ran for governor in 2018 and 2022. *Id.* He was defeated both times in the Republican primary, *id.* at 48-49, and he intends to run for statewide office again in 2026. *Id.* at 50. To that end, Lopez maintains an active Colorado candidate political committee for statewide office, which has up-to-date contribution and expenditure reports. *Id.* at 50-55; *see also Trial Ex*. 19.

2. Plaintiff State Senator Rodney Pelton is a Colorado State Senator, currently serving his first term in the Senate after serving six years in the Colorado State House. Trial Tr. Vol. I, 105. He intends to run for re-election in 2026, *id.* at 108, and maintains an active Colorado

candidate political committee with up-to-date contribution and expenditure reports. *Id.* at 108-09; *see also* Trial Ex. 20.

3. Plaintiff Steven House is a frequent contributor to candidates running for Colorado statewide, legislative, and other offices. Trial Tr. Vol. I, 138-39. Indeed, he contributed over $10,000 to various candidates (including the maximum amount to statewide and legislative candidates) during the 2014 four-year election cycle, Trial Ex. 108, over $14,000 to various candidates (including the maximum amount to statewide and legislative candidates) during the 2018 four-year election cycle, Trial Ex. 109, and over $4,700 to various candidates (including the maximum amount to statewide and legislative candidates) during the 2022 four-year election cycle. Trial Ex. 110. House intends to continue his financial support of various Colorado candidates for as long as he lives, Trial Tr. Vol. I, 152-53, 194-95, and, if permitted, he would contribute more than the maximum amounts allowed by the individual contribution limits or Colo. Const. Art. XXVIII § 4 ("Section 4"), *see, e.g.*, *id.* at 158, 161.

B. Defendants

4. Defendants administer Colorado's campaign finance laws, investigate any alleged violations, and enforce any penalties for infringing on these laws. Colo. Const. Art. XXVIII § 9; CRS 1-45-111.5; *see generally* Trial Tr. Vol. V, 844-45.

C. Colorado's contribution limits

5. Taking effect in December 2002, Colo. Const. Art. XXVIII § 3 and its accompanying regulations (CCR 1505-6 § 10.17.1), establish the limits for contributions to candidates for public office for various types of donors. The *individual* campaign contribution limits apply per election cycle, which includes both the primary and general elections. *See* CRS 1-45-103.7(3), (4).

6. The contribution limit for statewide office per election cycle is $1,450. 8 CCR 1505-6 § 10.17.1(b)(1). The contribution limit for legislative candidates is $450. 8 CCR 1505-6 § 10.17.1(b)(2).

7. The limits for political parties contributing to candidates for public office per election cycle are: Governor, $789,060; Other statewide offices, $157,805; State Senate, $28,395; State House, $20,500. Colo. Const. Art. XXVIII §3(3)(d); 8 CCR 1505-6 § 10.17.1(j).

8. The limits for small donor committees per election cycle are $15,650 for statewide candidates and $6,200 for legislative candidates. 8 CCR 1505-6 § 10.17.1(c).

9. Beginning "in the first quarter of 2007 and then every four years thereafter," all limits are "adjusted by an amount based upon the percentage change over a four-year period in the [] consumer price index for [Denver-Aurora-Lakewood]," and "rounded to the nearest lowest twenty-five dollars." Colo. Const. Art. XXVIII § 3(13).

D. Asymmetric campaign contribution limits

10. Section 4 establishes the state's asymmetric campaign contribution scheme. When someone announces their candidacy for public office, the individual must declare whether he or she will limit spending on speech and accept Section 4's terms. *See* Section 4(3); CRS 1-45-110(1). "If a candidate accepts the applicable spending limit and another candidate for the same office refuses to accept the spending limit," then the "applicable contribution limits [in 8 CCR 1505-6 § 10.17.1] shall double for any candidate who has accepted the applicable voluntary spending limit" as long as "[a]nother candidate in the race for the same office has not accepted the voluntary spending limit," and a "non-accepting candidate has raised more than ten percent of the applicable voluntary spending limit." Section 4(4) and (5).

II. THE CONTRIBUTION LIMITS' SIGNIFICANCE

A. The contribution limits are among the lowest in the nation.

11. Colorado has the lowest or next to lowest individual contribution limits in the United States.[1] *See* Trial Ex. 1. Colorado has the lowest limits for secretary of state candidates and for candidates seeking legislative offices. *Id.* For candidates seeking election to governor, attorney general, or treasurer, only Delaware has lower limits. *Id.*

12. Alabama, Alaska, Indiana, Iowa, Mississippi, Nebraska, North Dakota, Oregon, Pennsylvania, Texas, Utah, and Virginia have no contribution limits. *Id.*

B. The contribution limits do not prevent actual *quid pro quo* corruption or its appearance.

13. Colorado has had no history of *quid pro quo* corruption involving campaign contributions either before the contribution limits were enacted or after. Indeed, defendants identified no example of this corruption before the caps. *See* Trial Tr. Vol. V, 926, 933-35; Trial Ex. 4 at 8-10 (Request Nos. 18–20); Trial Ex. 6 at 2-3 (Interrogatory 1). And defendants identified no examples of *quid pro quo* corruption involving campaign contributions or even any investigations into possible *quid pro quo* corruption after the contribution limits became law. *Id.*; Trial Ex. 4 at 1-3 (Interrogatory 1). Plaintiffs—all three of whom are actively involved in Colorado state politics and elections—are unaware of a single incident of *quid pro quo* corruption in Colorado electoral politics either before or after the contribution limits were enacted. Trial Tr. Vol. I, 88, 125-26, 177-78. Richard Wadhams, a former state Republican Party chairman and active participant and media pundit of Colorado state politics and elections,

[1] States vary in how they regulate contribution limits. Some states regulate individual contribution limits annually, others per election (treating primary and general elections separately), and others per election cycle (primary and general elections combined). Comparing these limits requires adjusting annual limits and per-election limits to reflect the total contribution limit in any given election cycle.

Trial Tr. Vol. IV at 632-35, is likewise unaware of a single incident of campaign *quid pro quo* corruption. *Id.* at 668.

14. Defendants' two witnesses with previous experience as elected officials likewise could not identify any past example of *quid pro quo* corruption involving campaign contributions. The examples that both witnesses identified as potential *quid pro quo* corruption merely described routine lobbyist and constituent interactions. Neither witness identified actual *quid pro quo* corruption. Trial Tr. Vol. 5, 829-34; Trial Tr. Vol. 6, 961-62, 970-72.

