IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 22-cv-00247-JLK

GREG LOPEZ,
RODNEY PELTON, and
STEVEN HOUSE,

Plaintiffs,

v.

JENA GRISWOLD, Colo. Sec'y of State, in her official capacity, and
JUDD CHOATE, Dir. of Elections, Colo. Dep't of State, in his official capacity,

Defendants

REPLY IN SUPPORT OF PRELIMINARY INJUNCTION MOTION

Defendants argue that Colorado's repeated and "emphatic[]" efforts to violate the First Amendment through contribution limits are okay because the voters really want it and because the state has been doing it so long. Opp'n to Mot. for Prelim. Inj. at 1-3, 8 (ECF No. 14) ("Opp'n"). But these are not legitimate arguments for upholding an unconstitutional law or withholding injunctive relief. No matter how long a state has been violating the Constitution and no matter how much its citizens and officers may want to trammel constitutional rights, they may not ignore the requirements of the First Amendment.

On the merits, the Defendants attempt to argue that there are no danger signs requiring special scrutiny for the rock bottom contribution limits for statewide races ("Tier 1"), and that contribution limits for both Tier 1 and legislative races ("Tier 2") survive the

special scrutiny required when the government imposes such low limits.[1] They also argue that the state's differential contribution limits scheme survives scrutiny because it gives candidates a choice: give up their constitutional rights or face a challenger to whom the state will give a funding advantage. These arguments all fail.

ARGUMENT

I. A LAW'S LONGEVITY AND POPULARITY DOES NOTHING TO AMELIORATE ITS UNCONSTITUTIONALITY

The Defendants spend pages arguing that the ultra low contribution limits imposed in 2002 must be constitutional because the state has long had some form of contribution limits and because the state's citizens and officials are strongly in favor of very low limits. Opp'n at 1-3, 8. But these justifications do not sustain the state's low limits.

"The First Amendment is a counter-majoritarian bulwark against tyranny," and it "places out of reach of the tyranny of the majority the protections of the First Amendment." *Wollschlaeger v. Governor*, 848 F.3d 1293, 1327 (11th Cir. 2017) (Pryor, J., concurring); *cf. Doe v. Shurtleff*, 628 F.3d 1217, 1222 (10th Cir. 2010) (noting counter-majoritarian "purpose"). The whole point of putting protections for speech and association in the Constitution is to stop momentary majorities from "determinin[g] that particular speech is [not] useful to the democratic process." *McCutcheon v. FEC*, 572 U.S. 185, 206 (2014) (Roberts, C.J., controlling op.).

Nor is it material to the constitutional analysis how long a law has stood without

[1] Tier 1 refers to candidates for governor, secretary of state, state treasurer, and attorney general. Colo. Const. art. XXVIII, § 3(1)(a). Tier 2 refers to candidates for state Senate, state House of Representatives, state Board of Education, regent of the University of Colorado, and district attorney. *Id.* § 3(1)(b). While the parties may occasionally mention "statewide" and "legislative" candidates as shorthand for these tiers, the Court should keep in mind that Tier 2 actually contains some statewide candidates (certain Board of Regents candidates) who must run their campaigns under the very low $400 limit.

challenge. Colorado may have had some form of contribution limits since the mid-1970s,[2] and the state's constitution may have regulated campaign finance since 2002, but the mere passage of time does not insulate a law from being unconstitutional. *See, e.g.*, *Lawrence v. Tex.*, 539 U.S. 558, 568, 577-79 (2003) (declaring sodomy laws unconstitutional despite history dating back 470 years); *United States v. Va.*, 518 U.S. 515, 536-37, 556-58 (1996) (striking down male-only education at state university that had employed that model since 1839); *Thompson v. Hebdon*, 7 F.4th 811, 816, 822-23 (9th Cir. 2021) ("*Thompson II*") (striking down Alaska's contribution limits despite restrictions dating to 1974); *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 807 (10th Cir. 2019) (upholding preliminary injunction against public-nudity ordinance); *id*. at 809 (Hartz, J., dissenting) (noting "long tradition" of such laws).

Colorado's law violates *Randall v. Sorrell*, 548 U.S. 230 (2006),[3] *Thompson v. Hebdon*, 140 S. Ct. 348 (2019) ("*Thompson I*") (per curiam), and *Davis v. FEC*, 554 U.S. 724 (2008). That's true whether the law passed with a one-vote margin or a million-vote margin. And it's true whether the law has stood for a month or 100 years.

