

BEFORE THE INDEPENDENT ETHICS COMMISSION
STATE OF COLORADO

CASE NO. 17-18

In the Matter of

VICKI MARBLE, Colorado State Senator

RESPONSE TO COMPLAINT OF SARAH HALL MANN

Respondent Colorado State Senator Vicki Marble, respectfully submits this Response pursuant to Rule 7(K)(2) of the Independent Ethics Commission (IEC) Rules of Procedure, through her counsel, Marcy G. Glenn of the firm of Holland & Hart LLP. Any statements contained in this response are true to the best of the undersigned's knowledge, information and belief.

RESPONSES TO COMPLAINANT'S ALLEGATIONS

1. Respondent Vicki Marble is currently a Colorado State Senator and was a member of the Colorado General Assembly in February 2017. She represents Senate District 23, comprising portions of Larimer and Weld Counties and all of the City and County of Broomfield.

2. In recent years, the issue of oil and gas exploration through hydraulic fracturing, or "fracking," has been a hotly debated issue in Broomfield. In her role as a member of the General Assembly, Senator Marble has heard from constituents, including individuals and businesses on both sides of the fracking debate.

3. On February 1, 2017, Senator Marble met with Broomfield governmental officials and representatives of Extraction Oil & Gas (Extraction), which has developed a drilling plan that includes portions of Broomfield, to try to help them find common ground. At that meeting, which was Senator Marble's only meeting with Extraction representatives, she suggested that it might be useful to have a community meeting in Broomfield, during which persons involved in drilling and local officials in other communities could share their experiences, and attendees could pose questions to those participants and Extraction representatives.

4. Extraction was interested in having such a meeting and it worked with Sheryl Fernandez, chair of the Broomfield County Republican Party, to arrange it. Ms. Fernandez, who also serves on a part-time basis as Senator Marble's legislative aide, devoted only her own time, in her capacity as county chair, to helping Extraction plan the community meeting; she attended the meeting in her capacity as county chair; and she used only her personal (not legislative) email

address and cell phone number for all communications related to the meeting.

5. Ms. Fernandez, in her county chair capacity, worked with Extraction personnel to publicize and plan the community meeting. She drafted and distributed to her Broomfield Republican Party contacts an announcement of the meeting and she also reached out to several anti-fracking activists in Broomfield, with the expectation that they would distribute the announcement to their own contacts; she also shared her draft announcement with Extraction, for its use. The announcement read in relevant part:

Senator Vicki Marble
hosts
“Been There, Done That”

* * *

Join the Senator for a presentation of facts regarding the proposed
oil and gas development in Broomfield, and how other
communities in Colorado have addressed these important issues.

6. The announcement described Senator Marble as the host in the hope that her presence at the community meeting would attract more attendees. Senator Marble initially expected that she would attend but take no active part in the community meeting because Ms. Fernandez, in her capacity as Broomfield County Republican Party Chair, would serve as moderator. On the day of the event, Ms. Fernandez suggested that Senator Marble moderate in her place, and Senator Marble agreed to do so. Senator Marble equates “hosting” with endorsing an event.

7. The community meeting occurred on the evening of February 15, 2017 in a private room at a Broomfield restaurant. It was well-attended by approximately 75 persons, including a good percentage who appeared to oppose Extraction’s drilling plans. Extraction had arranged for attendees to receive two drink tickets when they arrived and for a light buffet. Extraction paid the total cost of \$1,121.18 for use of the room, food, and drink (collectively referred to in this response as “community meeting expenses”).

8. Senator Marble arrived at the meeting shortly before it began. She introduced the issue and panel members: the former mayors of Erie and Windsor; a representative of VITAL (a pro-fracking group); and a representative of Water Valley (which had built a residential real estate development, Pelican Lakes, in close proximity to fracked wells). After the panelists’ prepared comments, they, along with an Extraction executive, participated in a question-and-answer segment that Senator Marble moderated. At the community meeting, Senator Marble drank only water and she did not eat except for, possibly, a few potato chips. She left the meeting as soon as the presentation and question-and-answer segment ended.

9. Senator Marble’s only involvement in the community meeting was to float the original suggestion and moderate the event. She was not involved in planning the event. She did not see the meeting announcement until after the event had occurred and she had no role in selecting the venue or ordering food and beverages. She did not know that Extraction had

arranged for and would pay the community meeting expenses.

10. Senator Marble suggested and participated in the community meeting to try to help a divided community engage in productive dialogue. The meeting was not a legislative town hall, in which the Senator would typically report to her constituents on her legislative activities and on legislative developments. Nor was it a campaign event—there was no self-promotion.

11. The community meeting would have occurred, and Extraction would have paid the community meeting expenses, with or without Senator Marble’s participation.

12. None of the Extraction personnel who helped plan the event or tendered Extraction’s payment for the community meeting expenses was a registered professional lobbyist.

13. Neither Extraction nor any Extraction executive has ever made campaign contributions to Senator Marble or ever asked Senator Marble to sponsor or otherwise support legislation.

14. At the time of the community meeting, only one bill related to the oil and gas industry was pending before the Senate: SB 17-035, which was introduced on February 15, 2017 and concerned tampering with oil and gas facilities. Senator Marble was not a co-sponsor.

15. When Extraction paid the community meeting expenses, it was not seeking to influence any official act by Senator Marble.

