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BEFORE THE  
COLORADO DEPUTY SECRETARY OF STATE

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AHO Case No. **2024-0026**

Election Division Case No: **2024-31**

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In the Matter of

ELECTIONS DIVISION of the SECRETARY OF STATE

Complainant,  
v.

DONNA OKRAY PARMAN

Respondent.

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### **FINAL AGENCY ORDER**

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This matter comes before Christopher P. Beall, Colorado Deputy Secretary of State ("Deputy Secretary"), as the agency's final decision maker on campaign and political finance matters filed with the Secretary of State, pursuant to section 1-45-111.7(6)(b), C.R.S., of the Colorado Fair Campaign Practices Act ("FCPA"), Rule 24.3.7 of the Secretary of State's Rules Concerning Campaign and Political Finance, 8 CCR 1505-6, and section 24-4-105 of the Colorado Administrative Procedures Act ("APA"), upon the Exceptions to the Initial Decision filed by Donna Okray Parman and the Deputy Secretary's own review of the Initial Decision issued by the Secretary's Administrative Hearing Officer ("AHO") and duly served upon the parties on October 15,

2024. The Deputy Secretary, being fully informed by the briefing of both parties and a full review of the record, as appropriate to the matters presented, issues this Final Agency Order.

As set forth in this Order, the Deputy Secretary adopts and affirms in its entirety the decision of the AHO in the Initial Decision, which is attached and incorporated herein by reference. See Attachment A, *infra*.

### **BACKGROUND**

Respondent Donna Okray Parman is a resident of Gilpin County, Colorado. Initial Decision, ¶ 20. On June 1, 2024, she mailed 2,700 postcards to Gilpin County residential addresses. *Id.* ¶ 25. The postcards contained statements about Jessica Kays, also known as Jessica Lovingier, along with a QR code and a web address. *Id.* ¶ 20. Ms. Kays was a Republican candidate for Gilpin County Commissioner, District 1, in the primary election held on June 25, 2024. *Id.* ¶ 25. A copy of the postcard is in the administrative record, both as part of the initial citizen complaint, the Division's administrative complaint, and as an exhibit that was offered into evidence during the hearing. See *also id.* ¶ 13.

The front and back of the postcard is depicted here:

**Jessica Kays (Lovingier) wants to be YOUR Commissioner?!?**

See other side for how Jessica served as your Clerk & Recorder in the past.

**What is she doing NOW?**

- **NOTHING** to stop the \$1,500,000 food pantry
- **NOTHING** to stop the IA forever Rec Center tax
- **NOTHING** to support the \$1,000,000 annual donation for the Rec Center from Black Hawk
- **NOTHING** to stop county employees from campaigning on the job

**JESSICA KAYS WALKED OUT ON A STANDING-ROOM-ONLY DEBATE CROWD ON MAY 2, REFUSING TO ANSWER VOTERS' QUESTIONS.**

<https://thekaystruth.blogspot.com>

PRSR STD  
ECRWSS  
U.S. POSTAGE  
PAID  
EDDM Retail

POSTAL CUSTOMER



**"7 News exposes Lovingier"**

**"County Clerk facing Internal audit"**

**"Clerk and Recorder's fund balances just do not add up"**



  <https://thekaystruth.blogspot.com>

Scan QR Code or use the web address for complete newspaper articles

As is evident from the images here, the postcard contains such statements as, “Jessica Kays (Lovingier) wants to be YOUR Commissioner?!? See other side for how Jessica served as your Clerk & Recorder in the past.” Hrg. Ex. 5. The referenced other side of the postcard contains a photograph of a woman (presumably Ms. Kays), along with a QR code, web address, and headlines— “7 News Exposes Lovingier,” “County Clerk facing Internal audit,” “Clerk and Recorder’s fund balances just do not add up”— and the instruction to “Scan QR code or use the web address for complete newspaper articles.” *Id.*

The front of the postcard states, “What is she doing NOW? NOTHING to stop the \$1,500,000 food pantry. NOTHING to stop the 1A forever Rec Center tax. NOTHING to support the \$1,000,000 annual donation for the Rec Center from Black Hawk. NOTHING to stop county employees from campaigning on the job.” *Id.* In all capital letters, the postcard states, “Jessica Kays walked out on a standing-room-only debate crowd on May 2, refusing to answer voters’ questions.” The QR code and the website address appear again below the address portion of the postcard. *Id.*

All told, Respondent spent \$1,581.44 to prepare and mail the postcards to the addresses of almost all residents of Gilpin County. Initial Decision, ¶¶ 25, 28. She did not include a “paid for by” disclaimer or file any reports with the Secretary of State. *Id.* ¶ 29. Nor did she identify herself in any way in the postcards. *Id.* ¶ 21.