15. Dr. David Primo, a professor of political science and business administration at the University of Rochester testified on behalf of the plaintiffs on the effect that contribution limits have on *quid pro quo* corruption and its appearance. Dr. Primo is an expert of campaign finance laws and their effect on the public perception of government and democratic outcomes. Trial Tr. Vol. II, 223-24.

16. Colorado's contribution limits have no meaningful effect on the public's confidence or trust in government.

17. A majority of Americans view everyday political activity as "corrupt." *Id.* at 228-30.

18. Dr. Primo's research shows that Colorado's contribution limits have no meaningful effects on *quid pro quo* corruption or the appearance of corruption. *Id.* at 225. Contribution limits do not affect the public's perception of government. Trial Exs. 119, 120, 121, and 122. The public's trust and confidence in state government would not change if Colorado eliminated its contribution limits. Trial Tr. Vol. 2, 274.

19. Defendants' expert Dr. Abby Wood's testimony was not credible. She made errors in her own study, *id.* at 284, and, unlike Dr. Primo, her trial research had not successfully passed the peer review process. Trial Tr. Vol. 6, 1058.

C. The contribution limits create less competitive elections.

20. In elections for most statewide executive branch positions, challengers must be able to self-fund tens of thousands of dollars; in gubernatorial races, challengers must raise millions. Trial Tr. Vol. 1, 173-77; Trial Tr. Vol. 4, 620-31, 681-82, 686-87; Trial Tr. Vol. 6, 689-91.

21. Plaintiff Lopez self-funded his failed primary campaign with a few thousand dollars, but otherwise relied on individual donors. Trial Tr. Vol. 1, 46-49, 53, 75-78, 83-85, 88. His primary opponent self-funded her campaign with hundreds of thousands of dollars. *Id.* at 76-77. Had he successfully advanced to the general election, Lopez would have needed millions to compete with Governor Polis. *Id.* at 83.

22. Challenging an incumbent or candidate with similar name recognition is difficult and contribution limits make it harder, especially for first-time candidates. Trial Tr. Vol. 4, 604-07, 614-31, 681-92.

23. Contribution limits unduly harm challengers' ability to raise money, which prevents them from promoting their candidacy to voters and, therefore, conducting a competitive campaign. *Id.* For example, individuals donate nearly 70 percent of the number of contributions made to first-time candidates in legislative races, while incumbents collect only half of their contributions from individuals. *Id.* Incumbent legislators instead receive contributions from lobbyists that control small donor committees, which can contribute over 13 times more money than individuals. *Id.* at 620-26; *compare* 8 CCR 1505-6 § 10.17.1(b)(2) *with* § 10.17.1(c)(2); Trial Tr. Vol. 5, 822-27; Trial Tr. Vol. 6, 963-70.

24. Contribution limits also have the insidious effect of discouraging potential first-time candidates from running for office due to an incumbent's fundraising advantage and the inability to overcome messages produced from opposition independent expenditure committees ("IECs").

Trial Tr. Vol. 4, 620-31, 681-82, 686-87. Indeed, a first-time state senate candidate must raise "at least" 20% more money than the incumbent to win the race. *Id*. at 626-27. Thus, because a first-time candidate is dependent on individual donors and an incumbent is not, a challenger's potentially competitive race ends before it even starts due to the ingrained fundraising advantage incumbents have with the contribution limits. *Id*. at 620-31. That is, unless a challenger is wealthy enough to self-fund his campaign and does not need to rely on individual contributors. *Id*. at 689-91; Vol. 1, 173-77.

25. Low contribution limits are "more likely to hurt challengers than incumbents," without "any benefits" of preventing corruption or increasing "political trust." Trial Tr. Vol. 3, 387-89.

26. Incumbents and their challengers are not on a level playing field at the beginning of a race. *Id*. at 378. Incumbents are "known to voters" due to their "higher name recognition," "well-established funding base and funding network," which gives them a "significant" fundraising advantage, and the ability to use their public office to ingratiate themselves with voters. *Id*. at 378-79.

27. Low contribution limits make challengers less competitive because they "make it more difficult for challengers to raise money," which inhibits their ability to increase name-recognition, publicize their policy positions, hold events and travel to meet voters. *Id*. at 379-80. Campaigns that have money to spend on advertising and messaging "increase[s] [ ] voter knowledge." *Id*. at 381. And "when voters are more knowledgeable, they're more likely to participate." *Id*.

28. Colorado's limits create these anti-competitive effects. Colorado's limits cause Colorado to have one of the lowest rates of contestation during its primaries, as well as a lower

general election contestation rate than it otherwise would have. With less restrictive contribution limits, "tens of thousands [more] Coloradans" would have a choice at the ballot box each election cycle. The limits also decrease the amount a candidate can raise, which has a disproportionately negative effect on challengers. Trial Tr. Vol. 3, 459-60, 470-73, 480, 484-86, 489-90, 493-95; Trial Exs. 123, 127, 128, 129, 130, 131.

29. The Court gives little weight to the testimony of defendants' expert, Dr. Douglas Spencer. His testimony that Colorado's contribution limits do not effect the incumbent win rate does not meaningfully address what makes an election competitive. *See* Trial Tr. Vol. 6, 1119-24. And his opinion that an election is "competitive" so long as there are at least two candidates running, Trial Tr. Vol. 6, 1124-25, is not credible.

D. Political party contributions do not make up for the low contribution limits.

30. Colorado allows political parties to contribute more money to candidates than individuals. *Compare* 8 CCR 1505-6 § 10.17.1(b) *with* Colo. Const. Art. XXVIII §3(d); 8 CCR 1505-6 § 10.17.1(j).

31. Political party contributions, however, are not a significant factor in primary elections because, traditionally, both major political parties take a neutral stance during primary elections. Trial Tr. Vol. 1, 170-71; Vol. 4, 637-38.

32. State parties do not have the financial resources to donate the maximum amount permitted under Colorado law to all their candidates. Trial Tr. Vol. 1, 164; Vol. 4, 645-56.

33. Instead, parties typically concentrate their spending on their own efforts to "get out the vote" and promote specific candidates. *See* Trial Tr. Vol. 1, 168-69, 184; Vol. 4, 640-43.

34. Parties also sometimes oppose their own candidates, as Plaintiff Pelton expects his party to do during the next election cycle. Trial Tr. Vol. 1, 122-24.

