

November 28, 2007

State of Colorado
Office of Administrative Courts
633 17th Street, Suite 1300
Denver, CO 80202

RE: Case No. OS 2007-0022
Brooks Imperial, Person Alleging Complaint
12300 County Rd. 118
Kiowa, CO 80117

CLAIMANT REQUEST FOR SUMMARY JUDGMENT

I, Brooks Imperial, respectfully request that the Court grant summary judgment in favor of my complaint dated November 8, 2007, in Case No. OS 2007-0022.

I do so because there is no reasonable question of fact that the Elbert County Development Council, Inc., [ECDC] a government council established in June, 2001 with supervision and funding from the Elbert County Board of County Commissioners [BOCC], contributed to newspaper advertising and direct mailings to voters in favor of referred measure 1B in the November 2007 election in Elbert County, an act specifically prohibited by Colorado Revised Statute 1-45-117.

This complaint became necessary for several reasons. The election for 1B turned out to be a matter determined by 105 marginal voters. Had there been a significant margin in the 1B vote, the voice of the people in Elbert County would have been clear, and the illegality of the ECDC's contribution would have been of minor consequence to the electoral process. This election, however, was close, and therefore the ECDC's illegal contribution and the advertising campaign it helped finance were determining factors in the outcome.

The political advertising illegally funded by the ECDC, combined with presumably legal funding from business interests standing to materially benefit from the passage of 1B, arguably swung the election toward passage of the measure. The Fair Campaign Practices Act prohibits government entities from participating in elections. This law did not deter the special interests in Elbert County from electioneering a victory for 1B. The ECDC participated in, and perhaps even orchestrated this process. The Secretary of State and the Court should not reward these parties by allowing this victory to stand.

Moreover, this matter is time-sensitive in that the 1B tax is scheduled to commence on January 1st, 2008. Since the dispositive facts in this matter are already well documented in public records, justice delayed beyond the first of the year may well amount to justice denied.

The legal authority for this claim comes from C.R.S. 1-45-117(1)(a), Sections (I) and (C). These statutes are detailed in my original claim. The elements described in those statutes to be proven by a preponderance of evidence are, A) the ECDC is a government council, and B) the ECDC illegally influenced an election for a referred measure.

The following evidentiary attachments are respectfully submitted for the consideration of the Court. Also, documentary evidence from state and county public records already referenced in the original complaint should be considered as a part of this request for summary judgment.

Evidence that the ECDC is a government council: Attachments 1 through 5

1) Secretary of State Document 20011122543 of June 19, 2007, Articles of Incorporation of Elbert County Development Council, Inc.

- a. This evidence establishes the formation of the current incarnation of the ECDC coincident with the first ECDC reference in 2001 commissioners meetings.

2) June 21, 2001, Elbert County Commissioner Meeting Minutes Excerpts.

- a. "The Board agreed that they will review the agreement with the County Attorney and that the Economic Development Council will sign this agreement."

This evidence indicates that the BOCC directed the ECDC with regard to the Vandewalle & Associates contract.

3) June 27, 2001, Elbert County Commissioner Meeting Minutes Excerpt.

- a. "[T]he Economic Development Committee accepted the proposal from Vandewalle & Associates and would like the Board of Commissioners to release funds to cover this cost. Commissioner Metli will discuss this matter with Treasurer Suzie Graeff."

This evidence indicates BOCC financing of the ECDC.

4) August 29, 2001, Elbert County Commissioner Meeting Minutes Excerpts.

- a. "Commissioner Metli discussed no charge to Vandewalle & Associates for this information since the Economic Development Council has signed a contract with them to provide services for Economic Development in Elbert County and they would only add this expense to their services or a minimum charge[.]"

This evidence indicates BOCC control and financing of the ECDC.

- b. "Commissioner Metli made a motion that the County Treasurer take the money that we reappropriated out of the Economic Development Fund last week, of \$10,000, to have Suzie put it into the General Fund for disbursement to the Economic Development Council. Commissioner Paulson seconded the motion. The roll having been called, the Chairman declared the motion unanimously carried and so ordered."

This evidence proves BOCC financing of the ECDC with public funds.

5) Colorado Secretary of State History and Document list for Elbert County Development Council, Inc.

- a. This evidence establishes continuous existence of the current incarnation of the ECDC from inception in 2001 as a government council to the present.

Evidence that the ECDC contributed money in favor of a referred measure: Attachments 6 through 9

6) July 25, 2007, Elbert County Commissioner Meeting Minutes Excerpt.

- a. "Charles Groesbeek and Tim Sheridan came before the Board to request that the Commissioners adopt a resolution to place a 1% sales tax and a 1% use tax on the ballot for the November 2007 Election. The sales and use tax would go to the Road & Bridge Fund for maintenance of roads, paving and building new roads."

Charles Groesbeek is a director of the ECDC government council and Tim Sheridan is head of the Simla division of the Elbert County Road & Bridge department. Commissioner Metli made a motion to place the tax on the ballot. The motion was unanimously carried and so ordered. In the Commissioner Meeting Minutes this excerpt came under the heading "Citizens for Responsible Government." There was no active political committee by that name registered in the state at the time.

This evidence supports the conclusion that the ECDC's role in the 1B tax campaign began with the initial public proposal of the tax, and it goes to the role of the ECDC as organizer of the 1B campaign.

7) Elbert County Transportation Initiative [ECTI] mailed flyers and newspaper advertising. These are copies of the pro-1B political advertising produced by the political issue committee to which the ECDC contributed.

- a. 1st Mailed flyer, side a
- b. 1st Mailed flyer, side b
- c. 2nd Mailed flyer, both sides
- d. Newspaper advertisements

These items are provided to demonstrate the caliber and quantity of political advertising created by the pro-1B group. This was not an insignificant or incidental effort.

8) Elbert County Transportation Initiative October 11, 2007, Report of Contributions and Expenditures (5 pages.)

This report describes a substantial contribution by A-1 Chipseal Co. Inc. A-1 Chipseal is a major road contractor for Elbert County and had received a payment of \$192,375.00 from Elbert County in September, 2007. See Elbert County News, October 18, 2007, page 41.

9) Elbert County Transportation Initiative October 28, 2007, Report of Contributions and Expenditures (5 pages.)

In addition to documenting the illegal ECDC contribution, this report describes several substantial contributions from Elbert County contractors and interested parties from the Colorado Asphalt Pavement Association. Carter Burgess, for example, is currently in the process of formulating a long term transportation plan for Elbert County which will certainly include recommendations for road improvements.

In summary, a preponderance of evidence shows that the ECDC is a government council that participated in a well planned and substantial political campaign to get the 1B tax passed.

No inference or implication about the ECDC, the BOCC, the ECTI, the contractors in business with the county who contributed to the ECTI, or individual parties associated with these groups, for any other purpose than issues presented under the Fair Campaign Practices Act, is intended.

I encourage the Court to contact me if there are any questions on this material, or if I can assist in any other matter that might help the Court find a just resolution for this case, and thereby restore integrity to the Elbert County election process.

Respectfully Executed by Brooks Imperial on November 28, 2007, at Kiowa, Colorado. I declare under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct.

/s/