



BEFORE THE
COLORADO DEPUTY SECRETARY OF STATE

AHO Case No. **2024-026**
Election Division Case No: **2024-031**

In the Matter of

ELECTIONS DIVISION of the **SECRETARY OF STATE**,
Complainant,
v.

DONNA OKRAY-PARMAN,
Respondent.

**PROCEDURAL ORDER REGARDING AHO'S INITIAL DECISION
(with attached copy of same)**

Pursuant to section 24-4-105(16)(a), C.R.S., of the Colorado Administrative Procedures Act, section 1-45-111.7(6)(b), C.R.S., of the Colorado Fair Campaign Practices Act, and Rule 24.18 of the Secretary of State's Rules Concerning Campaign and Political Finance, 8 CCR 1505-6, service is hereby effected of the attached copy the Administrative Hearing Officer's ("AHO") initial decision issued on today's date in the above-referenced matter: Initial Decision, dated Oct. 15, 2024 (attached).

The Colorado Deputy Secretary ("Deputy Secretary") hereby serves this Procedural Order Regarding AHO's Initial Decision ("Procedural Order") upon the parties to notify all concerned of their rights, responsibilities, and deadlines should any party seek review by the Deputy Secretary of this Initial Decision.

This case remains open through the period of potential appeal and review by the Deputy Secretary. The Deputy Secretary is not bound by the AHO's initial rulings in this matter other than as controlled by applicable case law. As indicated below, the Deputy Secretary has initiated review on his own motion, and as a result, the Deputy Secretary has discretion to issue a Final Agency Order with a different result than that recommended in the Initial Decision.

In order to challenge the Initial Decision, a party must file exceptions with the Deputy Secretary pursuant to the procedures outlined in subsections 24-4-105(14), (15) and (16), C.R.S. and in this Order.

I. Initiation of Review on Deputy Secretary's Own Motion

The Deputy Secretary hereby initiates review of the Initial Decision upon his own motion pursuant to sections 1-45-111.7(6)(b) and 24-4-105(14)(a)(II) with regard to Respondent's as-applied First Amendment defense to the Division's charges.

II. General Filing Requirements

All requests and pleadings pertaining to any party's Exceptions or any responses must be in writing, filed electronically with the Deputy Secretary and **not** with the AHO.

The email address for filing exceptions in this matter is:

OACAppeals@ColoradoSoS.gov.

Any party that files a pleading, response, or any other related document with the Deputy Secretary must also serve a copy of such document upon the opposing party at the email addresses for those parties that were provided during the prior litigation.

III. Exceptions

Pursuant to section 24-4-105, a party may appeal the Initial Decision entered by the AHO by means of the exceptions review process (“Exceptions”). In such an appeal, a party must file what it denominates as its “Exceptions to the Initial Decision” according to the deadlines and procedures outlined below in this Procedural Order:

A. Designation of Record

Any party who seeks to reverse or modify the Initial Decision must file a Designation of Record within twenty (20) days from the date of this Procedural Order. Any party that wishes to challenge factual findings in the Initial Decision must also designate relevant transcript(s), or parts thereof, of the proceedings before the AHO in their Designation of Record. A transcript is not necessary if the requested review is limited to a pure question of law.

Within ten (10) days after service of the Designation of Record, any other party, including the Deputy Secretary, may file a “Supplemental Designation of Record” including any additional transcripts, or parts thereof, of the proceedings before the AHO. The Supplemental Designation of Record must specify all or part of the Record to be additionally included in the appeal.

A party ordering transcript(s) is responsible for ordering and filing such transcripts with the Deputy Secretary. It is recommended that a party contact the AHO and a certified court reporter for information on how to order a transcript.

B. 30-Day Deadline for filing Exceptions

Exceptions are due within thirty (30) days after the date of this Procedural Order. A party may request an extension of time to file Exceptions prior to thirty (30) days after the date of this Procedural Order. An extension of time will be granted for good cause.

The parties should be aware that delays in receiving an ordered transcript will **not** result in an automatic extension of the deadline for filing Exceptions. Rather, a proper motion for such relief must be filed.

C. Deadlines for Responses, Replies, and Proposed Orders

Responses: Either party may file a response to the other party's Exceptions within fourteen (14) days from the date of the Exceptions filing.