II. THE CONTRIBUTION LIMITS ALL PRESENT THE *RANDALL* / *THOMPSON* DANGER SIGNS

The Defendants admit that the state's limits for Tier 2 races raise the *Randall / Thompson I* danger signs, but they claim that the Tier 1 limits are free from concern. Opp'n at 6-7. But both sets of limits exhibit the danger signs identified in those cases and thus demand special constitutional scrutiny.

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[2] Of course, Plaintiffs do not challenge the idea of contribution limits in general. *See* Mot. for Prelim. Inj. ("Mot.") at 7 (ECF No. 8). Their complaint is with the specific contribution limits in effect in Colorado right now—unconstitutionally low limits with an ineffective inflation adjuster.

[3] Unless otherwise noted, all citations to *Randall* are to Justice Breyer's plurality opinion.

As adopted by the *Thompson I* Court, the danger signs from Justice Breyer's opinion in *Randall* trigger "independent[] and careful[]" review. *Randall*, 548 U.S. at 251. All the danger signs appear here.

The first danger sign is whether Colorado's limits are "substantially lower than . . . the limits we"—meaning the Supreme Court—has "previously upheld." *Thompson I*, 140 S. Ct. at 350 (quotation marks omitted). Colorado's Tier 1 limits meet this criterion. "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." *Id*. Adjusted for inflation, "[t]hat limit translates to over $[1,870] in today's dollars." *Id*.[4] Thus, as in *Thompson*, where the Supreme Court reversed the Ninth Circuit for ignoring the *Randall* danger signs, Colorado's Tier 1 limit "is less than two-thirds of the contribution limit [the Supreme Court] upheld in [Missouri]." *Id*. at 351.

Moreover, Justice Breyer in *Randall* explicitly compared Vermont's limits for statewide (Tier 1) races to the federal legislative races in *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam). "Adjusted to reflect its value in 1976 (the year *Buckley* was decided), [Colorado's] contribution limit on campaigns for [Tier 1 races] amounts to [$247.20] per 2-year election cycle, or roughly [$123.60] per election, as compared to the $1,000 per election limit on individual contributions at issue in Buckley." *Randall*, 548 U.S. at 250.[5] That is less than one-eighth, or less than 12.5%, of the contribution limit the Supreme Court upheld in *Buckley*. At less than two-thirds the *Shrink* limits and less than one-eighth the *Buckley* limits, Colorado's Tier 1 limits light up the first danger

[4] Adjusting $1,075 from January 1998 to January 2022. *See* https://data.bls.gov/cgi-bin/cpicalc.pl. Alternatively, the limit would be $1,790, adjusting from the date of the decision in the Missouri case, January 2000, to January 2022.

[5] Adjusting $1,250 from January 2022 to January 1976, when *Buckley* was decided. *See* https://data.bls.gov/cgi-bin/cpicalc.pl.

sign.

Second, the *Randall / Thompson I* test calls for courts to "consider[] as a whole" how contribution limits compare to other states. *Randall*, 548 U.S. at 250. Thus, Justice Breyer compared how Vermont's Tier 1, political party, and Tier 2 limits compared with other states. Vermont's contributions by individuals to Tier 1 candidates and by parties to Tier 1 candidates were the lowest in the country, and its limits on contributions to Tier 2 candidates were *among* the lowest. *Id*. at 250-51. Colorado has already admitted that its Tier 2 limits are the lowest in the country. Opp'n at 6-7. And its Tier 1 limits are among the lowest.[6] By falling back on the argument that Tier 1 limits are a little bit lower in Delaware and Montana, the Defendants admit that Colorado's limits are among the three lowest in the entire country. Indeed, Colorado is really in the bottom two, given that in all but the exceptional races where there is no primary challenger,[7] Montana's limits are higher than Colorado's: at $1000 per election ($2000 per election cycle) for governor and $700 per election ($1400 per election cycle) for other Tier 1 offices, compared to $625 per election ($1250 per election cycle) in Colorado. Mont. Code Ann. § 13-37-216(1).[8]

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[6] As discussed in Plaintiffs' motion, the party-to-candidate limits are technically higher in Colorado, but in practical effect the party limits suffer from the infirmities discussed in *Randall*. Because the parties are subject to such low limits on the contributions they can receive, the parties can give little more than nominal support to all but a handful of candidates. Mot. at 17-18. The Defendants attempt to counter this argument by asserting that contributions to gubernatorial candidates are much higher. Opp'n at 12-13. But that response fails to address the effect on the vast majority of the candidates across the state.

