STATE OF COLORADO
SECRETARY OF STATE
Administrative Hearing Office
1700 Broadway, Suite 550
Denver, CO 80290

Case number: 2026 AHO 24 CPF
(in re ED No. 2026-81)

IN THE MATTER OF:

ELECTIONS DIVISION of the SECRETARY OF STATE

Complainant

v.

INDEPENDENCE INSTITUTE,

Respondent

INITIAL DECISION ON MOTION TO DISMISS

1. In this case, a 2024 Colorado statute regulating the use of artificial intelligence in creating political ads collides with the biting video depiction created by Respondent, in opposition to Proposition NN, a ballot question that appeared on the November 3, 2026 ballot in Colorado.

2. The "deepfake statute," enacted in 2024, regulates the use of generative artificial intelligence to depict candidates in election communications. §§ 1-46-101 to -106, C.R.S. It defines a "deepfake" as AI-generated content "that falsely appears to be

authentic or truthful and which features a depiction of an individual appearing to say or do something the individual did not say or do." § 1-46-102(3), C.R.S. During a window of time— 60 days before a primary election and the 90 days before a general election—the distribution of a communication concerning a candidate that includes a deepfake is prohibited unless it carries a "clear and conspicuous" disclosure (referred to as a "disclaimer," in the parlance of campaign finance law) stating that the content "has been edited and depicts speech or conduct that falsely appears to be authentic or truthful." § 1-46-103(1), (2), C.R.S. "Clear and conspicuous" is defined as "a font-size no smaller than the largest font size of other text appearing in the visual communication. If the visual communication does not include any other text, the disclosure statement appears in a font size that is easily readable by the average viewer." § 1-46-103(2)(b)(I), C.R.S. The statute also contains a First Amendment safe harbor for some types of expression: it "does not apply to media content that constitutes satire or parody." § 1-46-103(3)(e), C.R.S.

3. The video at issue here contains no § 1-46-103(2)(a) disclaimer. The Division's Complaint claims that the omission of the disclaimer violates the statute. Respondent has filed a Motion to Dismiss which will be considered under C.R.C.P. 12(b)(5), and the matter is fully briefed. The question on the Motion to Dismiss is whether the Independence Institute's video falls within the safe harbor for satire and parody of § 1-46-103(3)(e), C.R.S.

Background

4. **The Ballot Question: Proposition NN.** During the 2026 legislative session, the Colorado General Assembly passed SB 26-135, which referred Proposition NN to the

voters on the November 3, 2026 ballot. Proposition NN would increase the TABOR cap and use the surplus funds on, among other things, K-12 education expenses and programs that "prepare children to be successful in school." Compl. ¶ 11. State Senator Cathy Kipp was a prime sponsor of SB 26-135 and supports Proposition NN. Compl. ¶ 12.

5. The Independence Institute opposed Proposition NN, and produced and distributed communications—including the video at issue here—encouraging voters to vote against Proposition NN. Compl. ¶ 13. The video[1] that spawned this case depicts Sen. Kipp as a grocery store cashier who refuses to give customers their change. Compl. ¶ 15.

6. The full transcript, Compl. ¶17, of the video is:

> SEN. KIPP: Your change is $50.
> [SEN. KIPP pockets the change] SEN. KIPP: Thanks for your business.
> PATRON: Um, where's my change?
> SEN. KIPP: Our new policy allows us to keep customer change to help educate children.
> PATRON: That's my money.
> SEN. KIPP: Management says it's for a good cause.
> PATRON: I want my money back.
> SEN. KIPP: Listen lady, you already gave me the money. I'm keeping it. We've got a lot of children to educate, so let's keep the line moving. Next?
> PATRON 2: Can they do that?
> [third patron raises hands in an "I don't know" gesture]
> NARRATOR AND LARGE CAPTIONS ON THE SCREEN: "Proposition NN wants to keep your tax refunds forever. How is that fair? No nonsense. It's your tax refund, not theirs."

[1] The video is found here: https://www.youtube.com/watch?v=blifVoJ05XY.

7. The division alleges Respondent used generative AI to create the video that includes images of Sen. Cathy Kipp saying or doing things that she did not say or do, Compl. ¶ 3, and that "[t]he video's purpose is express political advocacy, not satire, and does not parody identifiable statements or actions by Sen. Kipp." Compl. ¶ 15. The Institute distributed the video by email and posted it to social media, including Facebook and X. It was available for viewing at least through August 5, 2026. Compl. ¶ 18. The video did not include the clear and conspicuous disclaimer required by § 1-46-103(1), (2), C.R.S. Compl. ¶ 3.

