



University of Colorado

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To: Callie Rennison, Chair
Ken Montera, Vice Chair
University of Colorado Board of Regents

From: Jeremy Hueth, Vice President, University Counsel and Secretary of the
Board of Regents

Re: Regent Conflicts of Interest

Date: February 28, 2025

At your request, in your roles as Chair and Vice Chair of the Board of Regents, you have asked me to analyze whether actions of an individual member of the Board of Regents could be considered as violating applicable provisions of the Laws and Policies of the Board of Regents, or Colorado state statute pertaining to conduct of elected officials.

I. FACTUAL BACKGROUND

In 2021, the Colorado legislature created and funded a program directing the University of Colorado School of Public Health (Colorado SPH) to continue ongoing research about the public impacts of use of legalized medical and recreational marijuana on the general populace, especially minors. *Colorado House Bill 21-1317*. HB1317 also directed Colorado SPH to make recommendations to the legislature and create educational materials regarding the use of regulated concentrated marijuana. In December 2024, Colorado SPH created and launched an educational program monikered "[The Tea on THC](#)", designed to warn children about the dangers of concentrated marijuana. A portion of the funds appropriated by the legislature were used to hire [Intium Health](#), a Denver-based public relations firm specializing in creating public health campaigns that prioritize social and public good

Regent Wanda James is a high-profile owner of the Denver marijuana dispensary named Simply Pure Colorado, LLC and lists financial interests in Simply Pure Colorado, LLC on her Personal Financial Disclosure Statement filed with the Colorado Secretary of State. Over the course of late 2024 and early 2025, Regent Wanda James made public and private comments critical of the content of Colorado SPH campaign.

Some of these comments were published through Regent James' social media account and local media outlets, including, notably, the weekly Denver publication *Westword*, while others were shared directly with staff and contractors of the University of Colorado Anschutz Medical Campus. One *Westword* article where one article quotes her assertion that "[she] would like to see the entire Tea on THC campaign pulled, with its remaining funds directed to grants for marijuana business owners who qualify for social equity licenses." Regent James was also quoted in the online publication *Green Market Report* saying, "I also had a conversation yesterday with...the governor and members of the governor's team, and we're looking at pulling funding from (the Colorado School of Public Health) for this."

On January 31, 2025, Mark Ferrandino, the Director of Governor Polis' Office of State Planning and Budgeting, sent a letter to the state legislative Joint Budget Committee to update the Governor's FY 2024-25 to FY 2025-26 budget request. In this update, Director Ferrandino expresses the Governor's desire to "fully eliminate" the funding source for the Tea on THC education program. Ongoing funding for this program has not been finalized through the state budget process.

II. ARE THERE REGENT LAWS OR POLICIES THAT GOVERN REGENT CONDUCT UNDER THE CIRCUMSTANCES DESCRIBED ABOVE?

A. Conflicts of Interest

The regents have adopted a **Conflicts of Interest Policy, Regent Policy 2.A**. Section 1 is a distillation and summary of the entire policy which provides that,

Consistent with a regent's fiduciary responsibility, a regent serves the public trust and exercises their powers and duties in the interest of the public, the university, and the board. A regent's independent judgment in the discharge of board responsibilities must not be impaired as a result of conflicts between the interests of the university and the regent's own financial interest or personal interest, or the financial interests or personal interests of the regent's family or associates.

The policy also prohibits the regents from using "confidential information acquired in the course of the performance of regent responsibilities to further the regent's own financial interest or personal interest, or the financial interests or personal interests of the regent's family or associates."

Regent Policy 2.A also requires Regents to adhere to Title 18, Article 8, Section 308; Title 18, Article 8, Section 402; and Title 24, Article 18, Section 108.5, C.R.S. which relate to conflicts and official actions taken by Regents. **See Appendix A.**

B. Fiduciary Responsibilities

The Regents have also enacted **Regent Policy 2.J** defining the **Fiduciary Obligations** of the Regents. Regent Policy 2.J requires a Regent to “act in a manner reasonably believed to be in the best interests of the university” and “to retain the Board of Regents’ independence from external and internal stakeholders in conducting its oversight and policy responsibilities.

Finally, **Regent Policy 2.J.** requires a regent to “ensure that, in the exercise of official duties, the regent’s conduct is in accordance with applicable law and the university’s mission” and is intended “to achieve compliance with applicable legal requirements.”