[7] Notably, neither Plaintiff Lopez nor Plaintiff Pelton is in an uncontested primary. The people who most often see uncontested primaries are *incumbents*. *Thompson II*, 7 F.4th at 819. By allowing people in an uncontested primary to still collect the same amount, Colorado's system is worse for challengers than Montana's.

[8] Defendants mention the district court and appellate court decisions in *Lair v. Mangan*,

The Defendants also look for support in the calendar year limits imposed by Massachusetts and Rhode Island. Opp'n at 7. But, comparing apples to apples, the limits in those states are much higher than those in Colorado, given that $1,000 per calendar year would amount to $4,000 over a four-year election period, compared to $1,250 in Colorado. *See* Mass. Gen. Laws ch. 55 § 7A; R.I. Gen. Laws § 17-25-10.1(a)(1); 8 CCR 1505-6, Rule 10.17(h). Even if they weren't, however, Defendants' best-case scenario still puts Colorado in the bottom 10% of contribution limits nationwide. That's enough to say Colorado's limits are among the lowest in the country, which is all the caselaw requires. *See Thompson I*, 140 S. Ct. at 351; *Randall*, 548 U.S. at 250-51.

Colorado's limits for both Tier 1 and Tier 2 candidates thus exhibit the *Randall / Thompson 1* danger signs.[9]

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which ultimately upheld Montana's limits. Opp'n at 7. But the history of the *Lair* litigation in fact undermines their position. The Supreme Court in *Thompson 1* reversed a troubling trend in the Ninth Circuit of ignoring or of merely giving lip service to *Randall*. As the district court in *Lair* discusses, the Ninth Circuit repeatedly did that in *Lair*, applying its own precedent and only cursorily addressing *Randall*. *Lair v. Mangan*, 476 F. Supp. 3d 1091, 1094-96 (D. Mont. 2020). In *Thompson 1*, the Supreme Court finally reprimanded the Ninth Circuit for applying its own circuit precedent rather than *Randall*, but the *Thompson 1* decision was too late for *Lair.* The district court in *Lair* strongly feels that Montana's limits are unconstitutional. 476 F. Supp. 3d at 1096 ("There is now no doubt . . . ."). It is only because the district court felt bound by the law of the case that Montana's limits are still standing. *Id*. at 1097. This history undermines the persuasive authority the Defendants would like to draw from *Lair*. *See also Thompson II*, 7 F.4th at 817-23 (correcting course and declaring Alaska's contribution limits unconstitutional under *Randall*).

[9] The *Thompson 1* Court also discussed two of the tailoring considerations from *Randall* as additional danger signs: whether the limits are "adjusted for inflation" and whether the state lacks "any special justification" for such low limits. 140 S. Ct. at 351. The Defendants admit that there is no special justification for Colorado's limits. Opp'n at 16 n. 3. And, as discussed below in the tailoring analysis, Colorado's faulty inflation adjustment mechanism guarantees that Colorado's limits "will almost inevitably become too low over time." *Randall*, 548 U.S. at 261.

III. THE CONTRIBUTION LIMITS FAIL THE SCRUTINY *RANDALL* REQUIRES

Given the danger signs, Colorado's Tier 1 and Tier 2 limits must be examined "independently and carefully to determine whether [they] are 'closely drawn' to match the State's interests." *Randall*, 548 U.S. at 253. First, this Court must examine whether "the record suggests," even if "it does not conclusively prove," that Colorado's "limits will significantly restrict the amount of funding available for challengers to run competitive campaigns." *Id*. As part of this analysis, a court first examines whether the available funding dropped after the imposition of new limits. *Id*. In *Randall*, funding fell "18% to 53%." *Id*. The drop in Colorado is even worse. An examination of eight candidates shows funding falling from 15% to 75% between the elections immediately before and after the imposition of the lowered limits. *See* Mot. at 12.[10]

The Defendants would remove one of those candidates—John Andrews—from the statistics, as he did not make it to the general election ballot. Opp'n at 10. But removing his numbers only clarifies the problems with Colorado's limits, as the contributions for the remaining candidates in the sample dropped between 34% and 75%.