8. Respondent concedes that what is portrayed in the video is not true: Sen. Kipp does not work in a grocery store and did not steal a customer's grocery change in order to give it to children for their education. But it asserts that no one seeing the video would reasonably consider these things to be true. A reasonable person would view the video "as satire or parody and not . . . a true event which actually occurred." Motion, p. 3.

9. In its Motion to Dismiss, the Independence Institute states that the ad is, very obviously, to make voters aware of a ballot proposal in the upcoming election that would take taxpayer TABOR refund money and permit the State of Colorado to use it "for educational purposes." Respondent believes that Proposition NN amounts to stealing money from taxpayers' pockets. Motion, p. 2. It acknowledges that the "disclaimer"[2] does not comply with the statute, Motion, pp. 2-3, but asserts that the statute does not apply to

[2] 32 seconds into the video, two lines appear in small type face at the bottom of the screen, "AI generated content because who gets a human cashier these days?"

the video which any reasonable person hearing or watching would recognize as satire and parody. Motion, p. 3.

10. **The issue for decision.** Both parties agree that the only issue to be decided on the Motion to Dismiss is whether a reasonable person would consider the video to be a satire or a parody. Motion, p. 2; Resp., pp. 3-4. The deepfake statute specifically "does not apply to media content that constitutes satire or parody." 1-45-103(3)(e). If the video is a satire, parody, or both, the deepfake statute does not apply, there is no plausible claim for relief, and the Complaint must be dismissed

Standard of Review

11. A motion under C.R.C.P. 12(b)(5) tests the legal sufficiency of the complaint. The Complaint's factual allegations are regarded as true and viewed in the light most favorable to the Division. *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1088 (Colo. 2011). The Complaint survives only if those allegations state a plausible claim for relief. *Warne v. Hall*, 2016 CO 50, ¶¶ 9, 24. "[L]egal conclusions that are couched as factual allegations," however, are not regarded as true. *Denver Post*, 255 P.3d at 1088. The Complaint's assertions that the video is "not satire" and is "not parody," Compl. ¶¶ 15, 30–31, is a legal conclusion. Whether the conclusion is correct is the very issue to be decided here.

12. In ruling on the Motion, documents or things that are referred to and incorporated by reference in the Complaint can be considered. *Norton v. Rocky Mountain Planned Parenthood, Inc.*, 2018 CO 3, ¶ 7. The video is such a document. The Complaint transcribes it, includes screen shots from it, and links to it, Compl. ¶¶ 15–17, and both parties argue from it. The relevant facts are not in dispute.

Parody and Satire

13. The statute does not define "satire" or "parody." The General Assembly is presumed to have intended compliance with the state and federal constitutions, § 2-4-201(1)(a), C.R.S., and the Division acknowledges that the exclusion from the disclaimer for satire and parody "exists to satisfy the First Amendment." Resp., p. 4. The extent of the exclusion is established by First Amendment law. Whether or not a reasonable person would perceive that the video is a satire or parody under § 1-46-103(3)(e) is a question of law for the hearing officer. The matter is properly decided on a motion to dismiss based on the submissions of the parties and without an evidentiary hearing, as there is no dispute as to the facts.

14. The court determines whether a publication could reasonably be understood as describing actual facts or hyperbole, opinion, or parody. In *Greenbelt Cooperative Publishing Ass'n v. Bresler*, 398 U.S. 6, 13 (1970), the Supreme Court determined "as a matter of constitutional law" that describing a developer's bargaining position as "blackmail" was rhetorical hyperbole and not libel. *See also, Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16–17 (1990)(sports column implying that a coach lied under oath cannot, as a matter of law, reasonably be read as stating actual facts). The Tenth Circuit followed *Greenbelt* in the case of *Pring v. Penthouse International, Ltd.*, 695 F.2d 438, 442–43 (10th Cir. 1982) and again in *Mink v. Knox*, 613 F.3d 995, 1007 (10th Cir. 2010)("whether a statement could be reasonably understood as fact is a question of law"). The District of Columbia Circuit affirmed a dismissal for failure to state a claim on the same basis in

Farah v. Esquire Magazine, 736 F.3d 528, 535 (D.C. Cir. 2013)("These threshold inquiries are questions of law for the court to decide.")