35. Party spending is also not a significant factor in elections due to the rise of IECs.

36. Individual contributions to political parties are limited. *See* 8 CCR 1505-6 § 10.17.1(d). Contributions to IECs are not. Thus, IECs can amass greater resources, and, consequently, assert greater influence in elections. *See* Trial Tr. Vol. 4, 681-82, 686-87.

37. In 2008, IECs had no role in Bernie Buescher's surprise defeat. *See* Trial Ex. 154, 159, 163. But in the 2022 four-year election cycle, IECs spent nearly $122.8 million supporting and opposing various statewide and legislative candidates, while political parties at the state and local level contributed just over $1.7 million to candidates. *See* Trial Exs. 83, 84.

E. Colorado's treatment of campaign volunteers.

38. Colorado treats volunteer expenses the same way Vermont did in *Randall*. Vermont "exclude[d] from its definition of 'contribution' all 'services provided without compensation by individuals volunteering their time on behalf of a candidate.'" *Id*. at 259 (quoting Vt. Stat. Ann., Tit. 17, § 2801(2) (2002))); *compare* Colo. Const. Art. XXVIII §2(5)(b) (same); *see also* Trial Tr. Vol. 5, 882-83. Like Vermont, Colorado "does not exclude the expenses [ ] volunteers incur, such as travel expenses, in the course of campaign activities." *Randall*, 548 U.S. at 259; *compare* Colo. Const. Art. XXVIII §2(5)(b); 8 CCR 1505-6 § 1.6.2. "And, unlike the Federal Government's treatment of comparable requirements, [Colorado] has not (insofar as [this Court is] aware) created an exception excluding such expenses." *Randall*, 548 U.S. at 259 (citing the federal statutes that exclude "from the definition of 'contribution' volunteer travel expenses up to $1,000 and payment by political party for campaign materials used in connection with volunteer activities"). Indeed, defendants admit that compensation for a volunteer's mileage is not "specifically exempt" from qualifying as an individual campaign contribution and that

individuals should seek legal counsel to determine if they should report mileage reimbursements as contributions. Trial Tr. Vol. 5, 917.

39. Furthermore, Coloradans report ostensible volunteer expenses as individual campaign contributions. For example, reported expenses include mileage for driving 116 miles to attend a political committee meeting for a candidate and providing a personal home to serve as a meeting space for a candidate. *See* Trial Ex. 50, 51. Not only that, but defendants are also uncertain whether these activities are contributions. *See* Trial Tr. Vol 5, 917-24. Defendants are not even sure if clipboards that a volunteer donates to a campaign for vote canvasing is a contribution subject to the contribution limits. *See* id. at 911-14. This is exactly the problem *Randall* requires states to avoid. 548 U.S. at 260 ("Such supporters will have to keep careful track of all miles driven, postage supplied (500 stamps equals $200), pencils and pads used, and so forth.").

F. Inflation Adjustment

40. Colorado does not adjust the contribution limits for inflation. Instead, an increase only occurs if inflation raises the contribution limits over $25 during a four-year period and then that amount is "rounded down to the nearest lowest" $25. Colo. Const. Art. XXVIII § 3(13). Since the contribution limits were enacted up to 2023, overall inflation has increased 64.7%. Trial Tr. Vol. 4, 579-81, 583, 688. However, the limits for statewide and legislative candidates have only increased 45% and 12.5%, respectively. *Id.* at 580-82; Trial Ex. 40. Indeed, current statewide and legislative limits would be 14% and 47% higher, respectively, if they were adjusted for inflation every four years without rounding down. *Id.*

41. The failure to index for inflation causes Colorado's limits to fall behind important expenses for running a successful campaign, such as the cost of fuel needed to travel across the state to meet constituents. Trial Tr. Vol. 1, 56-60, 67-70, 117-19; Trial Ex. 17.

42. For the legislative caps to ever adjust again, inflation must be more than 11% over four years. *See* Trial Tr. Vol. 4, 582. That is approximately a 2.7% annual rate. *Id*. at 582-83. Accordingly, inflation must be higher than the Federal Reserve's annual 2% inflation target and sustain that inflationary pace while the Fed tries to lower it over four years. *Id*. at 583.

G. Special Justification

43. Colorado has no special justification for its contribution limits. *See* Pretrial Order at 4 (ECF 97).

CONCLUSIONS OF LAW

I. PLAINTIFFS HAVE STANDING AND THEIR CLAIMS ARE NOT MOOT.

A. Plaintiffs have standing.

44. Article III standing requires a plaintiff suffer "an injury in fact" that is "traceable to the challenged conduct and likely to be redressed by the lawsuit." *Biden v. Nebraska*, 600 U.S. 477, 489 (2023). "If at least one plaintiff has standing, the suit may proceed." *Id*.

45. Plaintiff Lopez has standing. He ran for statewide office in the past and intends to run again in 2026. *See* Trial Tr. Vol. 1, 44-46, 48-51. Because of his inability to self-finance his campaign (in contrast to recently successful gubernatorial candidates), and the state party's neutral stance during primaries, he relies almost entirely on individuals to fund his campaigns. *Id*. at 46-49, 53, 75-78, 83-85, 88. Lopez reliance on Colorado's individual campaign contributions prevents him from meeting the high financial costs, especially travel expenses, for running a competitive campaign. *See id*. at 52-53, 55-60, 67-75, 77-78, 87-88; Trial Ex. 17. Section 4 puts him in a no-win situation because he either must rely on standard-level contributions to spend the funds he needs to be competitive or limit his spending at a potentially uncompetitive level. *See* Trial Tr. Vol. 1, 81-83.

46. Plaintiff Pelton has standing. He is a state senator and intends to seek reelection in 2026. *Id*. at 105-09. Even though he is the incumbent, the contribution limits restrain Pelton's ability to run a competitive campaign due to high costs, especially travel expenses for his rural district. *Id*. at 109-121, 124-25; Trial Ex. 17. He also testified that because of his poor relationship with the state party's leadership, he does not expect party support and anticipates the state party will oppose his reelection by recruiting a primary challenger to defeat him in the next election. *See* Trial Tr. Vol. 1, 122-24. Consequently, he will rely more on individual contributors to run a competitive campaign.

