

<p>Court of Appeals, State of Colorado 2 East 14<sup>th</sup> Street, Denver, CO 80203</p>	<p>DATE FILED: March 3, 2021 3:57 PM FILING ID: 45466921B7956 CASE NUMBER: 2020CA1692</p>
<p>Appeal From: District Court, City and County of Denver, Colorado Judge Ross B.H. Buchanan, No.: 2014CV34530</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><b>Plaintiffs-Appellees/Cross-Appellants:</b> State of Colorado ex rel. Cynthia H. Coffman, Attorney General, and Julie Meade, Administrator, Uniform Consumer Credit Code, v. <b>Defendants-Appellants/Cross-Appellees:</b> Center for Excellence in Higher Education, Inc., a not-for-profit company; CollegeAmerica Denver, Inc., and CollegeAmerica Arizona, Inc., divisions thereof, d/b/a CollegeAmerica; Stevens-Henager College, Inc., a division thereof, d/b/a Stevens-Henager College; CollegeAmerica Services, Inc., a division thereof, Carl Barney, Carl Barney Living Trust, and Eric Juhlin.</p>	
<p><b>Attorneys for Individual Appellants:</b> Larry S. Pozner, #2792 L S Pozner, PLLC 1444 Blake St. Denver, CO 80202 303-888-7063 pozneroncross@gmail.com  Steven M. Gombos #20PHV6344 Jacob C. Shorter #20PHV6345 Gombos Leyton PC 11350 Random Hills Rd., Ste. 400 Fairfax, VA 22030 703-934-2660 sgombos@glpclaw.com jshorter@glpclaw.com</p>	
<p style="text-align: center;"><b>Individual Appellants' Motion to Strike February 24, 2021 Letter from Record</b></p>	

Eric Juhlin, Carl Barney, and the Carl Barney Living Trust (the Individual Appellants) move to strike from the appellate record a letter filed on February 24, 2021. The CollegeAmerica Appellants join in this request.

Appellants and their counsel first learned the letter had been filed late on the afternoon of March 2, 2021, when the State notified counsel that the letter had been filed. The envelope—which only lists a website return address—forwarded an article that Appellant Carl Barney had posted on his website on February 17, 2021. Presumably because the envelope listed Mr. Barney’s website as the return address and included a printed-out post from his blog, the State said in its email to counsel that it believed Mr. Barney had filed the letter.

Counsel for Appellants responded to the State’s email and indicated that the Appellants intended to file a motion to strike the February 24, 2021 letter. That same night, March 2, 2021, counsel for Appellants provided the State with the draft Motion to Strike and asked the State for its position. On March 3, 2021, counsel for Appellants provided the State with a revised Motion to Strike and, again, asked the State for its position. As of the time of this filing, the State has not provided its position as to the Motion or the requested relief.

While Mr. Barney did author the blog post, he did not send it to any court or judge, nor did he authorize anyone else to do so on his behalf; indeed, he did not

know the article had been sent to any court until it was brought to his attention after the State notified counsel. For that matter, no other Appellant filed or authorized filing the letter, and none knew of the filing before March 2, 2021.

Given the fact the letter was filed with the Court by mail or hand delivery, lists a website as the return address, and includes only a printout of the blog post, it seems the letter may have been filed by a third party in an attempt to prejudice the appeal.

Because the February 24, 2021 letter was not filed by any party, is not material to the appeal, and may actually have been filed in an attempt to prejudice the merits of the appeal, the Individual Appellants request that the Court strike the letter and attachment from the appellate record.

Respectfully submitted,

*s/Larry S. Pozner*

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## **Certificate of Service**

I hereby certify that on this 3rd day of March 2021, this Motion to Strike was filed and served via Colorado Courts E-filing upon all counsel registered to receive electronic notifications.

*s/ Larry S. Pozner*

Larry S. Pozner