Replies: Either party may file a reply to the other party's response to Exceptions within seven (7) days from the date of the responsive filing.

Proposed Orders: Either party may file a proposed final agency order. Such proposed order may be filed together with the party's Exceptions, response, or reply.

D. Computation and Modification of Time

All time periods are calculated pursuant to Rule 6 of the Colorado Rules of Civil Procedure.

IV. Oral Arguments

The Deputy Secretary may permit oral argument upon request from either party. Such request must be filed with the exceptions, response, or reply. If permitted, each party will be allotted a defined time limit for oral argument. The requesting party will present first and may reserve time for rebuttal. The Deputy Secretary will be permitted

to ask questions. Oral argument must be confined to the arguments and evidence presented during the hearing or in the exceptions and responses thereto. Evidence or arguments outside the record may not be presented during oral argument.

V. Final Order

The Deputy Secretary may affirm, set aside, or modify any, all, some, or no parts of the Initial Decision, including any findings of fact, conclusions of law, and recommended dismissal, sanction or other penalty within the Deputy Secretary's authority. Under most circumstances, the Deputy Secretary will issue a Final Agency Order at the conclusion of his review. On occasion, however, the Deputy Secretary may conclude that either the factual basis or legal analysis, or both, in the AHO's initial decision are insufficient to complete an appropriate review of the case. In such instance, the Deputy Secretary will remand the case back to the AHO with directions to issue a revised initial decision. The AHO will subsequently issue a Revised Initial Decision upon remand. The parties will have the same appeal rights with respect to the Revised Initial Decision as they had with the original Initial Decision.

The ultimate Final Agency Order is subject to judicial review under section 24-4-106. However, if a party fails to timely appeal the Initial decision through Exceptions, such failure operates as a matter of law as a waiver of the right to judicial review of the Final Agency Order except to the extent it differs from the Initial Decision. See § 24-4-105(14)(c), C.R.S.

IT IS SO ORDERED.

DONE and **ORDERED** this 15th day of October 2024.



CHRISTOPHER P. BEALL
Deputy Secretary of State



CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this **PROCEDURAL ORDER REGARDING AHO'S INITIAL DECISION** along with the accompanying **INITIAL DECISION** by Administrative Hearing Officer Macon Cowles was served on the following parties via electronic mail on October 15, 2024:

Complainant –

Peter Baumann, Senior Assistant Attorney General
Kyle M. Holter, Assistant Attorney General
Colorado Department of Law
Peter.Baumann@CoAG.gov
Kyle.Holter@CoAG.gov

Respondent –

Donna Okray-Parman
529 Highpoint Circle.
Black Hawk, CO 80422
donnaokrayparman@gmail.com

Underlying Citizen Complainant

Jessica Kays
PO Box 1068
Central City, CO 80427
hello@votekays.com

Administrative Hearing Officer Macon Cowles –

AdministrativeHearingOfficer@ColoradoSOS.gov

Elections Division –

Colorado Secretary of State, Elections Division
cpfcomplaints@coloradosos.gov

/s/ Christopher P. Beall
Deputy Secretary of State

STATE OF COLORADO
SECRETARY OF STATE
Administrative Hearing Office
1700 Broadway, Suite 550
Denver, CO 80290

Attachment
To
Procedural Order

Case number: 2024 AHO 0026
(*in re* ED 2024-31)

IN THE MATTER OF
ELECTIONS DIVISION of the SECRETARY OF STATE
Complainant
v.
Donna Okray-Parman
Respondent

INITIAL DECISION

Table of Contents

Exhibits	3
Summary of Testimony	3
Tim Gebhardt, Campaign and Political Finance Manager	3
Donna Okray-Parman, Respondent	6
Findings of Fact.....	8
Conclusions of Law, and Order	9

1. A trial in this matter pursuant to section 24-4-105 and section 1-45-111.7 6(a) and (b) of the Colorado Revised Statutes was held October 1, 2024 to receive evidence and argument on the Administrative Complaint filed by the Enforcement Division August 7, 2024. Pursuant to § 1-45-111.7(6)(a), C.R.S., this Initial Determination is subject to review by the Deputy Secretary of State for issuance of a final agency decision.

2. Complainant Elections Division of the Secretary of State is represented by Kyle Holter. Respondent Donna Okray-Parman appeared *pro se*.