Ms. Kays determined that Respondent was the source of the postcards – the postcard includes a URL address for an internet blog that Respondent publishes under her own name, and Ms. Kays then filed a citizen complaint against Respondent, alleging

violations of the FCPA in failing to include disclaimers on the postcards and failing to report the expenditures for the postcard. *Id.* ¶ 7. After completing its investigation, the Division filed an administrative complaint against Respondent. *Id.* ¶ 26; *see also id.* ¶¶ 6-17. Respondent failed to file an answer to the Division’s complaint, but the AHO gave her the opportunity to be heard and to present evidence at the evidentiary hearing on October 2, 2024. *See id.* ¶¶ 3-4.

The AHO determined that Respondent had violated the FCPA. Specifically, Respondent’s postcards were electioneering communications as defined by Colorado law. *Id.* ¶¶ 27, 32. Respondent was in violation of sections 1-45-108.3(3) and 1-45-107.5(5)(a) requiring disclaimers on electioneering communications, for which the AHO imposed a fine of \$158.14. *Id.* ¶¶ 33, 41. He also determined that Respondent violated section 1-45-108(1)(a)(III)’s requirement that expenditures on electioneering communications that exceed \$1,000 in a calendar year be reported to the Secretary of State, and imposed a fine of \$179.08 for the failure to report. *Id.* ¶¶ 32, 42.

Thus, the total penalty recommended by the AHO was \$337.22. *Id.* ¶ 43.

Respondent timely filed exceptions on November 13, 2024, after filing a designation of record on November 4. The Division responded and Respondent filed a reply. No transcript has been presented to the Deputy Secretary for review, consistent with the absence of any challenges to the factual findings in the Initial Decision.<sup>1</sup> Neither side requested oral argument.

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<sup>1</sup> After designating the hearing transcript in its Supplemental Designation of the Record, the Division changed course in its Amended Supplemental Designation of Record, filed November 27, 2024, indicating that audio and video recording of the hearing would be included instead. A recording is not a

## ISSUES ON REVIEW

The Deputy Secretary initiated review of the Initial Decision on his own motion, pursuant to sections 1-45-111.7(6)(b) and 24-4-105(14)(a)(II). As stated in the Procedural Order, his review will address Respondent's as-applied First Amendment defense.

Respondent, who is *pro se*, filed exceptions to challenge the AHO's legal conclusions that she violated campaign finance law and her sanction. Her main argument is that her conduct is protected by her right to free speech under the First Amendment to the U.S. Constitution. She also argues that she should be exempt from the violations found by the AHO because she did not know the legal requirements of the FCPA and was motivated to send the postcards because local newspapers and social media sites allegedly deprived her of her preferred channels of communication to voters. She asks the Deputy Secretary to dismiss this matter without imposing any penalties.

## STANDARDS OF REVIEW

The Deputy Secretary reviews questions of law and the application of law to undisputed facts de novo. See *Winter v. Indus. Claim Appeals Office*, 2013 COA 126, ¶¶ 7-8, 321 P.3d 609, 612. He may substitute his judgment for that of a hearing officer with respect to an ultimate conclusion of fact. See § 24-4-105(15)(b). The Deputy

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substitute for a written transcript in this context, but a transcript is unnecessary because the factual findings are not at issue. See § 24-4-105(15)(a); see also Procedural Order § III.A. The Deputy Secretary has not reviewed the recordings for purposes of this decision, and similarly does not consider additional facts presented by Respondent in her submissions that are not found elsewhere in the administrative record.

Secretary may also modify the initial decision, or any sanction or relief entered therein, in conformity with the facts and the law. § 24-4-105(15)(b); *see also Colo. Real Estate Comm’n v. Hanegan*, 947 P.2d 933, 936 (Colo. 1997) (holding that an agency is afforded wide discretion to modify an initial decision’s recommended sanction within the parameters of its authority).