15. Cases of the Colorado Supreme Court have reached a similar conclusion. *NBC Subsidiary (KCNC-TV), Inc. v. Living Will Center*, 879 P.2d 6, 11 (Colo. 1994)("Whether allegedly defamatory language is constitutionally privileged is a question of law"), *cert. denied*, 514 U.S. 1015; *Keohane v. Stewart*, 882 P.2d 1293, 1299, fn. 8 (Colo. 1994), *cert. denied*, 115 S.Ct. 936, 130 L.Ed.2d 882 (1995); So Fine Limousine, Inc., v. Jacor Broad. Of Colo., Inc., 1996 Colo. App. LEXIS 1140 (July 11, 1996) (unpublished)(the court could determine as a matter of law, that there were no actionable facts for a defamation claim given the context of the comedy show), The Division agrees that this is a question of law. Resp., p. 3 n.1.

16. The test for whether or not the communication is parody or satire is objective. It asks how a hypothetical reasonable viewer would understand the video, not how particular viewers reacted to it or how its subject characterizes it. *Farah*, 736 F.3d at 537; *Mink*, 613 F.3d at 1009. In addition, a tribunal must ensure that its judgment "does not constitute a forbidden intrusion on the field of free expression." *Milkovich*, 497 U.S. at 17 (citations omitted).

17. In considering the meaning of "parody" and "satire," it is easy to let the concepts run together, merging in the idea that parody and satire mean making fun of someone or of some thing. But they do have different origins.

18. **Parody is a take-off of an original:** an imitation with changes, themes or exaggerations of the original song, statement, work of art, etc. that make a point or a joke, or an interpolation that changes the meaning or context and ridicules or jabs at the original. Such was the case under consideration by the Supreme Court in *Campbell v. Acuff-Rose Music*, Inc., 510 U.S. 569 (1994) which dealt with how rapper 2 Live Crew's song, "Pretty Woman" parodied Roy Orbison's rock ballad, "Oh, Pretty Woman" in a way that "derisively demonstrate[s] how bland and banal the Orbison song seems to" the parodist. Parody uses "some elements of a prior author's composition to create a new one that, at least in part, comments on that author's works." 510 U.S. at 580.

> The germ of parody lies in the definition of the Greek *parodeia* . . . as "a song sung alongside another." Modern dictionaries accordingly describe a parody as a "literary or artistic work that imitates the characteristic style of an author or a work for comic effect or ridicule," or as a "composition in prose or verse in which the characteristic turns of thought and phrase in an author or class of authors are imitated in such a way as to make them appear ridiculous." *Acuff-Rose*, 510 U.S. at 580 citations omitted).

19. The parodied original need not be a song or a book. It can be a law, and what the parodist imitates can be the way the law operates. What matters is that the new work imitates an original and has a "critical bearing on the substance or style of the original composition." *See Acuff-Rose*, 510 U.S. at 580.

20. **Satire stands on its own,** not requiring an imitation or reference, as parody does, to some original expression. Yet still the motive of the satirist, like that of the parodist, is to ridicule or make fun of someone or some thing. The word comes from the Latin *satura*, a medley, the name the Romans gave to verse that mocked the vices of the

day. The practice is older than the word, and politics has been its subject from the start. Satire "has been employed since the time of Ancient Greece," and its "forms are as varied as its victims." *Farah v. Esquire Magazine*, 736 F.3d 528, 536 (D.C. Cir. 2013). in the 5th c. BCE, Aristophanes in *The Knights* put Cleon, the leading politician of Athens, on the comic stage making his doppelganger a scheming household slave. Jonathan Swift's *A Modest Proposal* (1729) gravely recommended solving the problem of Irish poverty by killing and eating Irish children. *See Farah*, 736 F.3d at 536. No reader was meant to take the proposal as genuine. Its target was the policy that had produced poverty.

21. Satire is a creation "in which prevalent follies or vices are assailed with ridicule," or are "attacked through irony, derision, or wit." *Acuff-Rose*, 510 U.S. at 581 n.15 (citing 14 *Oxford English Dictionary* 500, (2d ed. 1989)). It is "a long-established artistic form that uses means such as 'ridicule, derision, burlesque, irony, parody, [or] caricature' to censure the 'vices, follies, abuses, or shortcomings' of an individual or society." *Farah v. Esquire Magazine*, 736 F.3d 528, 536 (D.C. Cir. 2013)(quoting *Satire*, ENCYC. BRITANNICA ONLINE, http://www.britannica.com/EBchecked/topic/524958/satire (last visited Nov. 13, 2026). Its unifying element is the use of wit. And as any watcher of *Saturday Night Live* can attest, sometimes the humor lands and sometimes it does not.