In addition, the Defendants object that all the candidates in Plaintiffs' sample were incumbents in the second election. But that does not make the evidence irrelevant to whether the facts "suggest" a difficulty for challengers. *Randall*, 548 U.S. at 253. In *Thompson II*, for example, the court compared the fundraising totals in former governor Tony Knowles's three runs for the office. 7 F.4th at 820 (noting runs in 1994, 1998, and 2006); *see Former Alaska Governors*, Nat'l Governors Ass'n, https://www.nga.org/former-governors/Alaska/ (noting governor from 1994 to 2002).

[10] The numbers given in the motion show, between 2000 and 2004, a 15% drop for John Andrews and a 72% drop for Ken Gordon; between 2002 and 2004, a 71% drop for Bill Crane, a 64% drop for Richard Decker, a 34% drop for Jerry Frangas, and a 67% drop for Joel Judd; between 2002 and 2006, a 63% drop for Joan Fitz-Gerald and a 75% drop for Jim Isgar. Mot. at 12.

Furthermore, that even incumbents saw significant fundraising drop-offs only serves to highlight the problems with Colorado's limit, given that incumbents generally have a fundraising advantage over challengers. Mot. at 13. Thus, the data "suggests . . . that [Colorado's] contribution limits . . . significantly restrict the amount of funding available for challengers to run competitive campaigns." *Randall*, 548 U.S. at 253.

Moreover, the Defendants seem to challenge whether additional funding affects challengers' ability to run competitive campaigns—whether additional funding affects their ability to overcome all the advantages incumbents hold. Opp'n at 11. But that is not the question at issue here, because the Supreme Court has already settled that "challenger[s] must bear" "higher costs . . . to overcome the name-recognition advantage enjoyed by an incumbent." *Id*. at 256; *see also id*. at 248 (noting "the advantages of incumbency"); *id*. at 248 (citing *Shrink Mo.* on concerns that limits increase incumbents' reputation and media advantages). Rather, bearing in mind that reducing money in elections is not an accepted governmental interest, *Buckley*, 424 U.S. at 57, the question is whether Colorado's contribution limits have harmed challengers' ability to obtain the funding they need. The dramatic drop in candidate funding after 2002 suggests that the limits have been harmful, and Professor Masket's declaration showing that challengers in Colorado are losing more often when they cannot obtain needed funds only further supports that suggestion. Masket Decl. ¶ 20 (ECF No. 8-9).

Second, as Plaintiffs already argued, Colorado's "treatment of volunteer services aggravates the problem." *Randall*, 548 U.S. at 259. The Defendants' respond that volunteers' mileage is not a contribution, because only things put into a candidate's possession are contributions, but in the next breath they state that volunteer expenses are contributions. Opp'n at 13-14. That is, just as in *Randall*, Colorado fails to exclude out of pocket "expenses those volunteers incur, such as travel expenses." *Randall*, 548 U.S.

at 259. So, while Colorado may not use standard mileage calculations, it would treat money spent out of pocket on gas and lodging as contributions, decreasing the contributions volunteers may give and "imped[ing] a campaign's ability effectively to use volunteers." *Id*. at 260.

Third, Colorado created a faulty inflation adjustment mechanism that guarantees "that limits which are already suspiciously low . . . will almost inevitably become too low over time." *Id*. at 261. Despite a 55% increase in the consumer price index from the end of 2002 to the end of 2021, the limits for Tier 2 candidates have never changed and the limits for Tier 1 candidates have risen only 25%. Opening Br. at 10-11.

The Defendants would have the Court look to inflation in 2019 or 2023, even though the effect of Colorado's failure to properly index—imposing too low limits—is happening now. But, even comparing the second half of 2019 to the second half of 2002, inflation had increased by some 45.8%, compared to an increase of only 25% in the Tier 1 limits.[11] That is, Colorado's inflation adjuster was too low in 2019. And, like a too-low starting salary, that failure to properly index will compound over time. The 2023 adjustment will not compensate for the failure to properly adjust the limits over the previous 20 years; it will just compound the too-low adjustments from 2002 to 2019 by undercutting the inflation adjustment for 2019 to 2023. And, by the time the 2024 and 2026 elections come around, the 2023 increase will already be out of date. Whether deliberate or not, Colorado's inflation adjuster increasingly drives the contribution limits lower and lower as compared to the costs of running a campaign.