## **ANALYSIS**

### **A. The Deputy Secretary rejects Respondent’s as-applied First Amendment challenge to the disclaimer and reporting requirements of the FCPA.**

The Deputy Secretary first turns to the issue that led him to initiate review of the Initial Decision, Respondent’s assertion of a First Amendment defense, which is also the primary argument made by Respondent in her exceptions.<sup>2</sup> Respondent argues that her “freedom of speech was abridged, and the press (print and digital) was the culprit!” Respondent’s Exceptions at 3. To the extent that Respondent argues that two social media sites and local news outlets—and not Colorado campaign finance laws—violated her First Amendment rights, the Deputy Secretary addresses this argument below. To the extent that Respondent is articulating an as-applied challenge to the reporting and

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<sup>2</sup> The Division argued in its Response brief that the Deputy Secretary should not address Respondent’s as-applied challenge to the constitutionality under the First Amendment of applying the FCPA’s disclaimer and disclosure requirements against her on the grounds that her arguments on these points are “underdeveloped.” Resp. at 4. However, because Respondent is *pro se*, and because the Deputy Secretary is therefore required to liberally construe the Respondent’s submissions, the Deputy Secretary has elected to address the First Amendment contentions that Respondent has touched on, albeit without her meeting her burden of providing full development of a sufficient record to support her contentions. The Deputy Secretary believes that Respondent’s testimony during the hearing that she “should not have to ask for permission of the government” to send out her electioneering postcards, *see* Initial Decision ¶ 38, and her assertion in her Exception that she “expressed my First Amendment Right to Free Speech when I created a postcard with a link for citizens to research this same person running for County Commissioner,” *see* Exceptions, 2, are sufficient invocations of the First Amendment to preserve this issue for review.

disclosure requirements, the Deputy Secretary emphatically rejects Respondent's argument.

"[A]n as-applied challenge alleges that the statute is unconstitutional as to the specific circumstances under which the defendant acted." *People v. Ford*, 232 P.3d 260, 263 (Colo. App. 2009). Because courts presume a statute is constitutional, the party bringing the as-applied challenge must prove the statute is unconstitutional beyond a reasonable doubt. *No Laporte Gravel Corp. v. Bd. of Cty. Comm'rs of Larimer Cty.*, 2022 COA 6M, ¶ 40.

"Disclaimer and disclosure requirements may burden the ability to speak, but they impose no ceiling on campaign-related activities, and do not prevent anyone from speaking." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 366 (2010). As a result, electoral disclosure requirements are subject to the exacting scrutiny standard. *Sampson v. Buescher*, 625 F.3d 1247, 1255 (10th Cir. 2010) (citing *Doe v. Reed*, 561 U.S. 186, 196 (2010)). Exacting scrutiny requires "a substantial relation between the disclosure requirement and a sufficiently important governmental interest. To withstand this scrutiny, the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Id.* (internal citation and quotations omitted). "In determining whether these [governmental] interests are sufficient to justify the requirements we must look to the extent of the burden that they place on individual rights." *Id.* (citing *Buckley v. Valeo*, 424 U.S. 1, 68 (1976)). Laws subject to the exacting scrutiny standard must be substantially related and narrowly tailored to serve a sufficiently important government interest. *Ams. For Prosperity Found. v. Bonta*, 594



U.S. 595, 596 (2021). “[E]xacting scrutiny requires that a government-mandated disclosure regime be narrowly tailored to the government’s asserted interest, even if it is not the least restrictive means of achieving that end.” *Id.*

The United States Supreme Court has already recognized three legitimate justifications for laws requiring reporting and disclosure of campaign finances. First, disclosures provide the “electorate with information about the sources of election-related spending.” *Citizens United*, 558 U.S. at 367 (citing *Buckley v. Valeo*, 424 U.S. 1, 66 (1976)); see also *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 792 n.32 (1978). “Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity.” *Buckley*, 424 U.S. at 67. Third, recordkeeping, reporting, and disclosure requirements are an essential means of detecting violations of contribution limits. *Id.* at 67-68. These interests are paramount in Colorado’s campaign finance law. COLO. CONST. art. XXVIII, § 1; see also § 1-45-102, C.R.S.