47. Plaintiff House has standing. He has been involved in Colorado politics both as a candidate, political party leader, and, for many years, a financial contributor. *Id*. at 138-42. House has contributed and will continue contributing to candidates for various Colorado offices in the future. *Id*. at 138-42, 152-53. He explained his desire to contribute more than the contribution limits allow, and that he contributed the maximum amount allowed under the contribution limits in numerous election cycles. *Id*. at 143, 145-52; Vol. 2, 206-07. And with respect to Section 4's asymmetric campaign contribution scheme, House wanted to contribute double the standard contribution limits to his preferred candidates in past elections, just as donors to the opponents of House's candidates were permitted to do by Section 4. *See* Trial Tr. Vol. 1, 153-61.

B. Plaintiffs' claims are not moot.

48. Plaintiffs brought this suit seeking relief before the 2022 election, but their claims are not moot. Indeed, their claims "fit comfortably within the established exception to mootness for disputes capable of repetition, yet evading review." *Federal Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007).

49. The "capable of repetition, yet evading review" mootness exception applies when "(1) the challenged action ended too quickly to be fully litigated and (2) a reasonable expectation exists for the plaintiff to again experience the same injury." *Rio Grande Found. v. Oliver*, 57 F.4th 1147, 1166 (10th Cir. 2023) (cleaned up).

50. The Supreme Court routinely employs this mootness exception in election cases. *See, e.g., Davis v. Federal Election Comm'n*, 554 U.S. 724, 735 (2008). Indeed, "[e]lection cases often fall within this exception, because the inherently brief duration of an election is almost invariably too short to enable full litigation on the merits." *Porter v. Jones*, 319 F.3d 483, 490 (9th Cir. 2003) (collecting cases).

51. "Challenges to election laws may readily satisfy the first element [of the mootness exception], as injuries from such laws are capable of repetition every election cycle yet the short time frame of an election cycle is usually insufficient for litigation in federal court." *Rio Grande Found*., 57 F.4th at 1166 (citing *Wis. Right to Life*, 551 U.S. at 462). "The second prong of the capable of repetition exception requires a reasonable expectation or a demonstrated probability that the same controversy will recur involving the same complaining party." *Wis. Right to Life*, 551 U.S. at 463 (internal quotation marks and citations omitted). This prong's "bar is not meant to be high." *Rio Grande Found*., 57 F.4th at 1166 (citing *Honig v. Doe*, 484 U.S. 305, 318 n.6 (1988)). "[T]he same controversy [is] sufficiently likely to recur when a party has a reasonable expectation that it will again be subjected to the alleged illegality." *Wis. Right to Life*, 551 U.S. at 463 (internal quotation marks and citations omitted).

52. "[A] statement expressing intent to engage in the relevant [conduct] might suffice." *Rio Grande Found*., 57 F.4th at 1166 (citing *Davis*, 554 U.S. at 736). Indeed, in *Davis*, the candidate plaintiff challenged a campaign finance law and did not make his jurisdiction-

sustaining intentions known until he made a public statement shortly before filing his U.S. Supreme Court *reply* brief. 554 U.S. at 736. The Supreme Court noted the plaintiff's intent to "self-finance another bid for a House seat," and, on that basis alone, the Court was "satisfied that [his] facial challenge [was] not moot." *Id*.

53. All three plaintiffs testified they either intend to run for office again or continue donating money to state candidates. Thus, the relevant Colorado campaign finance laws will continue to burden their First Amendment rights in coming elections. Their testimony "expressing intent to engage in the relevant [conduct]" is more than enough evidence to overcome any mootness questions. *Rio Grande Found.*, 57 F.4th at 1165.

II. COLORADO'S INDIVIDUAL CONTRIBUTION LIMITS ARE UNCONSTITUTIONAL.

A. The contribution limits are subject to closely drawn scrutiny.

54. "[C]ontribution limitations are permissible as long as the Government demonstrates that the limits are 'closely drawn' to match a 'sufficiently important interest.'" *Randall v. Sorrell*, 548 U.S. 230, 247 (2006) (plurality op.) (citing *Buckley v. Valeo*, 424 U.S. 1, 25 (1976) (per curium)); *see also Thompson v. Hebdon*, 589 U.S. 1 (2019) (per curiam) (directing courts to apply *Randall* to contribution limit challenges). The Supreme Court "has recognized only one permissible ground for restricting political speech: the prevention of '*quid pro quo*' corruption or its appearance." *Federal Election Comm'n v. Ted Cruz for Senate*, 596 U.S. 289, 305 (2022). Once the government establishes that the restriction furthers this interest, *Randall*, 548 U.S. at 247, it must meet *Randall*'s unique tailoring criteria. *Id.* at 253-61. First, *Randall* tailoring asks whether there are "danger signs" that contribution limits are too low. *Id.* at 248-49. If so, the Court must conduct an independent review of the evidence, following the factors set out in *Randall*, to decide whether the limits are too restrictive. *Id.* at 254-61.

B. The contribution limits do not serve a legitimate anticorruption interest.

55. Colorado bears the burden of proving that its unusually low limits further the legitimate interest of preventing *quid pro quo* corruption or its appearance. It produced no evidence of *quid pro quo* corruption in Colorado from campaign contributions either before or after enacting Article XXVIII. "Because the Government is defending a restriction on speech as necessary to prevent an anticipated harm, it must do more than simply posit the existence of the disease sought to be cured." *Ted Cruz for Senate*, 596 U.S. at 307 (internal quotation marks omitted). "It must instead point to record evidence or legislative findings demonstrating the need to address a special problem," because the Supreme Court has "never accepted mere conjecture as adequate to carry a First Amendment burden." *Id.* (cleaned up).

56. Colorado "is defending [its] restriction on speech as necessary to prevent an anticipated harm"—the existence or appearance of *quid pro quo* corruption involving campaign contributions. *Ted Cruz for Senate*, 596 U.S. at 307. But every state in the union anticipates this harm and nearly 25% of them have no contribution limits. *See* Trial Ex. 1. The First Amendment burden the contribution limits place on plaintiffs' political freedoms must be "justified." *Ted Cruz for Senate*, 596 U.S. at 305. Colorado "must prove at the outset that it is in fact pursuing a legitimate objective. It has not done so here." *Id*.