Fourth, as argued above and in Plaintiffs' opening brief, Colorado's constraints on

[11] *See* Databases, Tables & Calculators by Subject, U.S. Bureau of Labor Statistics, https://data.bls.gov/pdq/SurveyOutputServlet (last accessed February 21, 2022) (Calculating ((269.85-185.1)/185.1), taking 269.85 for the end of 2019 and 185.1 for the end of 2002).

contributions to political parties only exacerbates the issues with the contribution limits. *See* supra, note 6, and Mot. at 17-18. And, fifth, Colorado has provided no special justification for its contribution limits. *See Randall*, 548 U.S. at 261.

As in *Randall*, these "considerations, taken together," indicate that Colorado's "contribution limits are not narrowly tailored." *Id*. Moreover, the limits likewise violate other constitutional rights: "mut[ing] the voice of political parties," *id*.; limiting individuals' rights to associate with parties; and limiting individuals' associational rights by restricting "participation in campaigns through volunteer activities," *id*. Colorado's law "goes too far" in "disproportionately burden[ing] numerous First Amendment interests, and consequently . . . violates the First Amendment." *Id*. at 262.

IV. THE DIFFERENTIAL LIMITS REGIME IS UNCONSTITUTIONAL

As if it were somehow strange to raise independent, alternative grounds for a law's unconstitutionality, the Defendants argue that the Court would incorrectly write an advisory opinion on Colorado's differential contribution limits if it also held that the limits were unconstitutional under *Randall*. Opp'n at 17. It is not only permitted but proper for a court to issue alternative holdings. *See, e.g.*, *Nat'l Am. Ins. Co. v. Am. Re-Insurance Co.*, 358 F.3d 736, 739 (10th Cir. 2004) ("A district court is entitled to offer alternative grounds for its holding."). Doing so facilitates affirmation of the district court's decision on any of the grounds raised. *Cf. Elkins v. Comfort*, 392 F.3d 1159, 1162 (10th Cir. 2004) (discussing considerations for affirmation).

Turning to the merits, Defendants argue that the differential limits are somehow constitutional because candidates can choose between facing candidates with an unfair advantage or limiting their right to make unlimited expenditures. Defendants mean to invoke the limits of the unconstitutional conditions doctrine, that the government is not required to "subsidize the exercise of a fundamental right," and may force beneficiaries to

choose between restrictions on a benefit and forgoing that benefit. *Regan v. Taxation with Representation*, 461 U.S. 540, 549 (1983).

This argument fails for two reasons. First, the fundamental predicate for the unconstitutional conditions doctrine is that the government has to in fact offer some benefit. But Colorado has not extended any benefit, in public financing or otherwise. Rather, Colorado's differential limits are more akin to coercion: Colorado tells candidates that they must give up a fundamental right or the state will give their opponents a funding advantage.

Second, no exception to the unconstitutional conditions doctrine applies. Under the doctrine, the government may only control the use of the government-granted benefit itself. The government crosses the line when it restricts the recipient herself, controlling everything that she does. *Rust v. Sullivan*, 500 U.S. 173, 197 (1991). And Colorado's limits apply to the candidates and not just to the use of a benefit: Colorado limits all of a candidate's expenditures once she opts in, not just the expenditures made using the doubled contributions.

Moreover, even if Colorado's scheme offered a benefit, the differential limits would be unconstitutional. Under *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 564 U.S. 721 (2011), the state cannot punish candidates for refusing to opt into a state's program by giving their opponents various advantages. *Id.* at 727-28 (discussing benefits given to opponents of privately financed candidates).

And Defendants fail to distinguish *Davis v. FEC*, 554 U.S. 724 (2008). Candidates here and in *Davis* had to make a choice, whether to opt in or stay out of the government's scheme. In *Davis*, candidates had to choose whether to give up their right to self-finance their campaigns, while the law here asks candidates to give up their right to make unlimited expenditures. In both cases an "asymmetrical regulatory scheme comes

into play" when a candidate refuses to follow the government's wishes. *Id*. at 729. But the fact that a candidate could choose whether to give up self-funding made no different in the outcome in *Davis*. *See id*. at 739 (noting that "require[d] a candidate to choose"). The law was unconstitutional, as are Colorado's differential limits.