Core Political Speech

22. The video at issue here lampoons a measure on the statewide ballot and one of its prime sponsors. Speech of that kind leads to the heart of First Amendment concerns. "Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs." *Mills v. Alabama*, 384 U.S. 214, 218 (1966)(striking a law that made it a crime to publish an election-day editorial on a ballot proposition). "Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution," and the First Amendment "affords the broadest protection to such political expression." *Buckley v. Valeo*, 424 U.S. 1, 14 (1976). Speech concerning public affairs "is the essence of self-government," *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964)(reversing a prosecutor's criminal-libel conviction for criticizing judges), and it "occupies the highest rung of the hierarchy of First Amendment values." *Snyder v. Phelps*, 562 U.S. 443, 452 (2011)(picketing at a soldier's funeral addressed matters of public concern, protected by the First Amendment, and could not support tort liability)(citation omitted).

23. These principles apply with full force to ballot measures. In a case that arose from Colorado's ban of paid circulators to gather signatures in support of a potential ballot question, the United States Supreme Court described advocacy on a ballot measure as "core political speech," for which First Amendment protection is "at its zenith." *Meyer v. Grant*, 486 U.S. 414, 425 (1988)(holding that the ban on the use of paid circulators abridged

the right to engage in political speech in violation of the First and Fourteenth Amendments).

24. Criticism of those who hold office is part of the bargain. It is essential to a healthy democracy that "debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Robust political debate "is bound to produce speech that is critical of those who hold public office [or who] shape events in areas of concern to society at large." *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988)(holding that that an ad parody depicting the Rev. Jerry Falwell in a drunken incestuous relationship with his mother in an outhouse could not support an emotional distress claim because the offending speech "could not reasonably have been interpreted as stating actual facts about the public figure involved").

25. That the video at issue here was created with AI does not change the analysis. "YouTube videos, Facebook posts, and X tweets are the newspaper advertisements and political cartoons of today, and the First Amendment protects an individual's right to speak regardless of the new medium these critiques may take." *Kohls v. Bonta*, 752 F. Supp. 3d 1187, 1195 (E.D. Cal. 2024)(holding that California's disclosure requirement for parody and satire videos constitutes unconstitutional compelled speech). The Supreme Court has said the same of each new medium: "the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary" when a new and different medium for communication appears. *Brown v. Entertainment*

Merchants Ass'n, 564 U.S. 786, 790 (2011)(quoting *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 503 (1952)). In *Entertainment Merchants Ass'n*, the court struck down California's ban on selling violent video games to minors. In *Burstyn*, The court struck down New York's ban on "sacrilegious" films.

26. Satire and parody are among the oldest forms of that debate. Parody is "a vital commodity in the marketplace of ideas." *Cardtoons, L.C. v. Major League Baseball Players Ass'n*, 95 F.3d 959, 972 (10th Cir. 1996). The First Amendment does not ask whether the satire is fair, kind, or well made. "[I]n the world of debate about public affairs, many things done with motives that are less than admirable are protected by the First Amendment." *Falwell*, 485 U.S. at 53.

Context, Falsity and Legal Analysis

27. The Institute concedes that the video depicts things that never happened. That does not take the video outside the protection of the First Amendment. "[E]rroneous statement is inevitable in free debate," and it must be protected if freedom of expression is to have the "breathing space" it needs to survive. *Sullivan*, 376 U.S. at 271–72. "The First Amendment requires that we protect some falsehood in order to protect speech that matters." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 341 (1974). There is no general exception to the First Amendment for false statements. *United States v. Alvarez*, 567 U.S. 709, 718 (2012)(plurality opinion)(holding that the Stolen Valor Act imposing a criminal penalty for a false claim to the Medal of Honor infringes on the First Amendment).

28. Satire and parody are more or less false by design, and they are protected nonetheless. "Even false statements of fact are protected from a defamation claim if any

reasonable person would recognize the statements as parody." *Mink*, 613 F.3d at 1005. The Tenth Circuit in *Mink* found that the portrayal in a student internet journal lampooning Professor Junius Peake as "Junius Puke," wearing a Hitler mustache and saying things diametrically opposed to the real professor's views, was protected parody. "It is not unusual to protect false statements of fact where, because of the context, they would have been understood as part of a satire or fiction." *Ollman v. Evans*, 750 F.2d 970, 1000 (D.C. Cir. 1984)(en banc)(Bork, J., concurring), *quoted in Mink*, 613 F.3d at 1006.[3] "Despite its literal falsity, satirical speech enjoys First Amendment protection." *Farah*, 736 F.3d at 536 (citation omitted). The advertisement parody in *Falwell* attributed provably false facts to a nationally known minister. The Supreme Court held it was protected because it "could not reasonably have been interpreted as stating actual facts about the public figure involved." *Falwell*, 485 U.S. at 50. In *Pring*, the magazine made no claim that the acts it attributed to the plaintiff—levitation of a body by a sexual act—were true. The Tenth Circuit held the