57. Colorado "has not shown that [the contribution limits] further[] a permissible anticorruption goal, rather than the impermissible objective of simply limiting the amount of money in politics." *Ted Cruz for Senate*, 596 U.S. at 313. "In general, the government can't prove a compelling interest when a policy has exceptions that cut against its proffered goal." *Nat'l Republican Senatorial Comm. v. Federal Election Comm'n*, _ F.4th _, 2024 U.S. App. LEXIS 22607 at *34-*35 (6th Cir. 2024) (en banc) (Thapar, J., concurring) (citing *Fulton v. City*

of Philadelphia, 593 U.S. 522, 542 (2021); *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546-47 (1993)). That problem exists here. Colorado cannot explain "why it has a particular interest in" adopting unusually low contribution limits to limit *quid pro quo* corruption or its appearance "while making them" twice as large if a candidate agrees to limit spending. *Fulton*, 593 U.S. at 542.

58. The contribution limits are among the lowest in the nation. *See* Trial Ex. 1. But Colorado does not always require candidates to follow them. Rather, Section 4 allows candidates to double these limits *so long as* they agree to limit their overall campaign spending. *See* Colo. Const. Art. XXVIII § 4. Indeed, the Tenth Circuit has already ruled that Section 4 exists "to encourage candidates to limit their expenditures." *Lopez v. Griswold*, No. 22-1082, 2023 U.S. App. LEXIS 3421, at *1 (10th Cir. Feb. 13, 2023).

59. Not only is this an impermissible state interest, *see Ted Cruz for Senate*, 596 U.S. at 313, it "flatly undermines the government's anti-circumvention arguments." *Nat'l Republican Senatorial Comm.*, _ F.4th _, 2024 U.S. App. LEXIS 22607 at *34 (Thapar, J., concurring). "Either [Colorado] is openly tolerating a significant" risk of *quid pro quo* corruption in exchange for candidates limiting their spending, or the contribution limits "are in no real sense" designed to prevent corruption. *Ted Cruz for Senate*, 596 U.S. at 313. The "latter answer [is] more persuasive," *id.* at 312, and it renders the contribution limits unconstitutional.

60. The problem is worse than simply doubling the limits. If donors can double their contributions only when limiting a candidate's total spending, then the purported risk of *quid quo pro* corruption increases because each maximum contribution constitutes a larger portion of the candidate's spending. Thus, not only does Section 4 undermine Colorado's purported interest in the contribution limits because it grants a significant exception unrelated to a legitimate

anticorruption goal, *see Fulton*, 593 U.S. at 542, it also makes the alleged problem worse in exchange for the "impermissible objective" of "limiting the amount of money in politics." *Ted Cruz for Senate*, 596 U.S. at 313. Section 4 reveals Colorado's true interest in the contribution limits. And in doing so, it makes them unconstitutional.

61. Even if Section 4's existence did not eviscerate Colorado's purported anticorruption interest, the defendants failed to prove that the contribution limits prevent *quid pro quo* corruption or its appearance. *Id*. at 307 (quotation marks omitted). Colorado produced no evidence of *quid pro quo* corruption involving campaign contributions before enacting the contribution limits. In fact, Colorado cannot identify a single *investigation* into alleged *quid pro quo* corruption from a contribution. *Id.*; Trial Ex. 4 at 1-3 (Interrogatory 1). Stephen Bouey, a 15-year veteran from the Secretary of State's office, testified that he has never seen "any complaints about *quid pro quo* corruption and campaign contributions," Trial Tr. Vol. 5, 926, has never seen any enforcement actions related to *quid pro quo* corruption, *id.*, and cannot find any past examples of *quid pro quo* corruption in "internal Secretary of State files." *Id.* at 933-34. The record lacks any evidence whatsoever of any kind of *quid pro quo* corruption in Colorado involving campaign contributions. *See id.* at 926-35; Trial Ex. 4-6, 44-47.

62. Colorado likewise failed to prove that the contribution limits reduce the appearance of *quid pro quo* corruption. The record contains no evidence that the contribution limits affect how the public perceives the government or the existence of *quid pro quo* corruption.

63. Colorado thus cannot establish a "sufficiently important interest" to justify the contribution limits. *Randall*, 548 U.S. at 247 (internal quotation marks omitted). Therefore, the laws are unconstitutional.

C. The contribution limits are too low under *Randall*.

64. Even if Colorado had a constitutional interest for their laws, the contribution limits fail the *Randall* test. Under *Randall*, courts engage in a two-step inquiry to determine whether a state's contribution limits are too low. 548 U.S. at 249, 253. First, the court looks for "danger signs" that "generate suspicion that [the limits] are not closely drawn." *Id.* at 250. Second, the court "review[s] the record independently and carefully with an eye toward assessing the statute's 'tailoring,' that is, toward assessing the proportionality of the restrictions." *Id.* Contribution limits survive this second step only when the state demonstrates the limits are "closely drawn to meet its objectives" without unduly burdening electoral competition. *Id.* at 254.

1. The contribution limits display constitutional "danger signs."

65. Contribution limits raise constitutional "danger signs" if they "are substantially lower than both the limits [the Supreme Court has] previously upheld and comparable limits in other States." *Randall*, 548 U.S. at 253. And these "danger signs" are larger when contribution limits are "not adjusted for inflation," *Thompson*, 589 U.S. at 6, because that "means [the limits] [will] soon be far lower" relative to other states. *Randall* 548 U.S. at 252. Here, the contribution limits display very large "danger signs."

66. First, the contribution limits are "substantially lower than . . . the limits [the Supreme Court] ha[s] previously upheld." *Thompson*, 589 U.S. at 5. Colorado admits this fact. Trial Ex. 4 at 8 (Admission 16). Colorado's individual contribution limit for statewide office per election cycle (*i.e.*, primary and general elections combined) is $1,450. *See* 8 CCR 1505-6 § 10.17.1(b)(1); CRS 1-45-103.7(3), (4). "The lowest campaign contribution limit [the Supreme] Court has upheld remains the limit of $1,075 per two-year election cycle for candidates for Missouri state auditor in 1998. That limit translates to over $1,600 in [2019] dollars." *Thompson*,

589 U.S. at 5 (internal citations omitted). By now, after recent record inflation, Colorado's "limit is well below" the lowest individual contribution limit ever approved by the Supreme Court. *Randall*, 548 U.S. at 251.

67. Second, Colorado's "individual-to-candidate contribution limit is 'substantially lower than . . . comparable limits in other States.'" *Thompson*, 589 U.S. at 5 (quoting *Randall*). Only Delaware "impose[s] limits on contributions to candidates for statewide office at or below" Colorado's individual limits. *Randall*, 548 U.S. at 250; Trial Ex. 1. Otherwise, Colorado imposes the lowest contribution limits in the nation on candidates for Secretary of State and the state legislature. *See* Trial Ex. 1.