C. Undue Influence

Regent Policy 5.B.1(B) protects faculty members from direct or indirect pressures in an attempt to influence their work in a manner that would conflict with professional standards of the field: “The Board of Regents and administration shall not impose such pressures or influence and shall resist such pressures or interference when exerted from outside the university.”

III. DO THE CIRCUMSTANCES DESCRIBED ABOVE PRESENT POTENTIAL VIOLATIONS OF REGENT POLICY OR APPLICABLE LAW?

The following questions are raised by Regent James through her public and private comments that impaired the work of Colorado SPH staff and contractors, and her direct advocacy with state officials to pull funding from a Colorado SPH education program that is directly related to her business and financial interests.

- Whether Regent James violated **Regent Policy 5.B.1.B** which states, “[f]aculty members shall not be subjected to direct or indirect pressures in an attempt to influence their work in a manner that would conflict with professional standards of the field. The Board of Regents and administration shall not impose such pressures or influence and shall resist such pressures or interference when exerted from outside the university.”
- Whether Regent James violated **Regent Policy 2.A.1** if she allowed her independent judgment in the discharge of her board responsibilities to act in the best interest of the university to be impaired by her own financial interest or personal interest, or the financial interests or personal interests of the regent's family or associates.
- Whether Regent James violated **C.R.S. §18-8-306** through public and private comments intended to alter or affect the decisions of public servants. **Section 18-8-306** any person from “attempt[ing] to influence any public servant by means of deceit or by threat of violence or economic reprisal against any person or property, with the intent thereby to alter or affect the public servant’s decision, vote, opinion, or action concerning any matter which is to be considered or performed by the public servant or the agency or body of which the public servant is a member[.]”

- Whether Regent James violated **C.R.S. §18-8-404** by committing an act relating to her office that was an unauthorized exercise of her official function by threatening reprisal if the Colorado SPJ *Tea on THC* education program was not ended and defunded and her direct advocacy toward the governor or his staff to pull funding for the program.
- Whether Regent James violated **C.R.S. §24-18-108.5**, which prohibits Regents from performing an official act which may have a direct economic benefit on a business when such member has a direct or substantial financial interest in such business.

IV. REGENT FIRST AMENDMENT RIGHTS

It must be noted that **Article I.E.I., *Laws of the Regents***, provides,

the University of Colorado is committed to the principle of freedom of expression embodied in the First Amendment to the United States Constitution and Article II, Section 10 of Colorado's State Constitution. The University of Colorado has an obligation to uphold the principle of freedom of expression.

Article I.E.3 provides further that "free expression encompasses verbal and written means by which individuals may communicate ideas to others"

V. DO THE PRESENT CIRCUMSTANCES GIVE RISE TO ANY POTENTIAL REMEDIES?

As we have discussed, the Board of Regents does not possess the constitutional authority to remove a duly elected member of the board. Therefore, if the Board of Regents concluded that the circumstances outlined above (or any other conduct by an individual Regent), the only remedy available to the Board of Regents is **Regent Policy 2.M, Censure**, which provides as follows:

The Board of Regents shall have the authority to censure a regent who is found by the Board to have violated the regent's duties. In order for the Board to censure a regent, the Board of Regents must find by a preponderance of the evidence that the regent violated a specific statute, Board Law, or Board policy defining the regent's obligation. Such a finding shall be made by the Board only after an investigation by the Board of Regents or the Board's designee. The investigation must include notice to the regent of the specific allegation of the alleged breach of duty, an opportunity for the regent to respond in writing to the specific allegation, and an opportunity for the regent to review any evidence related to the allegation. Unless otherwise permitted by law, the Board of Regents may not consider any matter related to the censure of a regent in executive session, and any censure must occur at a public meeting.

Alternatively, if the Colorado Attorney General, or other law enforcement authority with appropriate jurisdiction were to conclude that any of the above-referenced statutes, the Board of Regents may direct the Office of University Counsel to provide the information

outlined above to such authority. It may also be beneficial to consult with an independent third party, such as the Colorado Independent Ethics Commission, to offer additional guidance about the application of Colorado ethics statutes to the circumstances outlined above. However, I recommend that you inform Regent James, first, and then the full Board of Regents before determining next steps.