Here, the AHO found Respondent failed to include a required “paid for by” disclaimer, and Respondent failed to report electioneering communications exceeding \$1,000 in a calendar year to the Secretary of State. Initial Decision, ¶¶ 36-44. The Deputy Secretary finds that both the “paid for by” disclaimer requirement, and the reporting requirement, are substantially related and narrowly tailored to serve the sufficiently important government interest of providing the electorate with information about the sources of election-related spending.

As the Division's Campaign and Political Finance Enforcement Manager explained, disclaimers and reporting of independent expenditures "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." *Id.* ¶ 17; *see also* ¶ 7. The reporting requirements allow "the public to see who is spending money, how much and on what, in elections to influence voters." *Id.* ¶ 18. Similarly, without the required disclaimer, "voters would have no way of knowing who was behind the communication they received or for what purpose." *Id.* ¶ 19. Stated another way, the reporting and disclaimer requirements are narrowly tailored to the asserted interest of informing the electorate because these requirements are the only means to inform the electorate who is behind the messages targeting them.

What is more, compliance with these laws imposes minimal burdens on citizens such as Respondent. There is no charge to file an independent expenditure report with the Secretary of State. *Id.* ¶ 17. Respondent spent \$1,581.44 over the course of three days on postcards mailed to "almost all residential addresses in Gilpin County." *Id.* ¶¶ 25, 28. Respondent only needed to file a single no-cost expenditure report to comply with Colorado's reporting law. And at no point did Respondent present evidence or argue that simply adding the disclaimer to the postcards would be unduly burdensome. Adding an additional sentence most assuredly would not have cost anything at all. Nor did Respondent argue that requiring the disclaimer identifying herself as the sender would somehow chill her speech. Indeed, she downplayed the impact her lack of disclosure may have had on misleading the electorate based on the fact that the

Complainant was able to identify her as the sender despite the lack of disclaimer. See *id.* ¶ 21.

In contrast, the importance of informing the electorate about the source of this information cannot be overstated. Here, Respondent sent the postcards to almost every relevant voter less than thirty days before the primary election. *Id.* ¶ 25. The postcards imply that the candidate, while in office in her former role, had mishandled public funds. That sort of information, so close in time to the primary, could very well sway a voter against a candidate. Adding the minimally burdensome disclaimer on these postcards, and filing the required expenditure report, would “insure that voters are fully informed about the person [] speaking.” *Citizens United*, 558 U.S. at 368; see also *First Nat. Bank of Boston*, 435 U.S. at 792 n.32 (“Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected.”). Voters are entitled to this critical information.

For these reasons, the Deputy Secretary rejects Respondent’s as-applied constitutional challenge to her violations of the FCPA.

**B. Respondent’s other arguments do not exempt her from compliance with Colorado campaign finance law.**

Respondent does not contest that her postcards were electioneering communications, that they lacked the necessary “paid for by” disclaimer, that they were sent less than 30 days before an election, that her expenditures to prepare and mail them exceeded \$1,000, and that no report of that spending was submitted to the Secretary of State, as required by the FCPA. The Deputy Secretary now considers the

other arguments raised by Respondent on exceptions, namely, that her noncompliance with the FCPA should be excused because of her motivation for sending the postcards and her lack of knowledge of campaign finance law. As explained below, these are not defenses to the violations that were correctly found by the AHO.

Turning first to Respondent's contention that she was "censored" by the local press and thus had no other option but to send communications that violated the FCPA, the Deputy Secretary disagrees. Respondent seems to contend that she should be excused from the requirements of the FCPA because certain private entities allegedly censored her speech. The FCPA contains no exemption based on the action or inaction of non-governmental entities such as newspapers and social media sites.

Further, the Deputy Secretary disagrees with Respondent that her constitutional rights were violated by the alleged censorship; even if she had a valid claim, this would not be the forum to resolve it. The right to free speech and a free press is a right against government abridgment of expression, not private editorial judgment by private parties, and the First Amendment does not mean that a citizen can dictate what is ultimately published—including, but not limited to, letters to the editor. *See Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974) ("The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials -- whether fair or unfair -- constitute the exercise of editorial control and judgment" that are protected by the First Amendment.); *see also* Initial Decision, ¶ 20. The Deputy Secretary is unsure how to square the charge of "censorship" with the fact that the information Respondent wanted to highlight

had previously been published. Regardless, even accepting that Respondent was unable to achieve the hoped-for publication of information in the local press outlets that declined her requests, that simply does not excuse her from compliance with the FCPA once she opted to send electioneering communications that exceeded the statutory thresholds.