68. Third, Colorado "fail[ed] to index for inflation." *Randall*, 548 U.S. at 252; *Thompson*, 589 U.S. at 6. Colorado designed its inflation adjustment to ensure its low limits will "soon be far lower" in "real dollars." *Randall*, 548 U.S. at 250, 252. It does this in two ways: rounding and resetting. Colorado adjusts for inflation every four years, but it "round[s] down to the nearest lowest" $25. Colo. Const. Art. XXVIII § 3(13). That means Colorado only adjusts for inflation *if* inflation causes the limit to increase by at least $25. Anything less results in no adjustment at all. Then Colorado resets the calculation. It examines inflation for the next four-year period in isolation, without accounting for cumulative inflation from when the law was enacted in 2002 or the immediately previous four-year period, which is lost due to the rounding down provision. *See* Trial Tr. Vol. 4, 565-80; Trial Tr. Vol. 5, 874, 876; Trial Ex. 40. Consequently, beginning from when the contribution limits were enacted in 2002 through the end of time, inflation could be 4.9% every four-year period and neither the statewide nor legislative contribution limit would ever increase. Trial Tr. Vol. 4, 580. Indeed, by rounding down and resetting the adjustment every

four years, Colorado ensures the contribution limits—which are already among the lowest in the nation—will "decline in real value each year." *Randall*, 548 U.S. at 261.

69. The evidence bears this out. From 2002 to 2022, cumulative inflation escalated 64.7%, while the statewide and legislative contribution limits only increased 45% and 12.5%, respectively. *See* Trial Tr. Vol. 4, 579-83, 688; Trial Ex. 40. Current statewide and legislative individual contribution limits would be 14% and 47% higher, respectively, if they were adjusted for inflation every four years without rounding down. *Id*. And at their current levels, inflation could stay at 11% every four-year period for eternity and the legislative limits *will never increase*. *See* Trial Tr. Vol. 4, 582. Indeed, the legislative limits increased for the first time only in 2023 after historic inflation—over 20 years after the contribution limits were enacted. *See* Trial Tr. Vol. 4, 576; Trial Ex. 40; *compare* 8 CCR 1505-6 § 10.17.1(b)(2) (2023) *with* Colo. Const. Art. XXVIII § 3(1)(b) (2002).

70. *Randall* requires more inflation responsiveness than Colorado law allows. While it is true that *Randall* and *Thompson* examined states that had no contribution adjustment at all, 548 U.S. at 261; 140 U.S. at 6, in both cases the Supreme Court discussed inflation because failing to adjust means that "limits which are already suspiciously low will almost inevitably become too low over time." *Randall*, 548 U.S. at 252. And Colorado's scheme ensures the same result. Colorado ensures its limits will continue to decline relative to other states. It does not simply round to the nearest $25 so that some cycles the adjustment might be slightly more than inflation, and other cycles slightly less. Nor does it make sure that any rounding smooths out over time by accounting for cumulative inflation that may be lost from rounding. Instead, Colorado guarantees that the contribution limits will "decline in real value each year," *id.* at 261, without any

possibility of catching up. The Supreme Court's worry that "future legislation will be necessary to stop that almost inevitable decline" exists here just as it did in *Randall*.

71. "In sum, [Colorado's] contribution limits are substantially lower than both the limits [the Supreme Court has] previously upheld and comparable limits in other States." *Randall*, 548 U.S. at 253. Plus, its "failure to index for inflation means that [Colorado's] levels [will continue to be] far lower than [nearly all other states] regardless of the method of comparison." *Id*. at 252. "These are danger signs that [Colorado's] contribution limits may fall outside tolerable First Amendment limits." *Id*. at 253. This Court "consequently must examine the record independently and carefully to determine whether [Colorado's] contribution limits are 'closely drawn' to match the State's interests." *Id*.

2. The contribution limits do not pass Randall*'s tailoring requirements.*

72. Whether the contribution limits are "narrowly tailored" depends on five factors: (1) whether the limits "will significantly restrict the amount of funding available for challengers to run competitive campaigns;" (2) whether political parties must abide by the same low limits as individual contributors; (3) whether "the lack of tailoring in the" rules governing "volunteer services" allows regulators to apply "broad definitions" of contributions to "expenses [campaign] volunteers incur, such as travel expenses, in the course of campaign activities" in states with "very low" contribution limits; (4) whether the limits are indexed for inflation; and (5) whether there is any "special justification" that might warrant low limits. *Id*. at 248-61.

73. "These five sets of considerations, taken together, lead" to the conclusion that Colorado's "contribution limits are not narrowly tailored," *Id*. at 261, and, therefore, unconstitutional.

a. The contribution limits significantly restrict the amount of funding available for challengers to run competitive campaigns.

74. Under *Randall*, "the critical question concerns . . . the ability of a candidate running against an incumbent officeholder to mount an effective *challenge*." *Id*. at 255. "[T]ypically," a "challenger must bear" "higher costs" "to overcome the name-recognition advantage enjoyed by an incumbent." *Id*. at 256.

75. Colorado's individual campaign contribution limits significantly restrict the amount of funding for a challenger to run a competitive campaign against incumbent office holders. This leads to less competitive election outcomes. *See supra* at 6-8. Thus, the evidence creates "a reasonable inference that the contribution limits are so low that they pose a significant obstacle to candidates in competitive elections," *Randall*, 548 U.S. at 256, and that they "significantly restrict the amount of funding available for challengers to run competitive campaigns." *Id.*at 253. This factor "counts against the constitutional validity of the contribution limits." *Id*. at 256.

b. Political party contributions have practical limitations that mitigate their theoretical impact on competitive races.

76. *Randall* held political parties should be permitted to donate more funding to their candidates than individual contributors to help the candidate run competitive campaigns. 548 U.S. at 256-59. Here, the contribution limits allow political parties to contribute more money to candidates than they allow individuals to donate. *Compare* 8 CCR 1505-6 § 10.17.1(b) *with* Colo. Const. Art. XXVIII §3(d); 8 CCR 1505-6 § 10.17.1(j).

