

PHIL WEISER
Attorney General
NATALIE HANLON LEH
Chief Deputy Attorney General
ERIC OLSON
Solicitor General
ERIC T. MEYER
Chief Operating Officer



RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000
State Services Section

STATE OF COLORADO
DEPARTMENT OF LAW

October 23, 2020

**Sent Via HAND DELIVERY
& EMAIL**

To: Edward Bernard "Bernie" Pagel
16220 County Rd 19, Lot 18
Fort Morgan, CO 80701-7100
Bpagel5569@yahoo.com, berniepagel@ymail.com

Cease and Desist Notice

This letter serves as **NOTICE** that the Colorado Department of Law ("Department") has cause to believe that Edward Bernard ("Bernie") Pagel has engaged in, or is currently engaging in, unlawful voter intimidation as defined in the Colorado Uniform Election Code of 1992 ("Election Code"), Colo. Rev. Stat. § 1-13-713.

Specifically, § 1-13-713 prohibits voter intimidation as follows:

It is unlawful for any person directly or indirectly, by himself or by any other person in his behalf, to impede, prevent, or otherwise interfere with the free exercise of the elective franchise of any elector or to compel, induce, or prevail upon any elector either to give or refrain from giving his vote at any election provided by law or to give or refrain from giving his vote for any particular person or measure at any such election.

Based upon the preliminary investigation by the Department, it appears that Bernie Pagel engaged in or is currently engaging in prohibited conduct in connection with his dealings with tenants at the mobile home park located at 16220 County Road 19, Fort Morgan, CO 80701 (the "Mobile Home Park") by hand delivering a notice dated October 19, 2020 to Mobile Home Park homeowners/tenants, which was signed by co-owner Bernie Pagel and reads as follows:

TO ALL TENANTS:

Please understand **IF** Joe Biden is elected as our next President, everything you do and have to pay for will change completely.

Everything will be increased. Like paying **ALOT** more in taxes, utilities, gasoline, new permits, fees and regulations...everything! This also means YOUR RENT will be increased to cover these expenses. Most likely, rent would **DOUBLE** in price!

IF the current President is re-elected, WE **WILL NOT RAISE THE RENT FOR AT LEAST 2 YEARS!**

Voting is **your** choice and we **are not** telling you how to vote. WE are just informing our tenants what **WE** will do according to the election results.

If Trump wins, we all win. If Biden wins, we all lose.

VOTE on November 3, 2020.

A copy of this document is attached for reference and is referred to herein as the "Pagel Notice."

The Pagel Notice constitutes unlawful voter intimidation in its coercion of Mobile Home Park homeowners/tenants or their immediate family members to vote a certain way by indicating economic consequences based on the outcome of an election. In particular, the Pagel Notice attempts to induce homeowners/tenants to vote against a particular candidate by stating a significant increase in rent prices if one candidate wins the presidential election. The letter further induces homeowners/tenants to vote for a particular candidate by promising that rent "will not increase for at least two years" if the other candidate wins the election. Economic coercion can constitute voter intimidation that is not protected by the First Amendment. *E.g.*, *United States v. A.T. Beaty*, 288 F.2d 653 (6th Cir. 1961) (landowners evicting and refusing to deal in good faith with tenant farmers for purpose of interfering with their voting rights is economic coercion that constitutes voter intimidation); *United States v. Bruce*, 353 F.2d 474 (5th Cir. 1965) (landowners ordering insurance collector active in encouraging voter registrations to stay off their property, preventing him from reaching business clients, constituted voter intimidation).

Colorado law authorizes the Attorney General to take legal action to enjoin violations of the Election Code and take other actions, potentially including criminal prosecution, to protect the integrity of elections and to prevent voter intimidation.