[3]The *Ollman* case heard by the DC Circuit is interesting not just because of its analysis of the First Amendment, but because of who served on that en banc panel: Chief Judge **Spottswood William Robinson III** (one of the NAACP lawyers who litigated Brown v. Board of Education, and the first Black judge on the D.C. Circuit), and Circuit Judges **Skelly Wright** (who as a district judge ordered the desegregation of the New Orleans public schools), **Edward Allen Tamm** (a longtime senior FBI official before taking the bench), **Patricia Wald** (the first woman on the D.C. Circuit, and later a judge of the Yugoslavia war crimes tribunal), **Abner Mikva** (a former Congressman, and later White House Counsel), **Ruth Bader Ginsburg** (Associate Justice of the Supreme Court, 1993–2020), **Robert Bork** (the former Solicitor General whose 1987 nomination to the Supreme Court the Senate rejected), **Antonin Scalia** (Associate Justice of the Supreme Court, 1986–2016), and **Kenneth Starr** (Whitewater independent counsel), together with others well known and respected judges.

story was protected because the charged portions could not reasonably be understood as describing actual events. *Pring*, 695 F.2d at 442–43.

29. The reason is that the First Amendment looks to what a publication communicates, not to its literal content. The statement to be tested "is not invariably the literal phrase published but rather what a reasonable reader would have understood the author to have said." *Farah*, 736 F.3d at 536 (quoting *Milkovich*, 497 U.S. at 23–24). In the context of a libel action for a satirical piece about a professor, the Tenth Circuit observed that "[b]ecause no reasonable person would take these types of speech as true, they simply cannot impair one's good name." *Mink*, 613 F.3d at 1005. A searching consideration of the Motion to Dismiss requires asking whether Respondent's video could mislead a hypothetical reasonable voter about what a candidate said or did such that it removes the video from the safe harbor afforded to parody and satire.

30. Context is how a tribunal determines what was communicated. "Context is crucial and can turn what, out of context, appears to be a statement of fact into rhetorical hyperbole, which is not actionable." *Mink*, 613 F.3d at 1005 (citation and quotation marks omitted). The Tenth Circuit's test is "whether the charged portions in context could be reasonably understood as describing actual facts about the plaintiff or actual events in which she participated." *Pring*, 695 F.2d at 442. The measure "is what a reasonable reader would understand the author to be saying, considering the kind of language used and the context in which it is used." *Mink*, 613 F.3d at 1007. Context includes "not only the immediate context of the disputed statements, but also the type of publication, the genre of writing, and the publication's history of similar works," as well as the "broader social

context." *Farah*, 736 F.3d at 535 (citation omitted). Colorado courts likewise consider the phrasing of a statement, the context in which it appears, the medium, and the audience. *Keohane*, 882 P.2d at 1299; [4] *So Fine Limousine*, 1996 Colo. App. LEXIS 1140, *4 (1996).

31. The answer does not depend on labels: the question is not whether the work calls itself fiction or humor. *Pring*, 695 F.2d at 442. It does not depend on whether some viewers were actually misled: the question is whether the hypothetical reasonable viewer could be misled, on a considered view and not a first impression. *Pring, 695 F.2d 438, 442-43.* And it does not depend on whether the satire succeeds. "First Amendment protections do not apply only to those who speak clearly, whose jokes are funny, and whose parodies succeed." *Acuff-Rose*, 510 U.S. at 583 (internal quotation marks omitted). The threshold question is only "whether a parodic character may reasonably be perceived." *Id.* at 582.

32. The Division disputes that the holdings in defamation cases apply here, asserting that § 1-46-103 serves a different interest, to prevent voter confusion and "to vindicate the state's interests in an informed electorate." Resp., p. 4. The First Amendment protection demanded by these cases, however, is not attenuated by changing the cause of action on which the suit is grounded, or asserting that a public interest, rather than a private one, is at stake in the litigation. The First Amendment protection arises from the character of the speech in context and not the cause of action. *Falwell* was a claim for

[4] The facts in *Keohane*, arising out of events in Canon City, were complicated. In determining which speakers' statements were facts or implied truths and, therefore actionable, versus unactionable opinions, the court looked to phrasing, context, medium and audience.

intentional infliction of emotional distress; *Pring* applied the same analysis to claims of defamation, false light and outrageous conduct; *Acuff-Rose* applied a reasonable-perception standard to parody in copyright. The statute here is aimed at "deepfakes," defined as content "that falsely appears to be authentic or truthful." § 1-46-102(3), C.R.S. The harm the General Assembly identified is that a fabricated depiction will lead voters to believe that a candidate said or did something they did not say or do. § 1-46-101(1)(b)–(c), C.R.S. Content that a reasonable viewer would recognize as satire cannot cause that harm because it does not appear to be authentic or truthful. Whether a reasonable viewer would take the depiction as fact is thus the line the statute itself draws.