Next, the Deputy Secretary takes Respondent at her word that, at the time she sent the postcards, she was unaware of her obligations under the FCPA to include a “paid for by” disclaimer and to file a report with the Secretary of State. She also misinterpreted some of the Division’s language in the administrative complaint, initially arguing that an exception under the law should apply to her. The violations found by the AHO, affirmed here, apply to “any person” who engages in conduct like Respondent’s. § 1-45-108.3(3) (“any person who expends one thousand dollars or more per calendar year on electioneering communications shall . . . state in the communication the name of the person making the communication”); § 1-45-108(1)(a)(III) (“Any person who expends one thousand dollars or more per calendar year on electioneering communications . . . shall report to the secretary of state. . . .”). As the AHO correctly observed, ignorance of the law is not an excuse for non-compliance—even when the conduct is not willful. *Id.* ¶ 35 (citing *Barton v. Marjon Corp.*, 791 P.2d 1192, 1194 (Colo. App. 1989)). Indeed, if the FCPA could only be enforced against violators possessing detailed legal knowledge, it would jeopardize the goal of transparency and the purposes of informing the electorate about election influences. *See id.* ¶ 17.

Respondent does not offer a compelling explanation as to why the provisions of the FCPA—set forth clearly in the administrative complaint and in the Initial Decision—should not apply to her. The AHO’s conclusions that Respondent violated sections 1-45-108.3(3) and 1-45-108(1)(a)(III) (and 1-45-107.5(5)(a)) are supported by the facts and a reasonable basis in law, and they are affirmed.

**C. The sanctions assessed by the AHO are warranted and appropriate for Respondent’s campaign finance violations.**

In her exceptions, Respondent specifically asks the Deputy Secretary to dismiss the case against her and impose no penalties. The Deputy Secretary declines to do so, agreeing with the AHO’s determination that Respondent violated the FCPA as explained. The Deputy Secretary also agrees with the AHO’s computation of the base fines suggested by the Secretary’s Rule 23.3.3 in this case. Initial Decision, ¶¶ 41-43. However, analysis of the appropriate sanction does not end with the calculation of base fines.

Once the specific fine amount is determined, the following mitigating or aggravating factors are also considered:

- (a) Nature and extent of the violation;
- (b) Timing of the violation (including proximity to the election);
- (c) Ability or effort to mitigate the violation;
- (d) Evidence of an intentional act or a pattern or practice of misconduct;
- (e) Extent to which the harm cause[d] by the violation or the value of the violation cannot be reasonably calculated.

8 CCR 1505-6, Rule 23.3.5(a) – (e). The Rule further provides that “[o]ther aggravating or mitigating factors may be taken into consideration in reaching a just and equitable outcome.” 8 CCR 1505-6, Rule 23.3.5(f).

Potential mitigating factors include Respondent’s cooperation with the Division in its investigation, and her forthrightness throughout the hearing and in her exceptions filings. Because of the information willingly provided to the Division, Respondent’s violation can be assessed to the penny. The administrative record supports her assertion that she is a private citizen, motivated by a genuine desire to share information that she considered relevant to a local election with her neighbors in Gilpin County.

Aggravating factors include Respondent’s attempt to directly target virtually the entirety of the electorate for Ms. Kays’ race, the violations’ proximity in time to the primary election, and—most importantly—the lack of any attempt by Respondent to mitigate the violations. Respondent continues to insist that she has an absolute defense to the campaign finance violations, based solely on a fervent but imperfect understanding of her constitutional rights. Her insistence that she need not identify herself because she was merely presenting “facts” about a candidate is not only not persuasive, it is not accurate. The FCPA’s requirements apply to electioneering communications regardless of the factual nature of their content, that is, regardless of whether they contain “facts” or opinions or anything in between. See COLO. CONST. art. XXVIII, § 2(7)(a) (defining “electioneering communication” based on whether the communication “unambiguously refers to a candidate” within thirty days of a primary

election, and not based on whether the communication is factual). The FCPA simply contains no such loophole.