APPENDIX A – COLORADO STATUTES REFERENCED HEREIN

§ 18-8-306. Attempt to influence a public servant

Any person who attempts to influence any public servant by means of deceit or by threat of violence or economic reprisal against any person or property, with the intent thereby to alter or affect the public servant's decision, vote, opinion, or action concerning any matter which is to be considered or performed by the public servant or the agency or body of which the public servant is a member, commits a class 4 felony.

§ 18-8-307. Designation of supplier prohibited

(1) No public servant shall require or direct a bidder or contractor to deal with a particular person in procuring any goods or service required in submitting a bid to or fulfilling a contract with any government.

(2) Any provision in invitations to bid or any contract documents prohibited by this section are against public policy and void.

(3) It shall be an affirmative defense that the defendant was a public servant acting within the scope of his authority exercising the right to reject any material, subcontractor, service, bond, or contract tendered by a bidder or contractor because it does not meet bona fide specifications or requirements relating to quality, availability, form, experience, or financial responsibility.

(4) Any public servant who violates the provisions of subsection (1) of this section commits a class 5 felony.

§ 18-8-308. Conflict of Interest.

(1) A public servant commits failing to disclose a conflict of interest if he exercises any substantial discretionary function in connection with a government contract, purchase, payment, or other pecuniary transaction without having given seventy-two hours' actual advance written notice to the secretary of state and to the governing body of the government which employs the public servant of the existence of a known potential conflicting interest of the public servant in the transaction with reference to which he is about to act in his official capacity.

(2) A "potential conflicting interest" exists when the public servant is a director, president, general manager, or similar executive officer or owns or controls directly or indirectly a substantial interest in any nongovernmental entity participating in the transaction.

(3) Failing to disclose a conflict of interest is a class 2 misdemeanor.

§ 18-8-402. Misuse of Official Information.

(1) Any public servant, in contemplation of official action by himself or by a governmental unit with which he is associated or in reliance on information to which he has access in his official capacity and which has not been made public, commits misuse of official information if he:

- (a) Acquires a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action; or
- (b) Speculates or wagers on the basis of such information or official action; or
- (c) Aids, advises, or encourages another to do any of the foregoing with intent to confer on any person a special pecuniary benefit.

(2) Misuse of official information is a class 5 felony.

§ 18-8-404. First Degree Official Misconduct.

(1) A public servant commits first degree official misconduct if, with intent to obtain a benefit for the public servant or another or maliciously to cause harm to another, he or she knowingly:

- (a) Commits an act relating to his office but constituting an unauthorized exercise of his official function; or
- (b) Refrains from performing a duty imposed upon him by law; or
- (c) Violates any statute or lawfully adopted rule or regulation relating to his office.

(2) First degree official misconduct is a class 1 misdemeanor.

§ 24-18-108.5. Rules of conduct for members of boards and commissions

(1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) A member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which such member has a direct or substantial financial interest.

§ 24-18-101. Legislative declaration

The general assembly recognizes the importance of the participation of the citizens of this state in all levels of government in the state. The general assembly further recognizes that, when citizens of this state obtain public office, conflicts may arise between the public duty of such a citizen and his or her private interest. The general assembly hereby declares that the prescription of some standards of conduct common to those citizens involved with government is beneficial to all residents of the state. The provisions of this part 1 recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

24-18-102. Definitions

As used in this part 1, unless the context otherwise requires:

- (1) "Business" means any corporation, limited liability company, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business, whether or not operated for profit.
- (2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.
- (3) "Employee" means any temporary or permanent employee of a state agency or any local government, except a member of the general assembly and an employee under contract to the state.
- (4) "Financial interest" means a substantial interest held by an individual which is:
 - (a) An ownership interest in a business;
 - (b) A creditor interest in an insolvent business;
 - (c) An employment or a prospective employment for which negotiations have begun;
 - (d) An ownership interest in real or personal property;
 - (e) A loan or any other debtor interest; or
 - (f) A directorship or officership in a business.
- (5) "Local government" means the government of any county, city and county, city, town, special district, or school district.
- (6) "Local government official" means an elected or appointed official of a local government, but does not include an employee of a local government. "Local government official" includes a member of the board of commissioners of any airport authority created pursuant to article 3 of title 41.

(7) “Official act” or “official action” means any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

(8) “Public officer” means any elected officer, the head of a principal department of the executive branch, and any other state officer. “Public officer” does not include a member of the general assembly, a member of the judiciary, any local government official, or any member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses.