3. At the beginning of the hearing, the Assistant Attorney General asked the court to deem the facts alleged in the Administrative Complaint as admitted, because Respondent failed to file an Answer. Counsel argued that this failure would typically entitle the Elections Division to a default judgment under Campaign & Political Finance [CPF] Rule 24.7, 8 Code Colo. Regs. 1505-6. However, counsel expressed a desire for Ms. Okray-Parman to be heard and noted that the Division was prepared to proceed with the case to present uncontested facts. He reserved the right to object to any evidence or arguments presented by Respondent during the hearing that would be new facts not alleged in the Complaint and deemed true by Respondent's failure to answer.

4. While the Division was entitled to the relief it sought, the court declined to grant the motion in order to extend to Respondent the opportunity to present evidence any evidence relevant to the issues raised by the complaint: 1) the more than \$1,500 that she spent on electioneering communications in the form of a post card sent to all Republican voters in Gilpin County within 30 days of the primary election; 2) the failure of the post card to

contain the disclaimer required by § 1-45-107.5(4)(a), C.R.S.; 3) the failure to report the expenditure as required by § 1-45-108(1)(a)(III), C.R.S., and; 4) appropriate relief for the violations. The just cited sections of the Colorado Revised Statutes are in the Fair Campaign Practices Act (FCPA).

Exhibits

5. The following exhibits were received without objection:

Ex. 1	Complaint 2024-31 Donna Okray-Parman
Ex. 2	5.31.24 Printer Invoice
Ex. 3	5.30.24 USPS Receipt
Ex. 4	6.1.24 USPS Receipt
Ex. 5	6.1.24 Postcard front and back
Ex. 6	6.28.24 Email from D. Okray-Parman to T. Gebhardt (14 pages)

Summary of Testimony

Tim Gebhardt, Campaign and Political Finance Manager

After being first duly sworn, Tim Gebhardt testified as follows:

6. Mr. Gebhardt is the Campaign and Political Finance Enforcement Manager for the Colorado Secretary of State's office. He testified about the process his team uses to receive and review campaign finance complaints. He explained that complaints first undergo an initial review to determine timeliness, potential violation of Colorado campaign finance law, and whether there is a sufficient factual and legal basis for thinking that any campaign violations have occurred.

7. In this case, an initial complaint, Ex. 1, was filed by Jessica Kays alleging Donna Okray-Parman violated campaign finance laws by failing to report expenditures for, and

failing to include disclaimers on, postcards sent to voters. Mr. Gebhardt testified that the Elections Division did not have anything to do with Jessica Kays' decision to file the complaint.

8. The Division issued a Notice of Initial Review and Opportunity to Cure because they believed that the violations—specifically the failure to report the expenditure and the absence of the required disclaimer—could potentially be remedied. The Division also sent Ms. Okray-Parman a request for information, to which she responded, admitting to paying for the printing and distribution of postcards to members of the electorate.

9. Reviewing the response, the Division concluded that respondent had violated two provisions of the campaign finance laws:

a. **Failure to Report Expenditure:** Ms. Okray-Parman had spent more than \$1,000 within a calendar year on electioneering communications (specifically the postcards) without reporting this expenditure to the Secretary of State.

b. **Failure to Include a Disclaimer:** The postcards sent by Okray-Parman did not include the legally required “paid for by” disclaimer, which would have informed the recipients that Respondent paid for the communication.

10. Mr. Gebhardt testified that the postcards were sent to Gilpin County electors on June 1, 2024, less than 30 days before the June 25th primary. The postcards unambiguously referenced Jessica Kays Lovingien, a candidate for Gilpin County Commissioner,

commenting on Kays' record as County Clerk and Recorder. Gilpin County Commissioner and Gilpin County Clerk and Recorder are both public, elected offices in Colorado.

11. Mr. Gebhardt referred to six exhibits during his testimony. Exhibit 1 is the formal complaint that Jessica Kays filed on June 6, 2024, alleging Donna Okray-Parman violated campaign finance law.

12. Exhibit 6 (14 pages) is Ms. Okray-Parman's response to the Division's request for information about the postcards, in which she admitted to paying for and distributing them.