V. PRELIMINARY INJUNCTIVE RELIEF IS APPROPRIATE HERE

Defendants argue that Plaintiffs request a disfavored injunction because it would alter the status quo. Opp'n at 5. This argument misunderstands the change in the "status quo" that constitutes a disfavored injunction. But even if the requested injunction did alter the status quo, Plaintiffs have made the necessary strong showing on the likelihood of success and the balance of harms.

This requested injunction is not disfavored because it does not seek a change in the status quo. The status quo is not merely the state of the law before the lawsuit was filed, as the Defendants would have it. "An injunction disrupts the status quo when it changes the last peaceable uncontested status existing between the parties before the dispute developed." *Beltronics USA, Inc. v. Midwest Inventory Distribution, LLC*, 562 F.3d 1067, 1070-71 (10th Cir. 2009) (quotation marks omitted). "The last peaceable uncontested status between the parties was just prior to the [addition of Article XXVIII to Colorado's constitution], . . . which subjected Plaintiffs to the current" low limits on their contributions." *First Baptist Church v. Kelly*, 455 F. Supp. 3d 1078, 1084 (D. Kan. 2020). "Because the requested [injunction] would return the parties to that uncontested status, it would not alter the status quo and is not a disfavored injunction." *Id*.

But even if Plaintiffs had requested a disfavored injunction, they have made the required strong showing. "In the First Amendment context, the likelihood of success on the merits will often be the determinative factor because of the seminal importance of the interests at stake." *Verlo v. Martinez*, 820 F.3d 1113, 1126 (10th Cir. 2016)

(quotation marks omitted). That is, whether to grant an injunction depends on whether Plaintiffs have made a strong showing of likelihood of success on the merits. Plaintiffs have done so here.

Moreover, although a strong showing as to balance of harms is not required in a First Amendment case, the balance of harms is heavily in Plaintiffs' favor. Colorado "does not have an interest in enforcing a law that is likely constitutionally infirm." *Chamber of Commerce v. Edmondson*, 594 F.3d 742, 771 (10th Cir. 2010). Rather, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Verlo*, 820 F.3d at 1127 (quotation marks omitted); *accord Pac. Frontier v. Pleasant Grove City*, 414 F.3d 1221, 1237 (10th Cir. 2005) ("Vindicating First Amendment freedoms is clearly in the public interest."). And "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Id*. at 1127 (quotation marks omitted); *see also Inst. for Justice v. Laster*, No. CIV-19-858-D, 2020 U.S. Dist. LEXIS 125518, at *14 (W.D. Okla. July 16, 2020) ("Even when closely scrutinized under the heightened standard . . . , a case involving a fundamental right such as free speech passes muster . . . ."). Thus, given the likelihood of success on the merits in this First Amendment case, there is necessarily a strong showing that the balance of harms is in Plaintiffs' favor. *See Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012) ("But when the law . . . is likely unconstitutional, [the public's] interests do not outweigh [a plaintiff's] in having his constitutional rights protected.").

Defendants also attempt to create a Catch-22 as to irreparable harm—arguing that relief should be denied because Plaintiffs waited too long to file their suit. But if Plaintiffs had filed their suit earlier, before the election developed and choices were made as to the differential limits, the Defendants would have argued that the case was not ripe (for example, arguing that the election was too far away, or that legislative redistricting had

not been finalized).[12] Regardless, irreparable harm always favors the movant in such cases because "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Verlo*, 820 F.3d at 1127 (quotation marks omitted).

CONCLUSION

For all the reasons stated here and in Plaintiffs' original motion, the Court should issue a preliminary injunction prohibiting Defendants from enforcing the limits on contributions to candidate committees in 8 Colo. Code Regs. § 1505-6, Rule 10.17(b), and Article XXVIII, sections 3(1), 3(13), and 4(5) of the Colorado Constitution.

Dated: February 24, 2022

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[12] Plaintiff Pelton did not even have a district to run in until the middle of November. *See In re Independent Legislative Redistricting Comm'n*, 2021 CO 76, ¶ 68.