33. The Division's principal answer is that § 1-46-103 is a disclaimer requirement that does "not prevent anyone from speaking," and is therefore subject only to "a relaxed form of constitutional scrutiny." Resp., p. 4 (quoting *Citizens United v. FEC*, 558 U.S. 310, 366 (2010)). The premise is true, but exacting scrutiny is not relaxed. It requires "a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest," *Citizens United*, 558 U.S. at 366–67, and the requirement must also "be narrowly tailored to the government's asserted interest." *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595, 608 (2021); *see No on EE v. Beall*, 2024 COA 79, ¶¶ 18–21 (*cert. granted sub. nom Kline v. No on EE — A Bad Deal for Colo.*, 2025 Colo. LEXIS 631 (Aug. 4, 2025), No. 24SC540).

34. It is not clear that exacting scrutiny, advocated by the Division, Resp., p. 4, is the correct standard. The disclaimers upheld in *Citizens United* identified who was speaking, i.e., who paid for the communication. 558 U.S. at 366–68. Section 1-46-

103(2)(a), however, prescribes a script: the speaker must declare that its own message "depicts speech or conduct that falsely appears to be authentic or truthful." A law compelling a speaker to deliver a particular message is treated as a content-based regulation, *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 795 (1988)(striking a requirement that professional fundraisers disclose their fee percentages to potential donors); *National Institute of Family & Life Advocates v. Becerra*, 585 U.S. 755, 766 (2018)(striking down state-scripted notices that pregnancy centers must provide about the availability of state-sponsored services, including abortion—the very alternative that petitioners oppose), and such regulations ordinarily must satisfy strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)(Sign Code's provisions, treated signs differently based on subject matter are content-based regulations of speech that do not survive strict scrutiny). The district court in *Kohls v. Bonta* applied strict scrutiny to California's election deepfake law, which exempted satire and parody only if labeled in type no smaller than the largest text in the video, exactly like the size requirement for the prescribed disclaimer in Colorado's deep fake statute. § 1-46-103(2)(b)(I). The U.S. District Judge in *Kohls* held that the labeling requirement would fail even exacting scrutiny because a label of that size "drowns out" the parody's message. 752 F. Supp. 3d at 1197.

35. I do not decide which standard governs, nor the constitutionality of § 1-46-103. An administrative tribunal has no authority to rule on facial constitutional challenges, *Arapahoe Roofing & Sheet Metal, Inc. v. City & County of Denver*, 831 P.2d 451, 454 (Colo. 1992), and it is not necessary for a determination of the issue here. Under either standard of scrutiny, the statute must be narrowly tailored, and the exclusion for satire and parody

in § 1-46-103(3)(e) is the means by which the General Assembly narrowly tailored it. The level of scrutiny therefore bears on this case in one way: it informs how the exclusion is read. To do its work, the exclusion must reach at least as far as the constitutional protection for satire and parody. For that reason, I do not accept the Division's position that a communication qualifies for the safe harbor only if it "clearly" satisfies the standards for satire or parody. Resp., p. 10. The statute excludes content that "constitutes" satire or parody, not content that clearly does. The Division's formulation resolves doubt against the speaker, and so would raise the constitutional question the General Assembly wrote the exclusion to avoid. However, the First Amendment resolves doubt the other way. "Where the First Amendment is implicated, the tie goes to the speaker, not the censor." *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 474 (2007)(opinion of Roberts, C.J.). As explained below, this is not a close case, so there is no "doubt" that needs to be resolved.

36. The Independence Institute has been active in Colorado politics since 1985, Compl. ¶ 24, declaring these among other purposes on its website:

> We seek private-sector and community solutions to problems rather than prescriptions for regimentation and control.
>
> We offer expertise—and provide active leadership—in education, taxes, healthcare, energy, the environment, government transparency, transportation, local government, the right to keep and bear arms, and the U.S. and Colorado Constitutions. Unlike most policy organizations, we accept no government money.

Compl. ¶ 26.