13. Exhibit 5 contains the postcards themselves. Mr. Gebhardt pointed out that they mentioned Jessica Kays by name and made allegations about her conduct as County Clerk and Recorder in relation to her run for the position of County Commissioner. The postcards did not include any disclaimer that they were paid for by Okray-Parman.

14. Exhibit 2 is a receipt showing that the printing cost of the postcards was \$1,015.88.

15. Exhibit 3 is an invoice showing the postage cost for some of the postcards totaled \$433.41. Exhibit 4 is the second invoice from the United States Postal Service for the remaining postcard mailing costs in the amount of \$132.15. The total amount spent on postage was \$565.56.

16. Mr. Gebhardt cited Exhibits 2, 3, and 4 as proof that Ms. Okray-Parman's total expenditures on the postcards exceeded \$1500. This is a significant amount because it is more than the \$1000 minimum that triggers reporting requirements under Colorado law.

17. Mr. Gebhardt testified about the importance of disclaimers and reporting independent expenditures, as they allow voters to understand who is attempting to influence their vote. Without such transparency, voters would not know if they were receiving information from a competing candidate, corporation or elsewhere. There is no cost associated with reporting an expenditure to the Secretary of State.

18. **Reporting Requirement:** Mr. Gebhardt testified that when someone spends over \$1000 on electioneering communications, such as for the printing and mailing of the postcards distributed by Ms. Okray-Parman, it triggers a reporting requirement to the Colorado Secretary of State. This reporting allows the public to see who is spending money, how much and on what, in elections to influence voters.

19. **Disclaimer Requirement:** Mr. Gebhardt stated that the disclaimer requirement, which mandates a clear "paid for by" statement on electioneering communications, serves a similar transparency purpose under § 1-45-108(3). He noted that without a disclaimer, voters would have no way of knowing who was behind the communication they received or for what purpose.

Donna Okray-Parman, Respondent

After being first duly sworn, Donna Okray-Parman testified as follows:

20. Ms. Okray-Parman is a resident of Gilpin County, Colorado. She testified that she was motivated to send the postcards in question by her belief in a citizen's right to free speech and the importance of informing voters about candidates for public office. She argued that her efforts to provide information about Ms. Kays through a local newspaper

and social media were being “censored” because a newspaper and a website were not willing to publish what she wanted. Feeling she had no other recourse, she decided to print and mail postcards containing a QR code linking to information about the candidate.

21. Ms. Okray-Parman admitted that she did not include her name directly on the postcard, but since Jessica Kays identified her as the sender, Ms. Okray-Parman believes the public was not misled about the source of the information. If they follow the QR code, it would take them to a website.

22. The witness maintained she was unaware of the campaign finance laws requiring disclaimers and reporting of expenditures related to electioneering communications. She stated she did not view her actions as those of a “campaign committee,” but rather as those of an individual citizen exercising her right of free speech.

23. Ms. Okray-Parman referenced a right to free speech in asserting that she should not have to ask the government’s permission to share publicly available information about a candidate. She did respond to all inquiries from the Elections Division in a timely manner once she was made aware of the issue. She complied with their request for information.

24. Ms. Okray-Parman asks that the complaint against her be dismissed since she was not acting as a campaign committee and because her actions were protected by her right to free speech.

Findings of Fact

25. On June 1, 2024, Respondent Donna Okray-Parman mailed 2,700 postcards to “almost all residential addresses in Gilpin County,” Ex. 6, p. 6, including addresses of eligible voters in the June 25, 2024, Republican primary. The postcards, Ex. 5, unambiguously refer to Jessica Kays—who also goes by Jessica Kays Lovingier—as a candidate for Gilpin County Commissioner, District 1 in 2024. Ms. Kays appeared on the June 25, 2024, Republican Primary ballot in Gilpin County.

26. Ms. Kays filed a Campaign Finance Complaint against Respondent, received by the Elections Division on June 6, 2024. The Division went through the normal investigation process, which led to the filing of an administrative complaint on August 7, 2024.