The AHO assessed a total fine of \$337.22. Considering all circumstances in mitigation and in aggravation, the Deputy Secretary finds no need to adjust this figure. Significantly, Respondent does not argue that the amount is unreasonable or that she is unable to pay it. Compared to what appears to be Respondent's voluntary expenditure of nearly five times that amount on the postcards, the amount is not excessive.

Respondent is also ordered to file the required disclosures in TRACER. As the AHO has pointed out, there are no costs associated with filing with the Secretary of State, and staff are available to assist Respondent should she require it. Respondent does not argue that she is unable to comply with the AHO's directives. Indeed, the administrative record shows that Respondent had the sophistication and the wherewithal to generate a postcard with images and a QR code and disseminate it throughout Gilpin County, and to represent herself throughout this proceeding. Requiring her to report her expenditures via TRACER (including the name and address of any person other than herself who contributed more than \$250 to that effort, if applicable) is not unduly burdensome.

The Deputy Secretary is aware of the fact that the election at issue is over, meaning that it is impossible for Respondent's remedial actions to fulfill the informational purposes of the FCPA in a way that would timely inform the Gilpin County electorate. Yet the value of transparency in elections persists, along with the need to deter future offenses and offenders. These penalties are reasonable, impose a minimal



burden upon Respondent and are proportional to the violations. The Deputy Secretary affirms and adopts them.

### **CONCLUSION**

For the reasons stated above, the Deputy Secretary enters this Final Agency Order affirming the Initial Decision in all respects. Respondent Donna Okray Parman is ordered (1) to pay a fine of \$337.22 to the Secretary of State and (2) to submit the required TRACER filing reporting the money spent on the electioneering communications promptly upon service of this Order.

Attachment A – Initial Decision

**DONE** and **ORDERED** this 14<sup>th</sup> day of February 2025.



**CHRISTOPHER P. BEALL**  
Deputy Secretary of State

**This decision becomes final upon electronic mailing.**

**Pursuant to section 24-4-105(14)(c), C.R.S., a party who has failed to file an exception to the AHO's initial decision is deemed to have waived their right to judicial review of the Final Agency Order except for those portions different from the content of the initial decision.**

**Any party may appeal the portions of the Final Agency Order that have modified the Initial Decision, including specifically, all or part of**

**the fine imposed in this Order, by commencing an action for judicial review before the District Court in the City & County of Denver within thirty-five (35) days after the date of service of this Order. See §§ 1-45-111.7(6)(b) and 24-4-106(4), C.R.S.**

**In addition, the underlying citizen complainant also is entitled to seek judicial review of the Final Agency Order by a state district court under section 24-4-106(4). See § 1-45-111.7(5)(b), C.R.S.**

## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this **FINAL AGENCY ORDER** was served on the following parties via electronic mail on February 14, 2025:

Complainant c/o Counsel–

Kyle M. Holter, Assistant Attorney General  
Colorado Department of Law  
[Kyle.Holter@coag.gov](mailto:Kyle.Holter@coag.gov)

Respondent –

Donna Okray Parman  
529 Highpoint Circle  
Black Hawk, CO 80422  
[donnaokrayparman@gmail.com](mailto:donnaokrayparman@gmail.com)

Courtesy copy to Citizen Complainant –

Jessica Kays  
PO Box 1068  
Central City, CO 80427  
[hello@votekays.com](mailto:hello@votekays.com)

Courtesy copy to Administrative Hearing Officer Macon Cowles –

[AdministrativeHearingOfficer@ColoradoSOS.gov](mailto:AdministrativeHearingOfficer@ColoradoSOS.gov)

Courtesy copy to Elections Division –

Colorado Secretary of State, Elections Division:  
[cpfcomplaints@coloradosos.gov](mailto:cpfcomplaints@coloradosos.gov)

/s/ Christopher P. Beall  
Deputy Secretary of State

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

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

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

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**INITIAL DECISION**

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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

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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

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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 25<sup>th</sup> primary. The postcards unambiguously referenced Jessica Kays Lovingien, a candidate for Gilpin County Commissioner,

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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.



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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

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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.

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### 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-

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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.

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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;

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- 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.

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**“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).

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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](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/](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



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\$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:

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Email: [CPFhelp@coloradosos.gov](mailto:CPFhelp@coloradosos.gov)

Telephone: 303.894.2200, press option 3

**SO ORDERED** this 15<sup>th</sup> day of October 2024.



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Macon Cowles, Hearing Officer