37. The Division argues that Respondent's purposes and expertise weigh against a finding of satire because the Institute is a policy organization, not a humor publication, and because the video appears on its Facebook page between two serious videos. Resp., p. 8; Compl. ¶ 27. The argument is that in creating the video which the Institute thinks is "hilarious," Motion, p. 3, Respondent has moved out of its lane—generally serious policy pronouncements. But the First Amendment protection for satire is not available only to publications that specialize in it. The publications in *Falwell*, *Pring*, and *Farah* were not humor magazines, and *Esquire Magazine* had carried serious reporting on the very subject that an *Esquire* political blog post later satirized. *Farah*, 736 F.3d at 537.[5]

38. The video's own content settles the matter. A cashier tells a customer that her change is $50, pockets it, and thanks her for her business. No store operates that way, and no cashier announces a theft as store policy. The narrator then states the point: "Proposition NN wants to keep your tax refunds forever. How is that fair?" It is at this moment that the skit is revealed as a parodic and satiric analogy. The caption that accompanies the post makes the point: "Apparently, 'keep the change' means something different when the government says it." Compl. ¶¶ 15–16 (screenshots). So too does the closing line on the screen—a final attempt to garner a laugh: "AI generated content because who gets a human cashier these days?" Compl. ¶ 16.

[5] In *Farah*, an *Esquire* blog post falsely "reported" that a publisher was recalling and pulping a book questioning President Obama's birthplace. The court affirmed dismissal for failure to state a claim, holding a reasonable reader would recognize the blog post as political satire.

39. The Division argues that the use of artificial intelligence changes the analysis because the viewer sees Sen. Kipp, and not an actor playing her. Resp., pp. 6–7. To take the video as a record of actual events, however, a viewer who recognizes Sen. Kipp would have to believe that she willingly let herself be filmed as a rude and peremptory clerk at a grocery checkout, that she kept a customer's money in front of witnesses and a camera, and that she consented to appear in an advertisement against a ballot question she sponsored. No reasonable viewer who recognizes Sen. Kipp would believe that. On the other hand, a viewer who does not recognize Sen. Kipp sees an anonymous cashier and cannot be misled about any candidate. Nothing in the dialogue or the narration identifies the main character as Senator Cathy Kipp.

40. The Division argues that the video lacks the "over-the-top hyperbole" that marks satire and that its characters are "straight-faced." Resp., p. 9. The exaggeration is in the premise of the skit. Deadpan delivery is one of satire's oldest methods. The court in *Farah* pointed to satires by Defoe and Franklin in the 18th century which were at first received as genuine. 736 F.3d at 536–37.(satire works by "distort[ing] . . . the familiar with the pretense of reality in order to convey an underlying critical message")(citations and quotation marks omitted). In *Pring* the signal that the story could not be taken literally was the impossibility of the events described, not the tone of the telling. 695 F.2d at 441–43. The Division also concedes that another of the Institute's AI-generated videos of Sen. Kipp,

linked at Resp., p. 9 n.5,[6] is more likely to be viewed as satire. The two videos make the same point about the same measure. Reply, p. 3. What separates them is the sense of humor that drives the narrative, and that is a matter of taste. Whether parody "is in good taste or bad does not and should not matter to fair use," *Acuff-Rose*, 510 U.S. at 582, and it matters no more here where the issue is whether an electioneering communication created using AI is a parody or satire at all.

41. The Division agrees that First Amendment protection extends even to satire or parody that—through artificial intelligence—includes the very candidates or officeholders the communication is meant to target. Resp., pp. 9–10. A realistic likeness to the target of satire does not remove it from First Amendment protection. The parody in *Falwell* used the minister's name and picture in parody of a Campari advertising campaign. 485 U.S. at 48. The website in *Mink* used the professor's photograph. 613 F.3d at 1009. The question is whether *the work as a whole* could reasonably be understood as describing actual events.

42. Finally, the Division proposes a different question: whether a reasonable viewer would assume that Sen. Kipp consented to the use of her likeness and supports the video's message. Resp., pp. 5–6. The statute does not ask that question. It speaks of the depiction of a person "appearing to say or do something the individual did not say or do," Sec. 1-46-102(3), C.R.S., and it excludes satire and parody without reference to consent or

[6] https://www.facebook.com/reel/1446632193948510

endorsement. No reasonable viewer would suppose that the sponsor of Proposition NN agreed to play a cashier who keeps a customer's money in an advertisement urging a vote against the measure.

Findings and Conclusion

43. The video is a parody of Proposition NN. Its original is not a song but a legislative measure and a ballot question, SB 26-135, and what the skit imitates is how the measure, in Respondent's view, operates. Under TABOR, revenue collected above the cap must be refunded to taxpayers. Colo. Const. art. X, § 20(7)(d). Proposition NN allows the state to keep that money, which taxpayers have already paid, to spend on K-12 education. Compl. ¶ 11. The skit replays each step at a checkout counter. The customer has already handed over her money, change is due to her, and the cashier keeps it under a new policy "to help educate children." The patrons are the taxpayer-voters to whom the video is addressed. "Management" in the video is the counterpart of the government deciding that the money is needed for education. The cashier in the video looks like Senator Cathy Kipp. Compl. ¶ 15. The parody is directed at Proposition NN itself and would work with any cashier. Putting the measure's prime sponsor behind the register adds something more.