(9) “State agency” means the state; the general assembly and its committees; every executive department, board, commission, committee, bureau, and office; every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof; and every independent commission and other political subdivision of the state government except the courts.

§ 24-18-103. Public trust--breach of fiduciary duty

- (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, members of the general assembly, local government officials, and employees. A public officer, member of the general assembly, local government official, or employee shall carry out his duties for the benefit of the people of the state.
- (2) A public officer, member of the general assembly, local government official, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The district attorney of the district where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the state or local government. Judicial proceedings pursuant to this section shall be in addition to any criminal action which may be brought against such public officer, member of the general assembly, local government official, or employee.

§ 24-18-103. Public trust--breach of fiduciary duty

- (1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty and the public trust. A public officer, a member of the general assembly, a local government official, or an employee shall not:
- (a) Disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal financial interests; or
- (b) Accept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value:

(I) Which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties; or

(II) Which he knows or which a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.

(2) An economic benefit tantamount to a gift of substantial value includes without limitation:

(a) A loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of such services; or

(b) The acceptance by a public officer, a member of the general assembly, a local government official, or an employee of goods or services for his or her own personal benefit offered by a person who is at the same time providing goods or services to the state or a local government under a contract or other means by which the person receives payment or other compensation from the state or local government, as applicable, for which the officer, member, official, or employee serves, unless the totality of the circumstances attendant to the acceptance of the goods or services indicates that the transaction is legitimate, the terms are fair to both parties, the transaction is supported by full and adequate consideration, and the officer, member, official, or employee does not receive any substantial benefit resulting from his or her official or governmental status that is unavailable to members of the public generally.

(3) The following are not gifts of substantial value or gifts of substantial economic benefit tantamount to gifts of substantial value for purposes of this section:

(a) Campaign contributions and contributions in kind reported as required by section 1-45-108, C.R.S.;

(b) An unsolicited item of trivial value;

(b.5) A gift with a fair market value of fifty-three dollars or less that is given to the public officer, member of the general assembly, local government official, or employee by a person other than a professional lobbyist.

(c) An unsolicited token or award of appreciation as described in section 3(3)(c) of article XXIX of the state constitution;

(c.5) Unsolicited informational material, publications, or subscriptions related to the performance of official duties on the part of the public officer, member of the general assembly, local government official, or employee;

(d) Payment of or reimbursement for reasonable expenses paid by a nonprofit organization or state and local government in connection with attendance at a convention, fact-finding mission or trip, or other meeting as permitted in accordance with

the provisions of section 3(3)(f) of article XXIX of the state constitution;

(e) Payment of or reimbursement for admission to, and the cost of food or beverages consumed at, a reception, meal, or meeting that may be accepted or received in accordance with the provisions of section 3(3)(e) of article XXIX of the state constitution;

(f) A gift given by an individual who is a relative or personal friend of the public officer, member of the general assembly, local government official, or employee on a special occasion.

(g) Payment for speeches, appearances, or publications that may be accepted or received by the public officer, member of the general assembly, local government official, or employee in accordance with the provisions of section 3 of article XXIX of the state constitution that are reported pursuant to section 24-6-203(3)(d);

(h) Payment of salary from employment, including other government employment, in addition to that earned from being a member of the general assembly or by reason of service in other public office;

(i) A component of the compensation paid or other incentive given to the public officer, member of the general assembly, local government official, or employee in the normal course of employment; and

(j) Any other gift or thing of value a public officer, member of the general assembly, local government official, or employee is permitted to solicit, accept, or receive in accordance with the provisions of section 3 of article XXIX of the state constitution, the acceptance of which is not otherwise prohibited by law.

(4) The provisions of this section are distinct from and in addition to the reporting requirements of section 1-45-108, C.R.S., and section 24-6-203, and do not relieve an incumbent in or elected candidate to public office from reporting an item described in subsection (3) of this section, if such reporting provisions apply.

(5) The amount of the gift limit specified in paragraph (b.5) of subsection (3) of this section, set at fifty-three dollars as of August 8, 2012, shall be identical to the amount of the gift limit under section 3 of article XXIX of the state constitution, and shall be adjusted for inflation contemporaneously with any adjustment of the constitutional gift limit pursuant to section 3(6) of article XXIX.