77. But this fact just slightly helps Colorado's case. Practical limitations along with the emergence of IECs make Colorado's political parties—even with higher contribution limits—nothing more than "a whisper." *Randall*, 548 U.S. at 259; *see supra* at 8-9. Thus, this factor weighs little in the court's analysis and only marginally favors the government.

c. Colorado's treatment of volunteer expenses is not properly tailored.

78. Colorado's treatment of volunteer services is identical to the treatment that the *Randall* Court found deficient in Vermont. It provides regulators with too broad of discretion to determine whether volunteer services during a campaign may amount to contributions, creating risk and uncertainty that the candidate may violate the state's exceptionally low contribution limits by allowing volunteers to assist on the campaign. Therefore, Colorado's treatment of volunteer services is not properly tailored.

79. "First Amendment freedoms need breathing space to survive." *See Wyo. Gun Owners v. Gray*, 83 F.4th 1224, 1248 (10th Cir. 2023) (internal quotation marks omitted). But in Colorado, "any person" that violates the contribution limits is subject to a civil penalty "of at least double and up to five times the amount contributed" and candidates are "personally liable" for penalties incurred by their campaign committees. Colo. Const. Art. XXVIII § 10(1). *See also* 8 CCR 1505-6 § 23.3.3(c)(1). Accordingly, a candidate or volunteer may not pursue a certain course of action to promote a political campaign for fear that the activity may be valued in an amount that violates the contribution limits. That "is not narrow tailoring." *Wyo. Gun Owners*, 83 F.4th at 1250.

80. The law's lack of clarity compounds the problem. "[A]mbiguous" rules "offer[] only uncertainty. *Wyo. Gun Owners*, 83 F.4th at 1248. "And uncertainty amidst the threat of sanction chills the exercise of First Amendment rights." *Id*. at 1249. A campaign cannot risk the "costly" mistake of violating the law during a campaign, "perhaps generating a headline, 'Campaign laws violated,' that works serious harm to the candidate." *See Randall*, 548 U.S. at 260. So campaigns face uncertainty—because of Colorado's "very low limits"—which "impedes a campaign's ability effectively to use volunteers." *Id.*

81. "Rather than leave [campaign actors] to twist in the wind, [Colorado] could have outlined" the boundaries of volunteer services and expenses. *Id*. at 1248. Indeed, it is Colorado's narrow tailoring burden to write laws so that campaign actors easily know how to comply. *Id.* at 1250. "To comply with the First Amendment, [Colorado] must offer appropriate and precise guidance, defining how actors—sophisticated or otherwise" can avoid violating its campaign finance laws. *Id*. The fact that what is and what is not a volunteer service or expense remains ambiguous proves Colorado failed to meet its tailoring burden.

82. As in *Randall*, "the very low limits at issue help to transform differences in degree into difference in kind. And the likelihood of unjustified interference in the present context is sufficiently great that [this Court] must consider the lack of tailoring in [Colorado's] definition of 'contribution' as an added factor counting against the constitutional validity of the contribution limits before [this Court]." *Randall*, 548 U.S. at 260.

d. The contribution limits do not adjust for inflation.

83. Colorado does not adjust individual contribution limits for inflation. Its rounding down requirement makes this simple mathematical adjustment impossible. This is fatal. *See id*. at 250-52, 261; *Thompson*, 140 S. Ct. at 351.

84. "A failure to index limits means that limits which are already suspiciously low will almost inevitably become too low over time." *Randall*, 548 U.S. at 261. (citation omitted). Indeed, current statewide and legislative contribution limits would be 14% and 47% higher, respectively, if they were adjusted for inflation every four years without the rounding down. Thus, Colorado's contribution limits, particularly its legislative caps, exemplify the principle that low limits will become too low over time without an inflation adjustment.

85. Since 2002, cumulative inflation has increased 64.7%, Trial Tr. Vol. 4, 579-81, 583, 688, but the limits for statewide and legislative office have only increased 45% and 12.5%,

respectively. *Id.* at 580-82; Trial Ex. 40. Indeed, current statewide and legislative limits would be 14% and 47% higher, respectively, if they were adjusted for inflation every four years without rounding down. *Id*. That disparity resembles the 20% decline in real value that *Randall* criticized. 548 U.S. at 261. This factor cuts strongly against Colorado. The legislative limits' increase was able to overcome the rounding requirement only because of recent historic inflation, otherwise they would remain unchanged.

86. Colorado understands how inflation adjustments should work. Indeed, Colorado annually adjusts civil penalties for inflation without a counterproductive rounding system. *See e.g.*, CRS 25-7-122(b)(I) (air quality violations); CRS 25-8-608(1) (water quality violations); CRS 31-16-101(1)(b) (municipal ordinance violations). And Colorado's minimum wage is adjusted annually "for inflation" and the state "must round up, to the nearest cent, any fractional cents yielded by the inflation adjustment," fully accounting for inflation and then some. 7 CCR 1103-1 § 8.9. But Colorado chose a different path for the contribution limits that forces them to fall behind inflation.

87. Indeed, because of the $25 rounding requirement, the legislative limits increased for the *first time* in 2023 to $450 per election cycle. *Compare* 8 CCR 1505-6 § 10.17.1(b)(2) (2023) *with* Colo. Const. Art. XXVIII § 3(1)(b) (2002). The Supreme Court criticized Alaska for going the same period of time without adjusting its limits. *Thompson*, 589 U.S. at 6. And the fact that Colorado might *sometimes* make an adjustment after historically high inflation does not solve this problem. *See id.* (faulting Alaska for relying on legislators to realize that the contribution limits were not keeping up with inflation). For the legislative caps to ever adjust again, inflation must be more than 11% over four years. *See* Trial Tr. Vol. 4, 582. That is approximately a 2.7% annual rate. *Id*. at 582-83. Accordingly, inflation must be higher than the Federal Reserve's

annual 2% inflation target and sustain that inflationary pace while the Fed tries to lower it over four years. *Id*. at 583.

88. Colorado's argument that it sufficiently adjusts for inflation ignores the Supreme Court's reason for focusing on inflation at all. "A failure to index limits means that limits which are already suspiciously low will almost inevitably become too low over time." *Randall*, 548 U.S. at 261 (internal citation omitted). That same problem exists here, even if at a slightly slower pace than *Randall* or *Thompson*. And the problem creates real difficulties for candidates. "[T]he bread-and-butter approach of meeting voters face-to-face, sending them mailings, and reaching them by television and radio remain, and the costs of those methods inevitably rise over time." *Thompson v. Hebdon*, 7 F.4th 811, 822 (9th Cir. 2021). "As the cost of living rises so does the cost of campaigning." *Id.* These increased costs include the cost of fuel needed to travel across the vastness of Colorado to meet constituents. *See* Trial Tr. Vol. 1, 56-60, 67-70, 117-19; Trial Ex. 17. And unless the contribution limits actually keep up with inflation, these "limits which are already suspiciously low will almost inevitably become too low over time" and prohibit challengers from financing competitive campaigns. *Randall*, 548 U.S. at 261.