44. Sen. Kipp's AI deepfake doppelganger in the video saying things Sen. Kipp did not say and doing things she did not do makes the real Sen. Kipp a satirical target of the video. She is placed by the satirist—The Independence Institute—in a skit about Proposition NN. Rather than being concerned about adequate funding of K-12 education in Colorado, the Senator is portrayed in the skit as an unsmiling, unpleasant cashier stealing a customer's change on the decision of store management. Though in form a video clip

distributed on the internet and posted on a Facebook page, the AI created animation and skit can fairly be placed in the genre of a political cartoon. "The art of the cartoonist is often not reasoned or evenhanded, but slashing and one-sided." *Falwell,* 485 U.S. at 54. A public figure, Sen. Kipp in the video is the object of the satire. While the Complaint alleges that the video's purpose "is express political advocacy, not satire," Compl. ¶ 15, the two are often conjoined. Advocacy is the purpose while satire is the creator's method.[7] Section 1-46-103 reaches only election communications concerning a candidate, so nearly everything within its reach is political advocacy. If such advocacy disqualified a communication from the safe harbor of § 1-46-103(3)(e), the safe harbor would lose its function as a First Amendment protection. That the video urges a vote against Proposition NN does not take it outside the exclusion. It places the video at the core of political speech protected by the First Amendment. *Meyer*, 486 U.S. at 425.

45. I therefore find as a matter of law that the video is both a parody and a satire and that it cannot reasonably be understood to describe actual facts about Sen. Kipp or actual events in which she took part. It is satire and parody within the meaning of § 1-46-103(3)(e). Section 1-46-103 therefore "does not apply" to it, no disclaimer under § 1-46-103(2) was required, and the Complaint does not state a claim on which relief can be

[7] "Plaintiff's insistence that the commercial appears to be a serious offer requires the Court to explain why the commercial is funny. Explaining why a joke is funny is a daunting task; as the essayist E.B. White has remarked, 'Humor can be dissected, as a frog can, but the thing dies in the process . . . .'" *Leonard v. Pepsico, Inc.*, 88 F. Supp. 2d 116, 128 (S.D.N.Y. 1999).

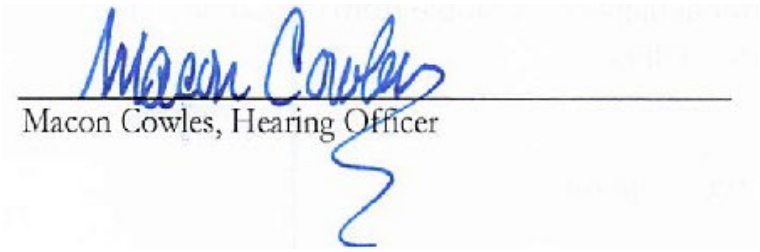
granted. Because the Complaint is dismissed on this ground, I do not reach the Institute's contention that the proceeding is itself retaliatory under *Worrell v. Henry*, 219 F.3d 1197, 1212 (10th Cir. 2000). Motion, pp. 7–8.

Order

46. This matter was determined in accordance with section 24-4-105 and section 1-45-111.7 6(a) and (b), C.R.S. Pursuant to § 1-45-111.7(6)(a), C.R.S., this initial determination is subject to review by the Deputy Secretary of State for issuance of a final agency decision.

47. The Division's factual allegations do not, as a matter of law, support the claim for relief. *Norton v. Rocky Mt. Planned Parenthood, Inc.*, 2018 CO 3, ¶ 7 (2018) Respondent's Motion to Dismiss is GRANTED. The Complaint is DISMISSED with prejudice.

SO ORDERED this 19th day of November 2026.



Appeal, Exceptions and Final Agency Action

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

A. Designation of the Record

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

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

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

B. Exceptions

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

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

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

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

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

C. Right of original complainant

The person who filed the original complaint with the Secretary of State, while not a party to the proceeding before the hearing officer, may seek judicial review by a state district court once all remedies have been exhausted at the Department under section 24-4-106. *See*, Sec. 1-45-111.7(5)(b), C.R.S.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one true copy of this Initial Decision on Motion to Dismiss was sent via email on November 19, 2026 to the following:

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