Acts of retaliation against individuals suspected of complaining about the Pagel Notice can constitute additional actionable voter intimidation in violation of the Election Code, as well as witness retaliation under Title 18 of the criminal code. Further, the Colorado Mobile Home Park Act prohibits a landlord from taking any retaliatory action(s)—which may include evictions; threats to evict; rent or fee increases; threats to increase rent or fees; cutting off water, power, or other services, acts of harassment; or any other retaliatory threat, act of harm, or injury—against a homeowner/tenant for expressing their intent to file or for filing a complaint related to the mobile home park. Colo. Rev. Stat. § 38-12-212.5(2)(a). A landlord may be fined up to \$10,000 for any such actions of retaliation against a homeowner. Colo. Rev. Stat. § 38-12-1105(13); 8 CCR 1302-15(1.3).

This Notice constitutes a demand by the Department that Bernie Pagel immediately **CEASE AND DESIST** from any and all violations of the Election Code or the Colorado Mobile Home Park Act, including but not limited to:

- (1) cease any and all communications, either direct or indirect, to homeowners/tenants of the Mobile Home Park indicating or implying any consequences resulting from any election or their votes for or against any candidate in any election;
- (2) take no action related to rents, fees, or other charges paid by Mobile Home Park homeowners/tenants associated with the results of the upcoming election or any individual's vote; and
- (3) take no retaliatory action against any individual associated with complaints or perceived complaints related to the Pagel Notice sent by Bernie Pagel to homeowners/tenants—including rent increases, fee increases, threats to increase rents or fees, discontinuance of services paid for in a homeowner/tenant's rental payment, or any other type of retaliatory harassment or actions.

Please acknowledge receipt of this Notice and your agreement to cease and desist from the above-described activities by signing below and returning the signed original document to this office by **October 30, 2020**.

Failure to submit the signed acknowledgement of this Cease and Desist Notice may result in legal action by the Department and/or other government agencies. The Department will continue to monitor the situation to ensure your compliance with this demand. Violations of the Colorado Election Code or the Colorado Mobile Home Park Act may result in legal action, including the filing of a criminal action or a civil lawsuit.

Any questions you have relating to this Notice should be directed to Assistant Attorney General Emily Burke Buckley at (720) 508-6403 or Emily.Buckley@coag.gov.

Sincerely,

FOR THE ATTORNEY GENERAL

s/ Rob Shapiro

Rob Shapiro

First Assistant Attorney General

Colorado Department of Law

Ralph L. Carr Judicial Center

Criminal Justice Section

1300 Broadway, 9th Floor

Denver, CO 80203

ACKNOWLEDGEMENT

I, Edward Bernard (“Bernie”) Pagel, acknowledge that I have received and reviewed the above-contained notice and advisement. I hereby certify that I agree to (1) CEASE & DESIST from communicating to tenants of the Mobile Home Park that there will be any consequences resulting from the election or their votes in the election, (2) CEASE & DESIST from taking any action related to rents or other charges at the Mobile Home Park associated with the results of the upcoming presidential election or any individual’s vote, and (3) CEASE & DESIST from taking and inducing any action against any individual associated with complaints or perceived complaints related to the Pagel Notice, or similar communications, sent by Bernie Pagel.

Bernie Pagel

Date

TO ALL TENANTS:

Please understand **IF** Joe Biden is elected as our next President, everything you do and have to pay for will change completely.

Everything will be increased. Like paying **ALOT** more in taxes, utilities, gasoline, groceries, new permits, fees and regulations...everything! This also means YOUR RENT will be increased to cover these expenses. Most likely, rent would **DOUBLE** in price!

IF the current President is re-elected, WE **WILL NOT** RAISE THE RENT FOR AT LEAST **2 YEARS!**

Voting is **your** choice and we **are not** telling you how to vote. We are just informing our tenants what **WE** will do according to the election results.

If Trump wins, we all win. If Biden wins, we all lose.

VOTE on November 3, 2020.

Dated: October 19, 2020

Thank you,

by 

Bernie Pagel, Pagel's TP