27. Under Colorado law, an electioneering communication is one that (I) unambiguously refers to any candidate for public office, (II) is mailed within thirty days before a primary election, and (III) is mailed to an audience including members of the electorate for such public office. Colo. Const. art. xxviii, § 2(7)(a). “[T]he electorate was concerned with regulating. . . speech designed to influence the outcome of Colorado elections.” *Harwood v. Senate Majority Fund, LLC*, 141 P.3d 962, 965 (Colo. Ct. App. 2006). When a person expends \$1,000 or more per calendar year on electioneering communications—in this case postcards—those communications must include a statutorily compliant disclaimer telling recipients who paid for the communication. Both § 1-45-108.3(3) and § 1-45-107.5(5)(a) of the FCPA required the disclaimer on the Okray-

Parman's postcards. The expenditures must also be reported to the Secretary of State, a requirement of FCPA § 145-108(1)(a)(III).

28. The postcards sent by Respondent cost \$1,015.88 to print, Ex. 2, and \$565.56 to mail (Exs. 3 and 4), for a total expenditure by Ms. Okray-Parman of \$1,581.44. They were "electioneering communications" as defined by Colo. Const. xxviii, § 2(7)(a) and by FCPA § 1-45-103.

29. The 2,700 postcards refer to Kays and Kays' candidacy for County Commissioner and would tend to influence the outcome of Colorado elections. Respondent mailed the postcards on June 1, 2024, twenty-four days before the June 25, 2024, Republican primary election. The postcards did not include a compliant disclaimer and Respondent did not report the \$1,581.44 expenditure to the secretary of state.

Conclusions of Law, and Order

30. The APA places the burden of proof upon the proponent of an order. APA § 24-4-105(7), C.R.S.; *Renteria v. State Dep't of Personnel*, 811 P.2d 797, 803 (Colo. 1991). The requirements of proof are, to the extent practicable, the same as those in civil nonjury trials in the district court. The burden of proof in civil cases is by a preponderance of the evidence. § 13-25-127(1), C.R.S.; CPF Rule 24.10.3.

31. "The proponent of a request for remedy or relief shall have the burden of proof." CPF Rule 24.10.1. But Respondent bears the burden of proving any affirmative defenses. CPF Rule 24.10.2. Proof is by a preponderance of the evidence.

32. **Donna Okray-Parman violated the law by failing to report having spent \$1,581.44 on an electioneering communication:** § 145-108(1)(a)(III) of the FCPA mandates that expenditures exceeding \$1000 in a calendar year for “electioneering communications” be reported to the Secretary of State. In this case, Respondent spent \$1,581.44 sending 2,700 postcards to electors. These postcards were electioneering communications. They urged voters to consider information that Ms. Okray-Parman felt was important in deciding whether to vote for a candidate in the upcoming primary election. Respondent did not report this expenditure to the Secretary of State, and she was, and is still, required to do so.

33. **Donna Okray-Parman violated the law by failing to include a disclaimer on the postcards targeting a candidate:** § 1-45-107.5(5)(a) and § 1-45-108.3(3) of the FCPA both require that any “electioneering communication” include a clear “paid for by” disclaimer, identifying the person (or group) responsible for the communication. The postcards, Ex. 5, do not contain this disclaimer. The information on the disclaimer would have provided transparency by telling voters who is behind, who is sponsoring, the information they received. Without such a disclaimer, voters receiving the Okray-Parman postcard were deprived of additional data that could have helped them evaluate the credibility of, and process the assertions in, the postcard.

34. Ms. Okray-Parman readily admits to the facts that support a finding that these violations occurred. Her defenses to the violations seem to be these:

- a. She was unaware of these campaign finance laws;

-
- b. She is not a “campaign committee” and therefore not subject to the disclaimer and reporting requirements;
 - c. She should not have to ask permission of the government to send information to voters.

35. First, if Respondent was unaware of her duty to reveal herself as the sender of the postcards and her duty to report the amount of the expenditure to the Secretary of State, that lack of awareness does not get her off the hook. “Ignorance of the law is no excuse,” and indeed the truth of that saying is so much a matter of common sense that the very phrase is a cliché. It is not only common, but it is the law in this state. *Barber v. Marjon Corp.*, 791 P.2d 1192, 1194 (Colo. Ct. App. 1989) (“Ignorance of the law is not an excuse for non-compliance.”)

36. Second, Respondent is not charged with being a “campaign committee.” She is a “person” that has violated the law by failing to do what “any person” is obligated to do when they spend \$1,581.44 sending 2,500 postcards to electors that support or denigrate a candidate.

