

**BEFORE THE INDEPENDENT ETHICS COMMISSION
STATE OF COLORADO**

**CASE NO. 21-18
CASE NO. 22-07
CASE NO. 22-22**

IN THE MATTER OF: TINA PETERS

RESPONDENT’S BRIEF IN SUPPORT OF CONTINUATION OF STAY

The Commission previously issued a stay for the complaints against Tina Peters, for good reason. Applying the *Shifrin* test, the Commission properly stayed these matters because the burden it placed on Peters’ constitutional rights, in light of the potential criminal charges against her.

Since then, Peters has faced a criminal trial and is currently incarcerated. She is, however, preparing an appeal in which she will seek a new trial. Because the criminal case has not been fully adjudicated and because of the possibility of a new trial, the Commission should keep the stay in place.

The six *Shifrin* factors continue to weigh in favor of a stay.

First, “the issues in the criminal case overlap with those presented in th[is] civil case.”¹ Indeed, the Petitioner in this case readily admits this overlap: Specifically, she states “[i]t is possible that Respondent’s appeals in the Criminal Matter may result in a new trial. In that case, testimony before the Commission might be used against her.”²

Second, the status of the case weighs heavily in favor of a stay due to the unique status of this case. Peters is seeking a new trial, and unlike many criminal cases her criminal case presents two unique features that greatly increase the possibility of a new trial. First, the trial

¹ *People v. Shifrin*, 2014 COA 14, ¶ 26.

² *Petitioner’s Brief on Issue of Extension of Stay*, ¶ 8.

court repeatedly prohibited Peters from raising her preferred defense.³ Second (and relatedly), the crimes upon which Peters was prosecuted presented unusual legal theories and factual questions of first impression, meaning that review by an appellate court is necessary to determine the propriety and scope of both the prosecution’s legal theories and Peters’ relevant legal defenses. Until an appellate court definitively rules on the appropriate legal standards, Peters continues to face legal liability.

Third, the Petitioner in this case has asserted no private interests in this case, nor has she identified any prejudice in this matter. In other civil cases, courts have placed heavy weight upon whether a “[p]laintiff will be disproportionately harmed.”⁴ But here the Complainant has presented no evidence of harm, nor can she—she seeks to assert a public interest, not a private interest that can subject her to prejudice.

Fourth, the Commission should place heavy weight on “the private interests and burden on the defendant.”⁵ As noted above, the Complainant readily admits this proceeding may very well harm Peters’ Fifth Amendment Right. (“It is possible that Respondent’s appeals in the Criminal Matter may result in a new trial. In that case, testimony before the Commission might be used against her.”).

Fifth, the Commission does not have a strong interest in removing the stay. Even assuming liability (which Peters strongly contests), there is no possibility that Peters can continue to violate Colorado’s ethics laws, because she no longer holds office. Nor is there any evidence that other public officials face questions or uncertainty about legal defense funds, which would require adjudication of this case. In short, there is no need for prompt resolution of this case as a matter of policy.

Sixth, the public interest argues in favor of a stay. “[A]s a general matter the public’s interest in the integrity of the criminal case is entitled to precedence over the civil litigant.”⁶ Peters’ criminal trial has generated national media attention and substantial controversy. Undersigned counsel submits that faith in our legal system is paramount, especially for cases

³ See, e.g., <https://www.westernsloopenow.com/top-stories/the-tina-peters-trial-from-open-to-close/>, last visited October 28, 2024.

⁴ *Branaghan v. Sadeghi*, 2019 Colo. Dist. LEXIS 3363, *2.

⁵ *Shifrin*, 2014 COA at ¶ 26.

⁶ *Sanchez v. Deochoa*, 2023 U.S. Dist. LEXIS 64188, *3, citing *Acacia Corp. Mgmt., LLC v. United States*, No. 2008 U.S. Dist. LEXIS 108808, 2008 WL 2018438, at *5 (E.D. Cal. May 6, 2008).

such as Peters' criminal trial. Accordingly, this Commission should assiduously avoid actions that may have the effect of undermining Peters' ability to present a robust defense and thereby casting doubt on the fairness of criminal proceedings. The Commission should stay its hand to allow the Court of Appeals, and any subsequent trial unfold, free of doubt or accusations of unfairness.

Ultimately, the prejudice against the Petitioner is nonexistent, compared to great potential for harm against Peters. And, ultimately, the Commission should await final resolution of the criminal matters against Peters, in order to foster widespread public confidence in the ultimate outcome.

Respectfully submitted this 28th day of October 2024,

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Certificate of Service

I certify that on this 28th day of October 2024, the foregoing was electronically served via e-mail on all counsel and parties of record:

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