89. Colorado's inflation problem is in some ways worse than in *Randall* or *Thompson*. *Randall* and *Thompson* worried that a law that did not adjust for inflation '"impose[d] the burden of preventing the decline upon incumbent legislators who may not diligently police the need for changes in limits levels to ensure the adequate financing of electoral challenges.'" *Thompson*, 589 U.S. at 6 (quoting *Randall*, 548 U.S. at 261). But unlike legislators, who may "have 'particular expertise' in matters related to the costs and nature of running for office," *Randall*, 548 U.S. at 248, Colorado enacted these limits (and the inflation adjustment scheme as well) by popular vote as a state constitutional amendment. *See* Trial Tr. Vol. 4, 565-67. Even if legislators

monitored the "need for changes," they cannot legislate a solution to the problem. *Thompson*, 589 U.S. at 6. And if expecting elected officials to monitor issues of public policy is too difficult, *see id.*, then requiring the general public to stay abreast of the costs of campaigning and subsequently amend Colorado's constitution every few years is unthinkable. That Colorado imposed these low limits by constitutional amendment made it certain that the limits will "decline in real value" over time, which cuts against the law even more. *Randall*, 548 U.S. at 261.

e. There is no "special justification" for the contribution limits.

90. Colorado does not meet the fifth *Randall* factor because it lacks a special justification for imposing such low contribution limits.

* * *

91. Colorado "does not point to a legitimate statutory objective that might justify these special burdens." *Id*. at 261-62. Its individual contribution limits "disproportionately burden[] numerous First Amendment interests, and consequently, . . . violate[ ] the First Amendment." *Id*. at 262.

III. SECTION 4 VIOLATES THE FIRST AMENDMENT.

92. Section 4 is an asymmetric campaign contribution scheme. It requires candidates that do not limit their spending to abide by the contribution limits and "activate[s] . . . a scheme of discriminatory contribution limits" if a non-limiting candidate spends too much. *See Davis*, 554 U.S. at 740. Asymmetric campaign contribution schemes trigger strict scrutiny because "imposing different contribution . . . limits on candidates vying for the same seat is antithetical to the First Amendment." *Id*. at 743-44; *see also Riddle v. Hickenlooper*, 742 F.3d 922, 929 (10th Cir. 2014). The Supreme Court has "never upheld" a law that "raises the limits only for [one

candidate] and does so only when" his or her opponent spends a certain amount of money. *Davis*, 554 U.S. at 738.

93. Under Section 4, when someone announces her candidacy for public office, she must declare whether she will limit her spending on speech and accept Section 4's terms. *See* Section 4(3); CRS 1-45-110(1). "If a candidate accepts the applicable spending limit and another candidate for the same office refuses to accept the spending limit," then the "applicable contribution limits [in 8 CCR 1505-6 § 10.17.1] shall double for any candidate who has accepted the applicable voluntary spending limit" as long as a "non-accepting candidate has raised more than ten percent of the applicable voluntary spending limit." Section 4(4) and (5).

94. The Supreme Court has repeatedly held that this kind of differential treatment is subject to strict scrutiny. *Davis*, 554 U.S. at 740; *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 748-49 (2011) ("*AFE*"). "The logic of *Davis* largely controls [the] approach to this action." *AFE*, 564 U.S. at 736. "Much like the burden placed on speech in *Davis*, the [differential contribution limits] 'imposes an unprecedented penalty on any candidate who robustly exercises [his] First Amendment right[s]" by raising funds exceeding 10% of the voluntary spending limit. *Id.* The First Amendment *prohibits* the government from putting a limit on the total fundraising of a candidate. *Buckley*, 424 U.S. at 58. But under this scheme, if a candidate does not agree to a spending limit and then raises a mere 10% of that limit, his or her opponent can *double* their contributions. Thus, Section 4 gives a candidate only two choices: "abide by a limit on . . . expenditures or endure the burden that is placed on [the right to spend] by the activation of a scheme of discriminatory contribution limits." *Davis*, 554 U.S. at 740. Under *Davis*, such a law "cannot stand unless it is justified by a compelling state interest." *Id.*

95. The Tenth Circuit already ruled that Section 4 "was intended to encourage candidates to limit their expenditures." *Lopez*, 2023 U.S. App. LEXIS 3421 at *1. Limiting expenditures is not a permissible state interest. *See Ted Cruz for Senate*, 596 U.S. at 305, 313. And it strains credulity that a law that doubles contribution limits furthers the goal of preventing *quid pro quo* corruption or its appearance.

96. Colorado never addressed these issues. Instead, defendants claim Section 4 does not impose a burden on First Amendment rights. *See* ECF 76. They are wrong.

97. The Court does "not need empirical evidence to determine that [Section 4] is burdensome." *AFE*, 564 U.S. at 746 (citing *Davis*, 554 U.S. at 738-40). Asymmetric campaign contribution schemes burden on a candidate's First Amendment rights and are subject to strict scrutiny. *See Davis*, 554 U.S. at 738-40; *AFE*, 564 U.S. at 746-49; *Riddle*, 742 F.3d at 929. And Section 4 imposes such an asymmetric scheme because it penalizes a candidate for raising too much money by doubling that contribution limit for that candidate. "Ultimately, the [*Davis*, *AFE*, and *Riddle*] law[s] failed because [they] imposed different contribution limits on candidates vying for the same seat." *Riddle*, 742 F.3d at 929 (internal punctuation marks omitted). Only "uniform contribution limit" laws can be "constitutional," *id*., and a law that increases the contribution limit for a candidate if her opponent raises too much money is anything but uniform.

98. The asymmetric contribution limits in Section 4 are unconstitutional.

IV. CONCLUSION

99. The Court declares that Colo. Const. Art. XXVIII's individual campaign contribution limits (Section 3) and its asymmetric contribution scheme (Section 4) violate the First Amendment and, therefore, are unconstitutional. Defendants are permanently enjoined from enforcing these laws.