- a. “Any person” who pays for and distributes an electioneering communication is required to put a disclaimer on the communication. FCPA § 1-45-108.3(3).
- b. “Any person” spending \$1,000 or more on an electioneering communication is required to file a report of the matter with the Colorado Secretary of State.

“Any person who expends one thousand dollars or more per calendar year on electioneering communications **shall report** to the secretary of state, in accordance with the disclosure required by this section, the amount expended on the communications and the name and address of any person that contributes more than two hundred fifty dollars per year to the person expending one thousand dollars or more on the communications.” [Emphasis supplied.]

FCPA § 145-108(1)(a)(III).

37. Ms. Okray-Parnam has two reporting obligations under § 145-108(1)(a)(III) of the FCPA and CPF Rule 11 governing electioneering communications.

- a. She must report her own name and address, the method of communication, the amount spent on the electioneering communication and the name of the candidate referred to in the communication to the Secretary of State.
- b. She must report to the Secretary of State the names and addresses of any person who contributed \$250.00 or more toward the electioneering communications that targeted Ms. Kays.

38. Ms. Okray-Parman testified that she should not have to ask the permission of the government to send out this information. And, indeed, she does not have to ask for such permission. The duty of disclosure and reporting, however, is required of anyone who spends \$1,000 or more within a calendar year to support or target candidates with a message that “Is broadcasted, printed, mailed, delivered, or distributed within thirty days before a primary election or sixty days before a general election.” Colo. Const. xxviii, § 7(a)(II).

39. Voters in Colorado overwhelmingly expressed the principles that disclosure and transparency are important when they voted 2:1 in favor statutory and constitutional amendments that made these requirements mandatory. They did this by the adoption of Amendment 15 at the general election held November 5, 1996. 928,148 votes for Amendment 15; 482,551 in opposition.

https://historicalelectiondata.coloradosos.gov/eng/ballot_questions/search/date:1996-11-05/text:campaign%20finance/ballot_question_type. And they did this again when they adopted “Amendment 27: Campaign Finance” on November 5, 2002 by a vote of 890,390 in favor; 448,599 opposed.

https://historicalelectiondata.coloradosos.gov/eng/ballot_questions/view/12950/

40. The violations have been proved by a preponderance of the evidence. I turn now to the remedies sought by the Elections Division.

41. **Fine for disclaimer violation.** Respondent spent a total of \$1,581.44 to print and distribute postcards that were electioneering communications and did not include any disclaimer—a violation of two sections of the FCPA: § 1-45-107.5(5)(a) and § 1-45-108.3(3). CPF Rule 23.3.3(d) provides that the fine for such a violation is “at least 10 percent of the cost of the communication including cost to broadcast.” Respondent is hereby fined \$158.14 for the disclaimer violation.

42. **Fine for failure to report.** Respondent so far has failed to report the total expenditure of \$1,581.44 as she is required to do by the FCPA. Rule 23.3.3(b)(1) provides that the fine for that violation is \$100 plus 5 percent of the amount not reported. 5% of

\$1581.44 is \$79.08. Respondent is hereby fined \$179.08 for the violation of FCPA § 145-108(1)(a)(III).

43. **Total fine.** The total fine assessed to Respondent is \$337.22 which must be paid to the Secretary of State.

44. **Order to report consistent with FCPA § 1-45-108(1)(a)(III).** The failure to report who paid for the postcards targeting a candidate for County Commissioner and for their distribution is a continuing violation. The residents in Gilpin County still are not informed as they have a right to be of who paid for the electioneering communication and its distribution.

45. Therefore, as required by § 1-45-108(1)(a)(III), C.R.S. and in accordance with the remedy in CPF Rule 23.3.4(a)(3), Respondent Donna Okray-Parman is hereby ordered on or before November 13, 2024 to use the Tracer system of the Colorado Secretary of State:

- a. To report the money that she spent to create and distribute the electioneering communication at issue here, and;
- b. To report on the Tracer system the name and address of any person that contributed more than two hundred fifty dollars for or in support of the communication.

46. Technical help in making Tracer filings is available from the Compliance Division of the Colorado Secretary of State's Office:

Email: CPFhelp@coloradosos.gov

Telephone: 303.894.2200, press option 3

SO ORDERED this 15th day of October 2024.



Macon Cowles, Hearing Officer