16. Senator Marble’s actions do not violate any ethical code, any standard of conduct, or any reporting requirement under Colorado law.

AFFIRMATIVE DEFENSES

1. Senator Marble did not solicit, accept, or receive a prohibited gift under Colo. Const., art. XXIX, § 3 because Extraction’s payment of the community meeting expenses was a gift to the public and not a gift or other thing of value to Senator Marble.

2. Senator Marble did not knowingly receive or accept a prohibited gift under C.R.S. § 24-6-203(3.5):

a. Extraction’s payment of the community meeting expenses was a gift to the public and not a gift of money or an in-kind gift to Senator Marble.

b. The community meeting expenses that Extraction paid were not for the purpose of defraying any expenses related to Senator Marble’s official duties.

c. Because Senator Marble did not know that Extraction would be paying the community meeting expenses, she could not “knowingly” have received those payments (which were made to the restaurant) as a gift.

3. Senator Marble received no “personal financial gain” under Colo. Const., art. XXIX, § 1(1)(d) and C.R.S. § 24-18.5-101(5)(b)(II), from Extraction’s payment of the community meeting expenses.

4. Senator Marble received no “private gain” under Colo. Const., art. XXIX, § 6 and C.R.S. § 24-18.5-101(5)(b)(II), from Extraction’s payment of the community meeting expenses.

5. Extraction’s payment of the community meeting expenses did not create an appearance of impropriety under Colo. Const., art. XXIX, § 1(1) or C.R.S. § 24-18-103(1):

a. Colo. Const., art. XXIX, § 1(1) and C.R.S. § 24-18-103(1) are general and non-binding statements of purpose rather than substantive law provisions that impose specific and enforceable standards of conduct, and neither provision imposes an appearance of impropriety standard of conduct.

b. If Colo. Const., art. XXIX, § 1(1) or C.R.S. § 24-18-103(1) imposes an appearance of impropriety standard of conduct, that standard is unconstitutionally vague.

c. Extraction’s payment of the community meeting expenses was not in violation of the public trust nor did the payment create a justifiable impression among members of the public that Senator Marble acted “in violation of the public trust,” under Colo. Const., art. XXIX, § 1(1).

d. Extraction’s payment of the community meeting expenses did not cause Senator Marble to perform any official action to benefit Extraction or any other person.

e. By paying the community event expenses, Extraction did not seek to reward Senator Marble for past official acts or to influence an official act to be performed by her in the future.

f. Senator Marble did not attempt to nor did she realize any private or personal financial gain through Extraction’s payment of the community meeting expenses.

g. The community meeting provided no benefit to Senator Marble.

6. Senator Marble discharged her fiduciary duty to the people of the state in connection with the community meeting, in compliance with C.R.S. §§ 24-18-103 and 24-18-104:

a. The community meeting, including Extraction’s payment of the community meeting expenses, was for the benefit of persons in the community, particularly those within Senator Marble’s Senate district.

b. Senator Marble did not accept from Extraction a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value because Extraction’s payment of the community meeting expenses was a gift to the public and not a gift or other thing of value to Senator Marble.

c. By paying the community event expenses, Extraction did not seek to influence an official act performed in the course and scope of Senator Marble's public duties, or to reward her for official action she had taken in the past.

d. Extraction's payment of the community meeting expenses would not have tended to influence a reasonable senator to depart from the faithful and impartial discharge of the senator's public duties.

e. Prior to the community meeting, Senator Marble had taken no official action for Extraction's benefit and, therefore, Extraction's payment of the community meeting expenses was not primarily to reward Senator Marble for any such official action, and no reasonable person could have believed otherwise.

7. Senator Marble was not reimbursed for travel or other expenses in connection with the community meeting, and she did not receive a per diem, monetary, or in-kind payment from Extraction or any person for her participation as the moderator at the community meeting.

8. Senator Marble did not perform any official action to benefit any person because of Extraction's payment of the community meeting expenses.

9. The phrase "any other standards of conduct," as used in Colo. Const., art. XXIX, § 5(1), is unconstitutionally vague.

10. Senator Marble did not violate "any other standards of conduct" under Colo. Const., art. XXIX, § 5(1), in connection with the community meeting, including Extraction's payment of the community meeting expenses.

11. This Commission lacks authority to prosecute and penalize Senator Marble for an alleged violation of laws other than the gift bans and limitations and influence-peddling prohibitions set forth in Sections 3 and 4 of Article XXIX, laws expressly delegated by the General Assembly to the Commission, and limited provisions in C.R.S. title 24, art. 18 (Code of Ethics for governmental officials).

12. The complaint is frivolous and groundless.

13. The penalties that could potentially be sought are unwarranted and unauthorized under Colo. Const., art. XXIX, state statute, and as otherwise provided by law.

Respectfully submitted this 11th day of September 2017.



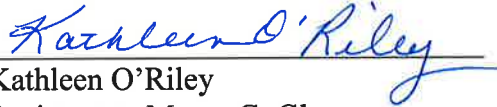
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**ATTORNEY FOR RESPONDENT
COLORADO STATE SENATOR
VICKI MARBLE**

CERTIFICATE OF SERVICE

I certify that on September 11, 2017, I served a true and accurate copy of the foregoing **RESPONSE TO COMPLAINT OF SARAH HALL MANN** to the following person by First Class U.S. Mail:

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