

<p>STATE OF COLORADO ADMINISTRATIVE HEARING OFFICER 1700 Broadway #550 Denver, CO 80290</p> <hr/> <p>BEFORE THE SECRETARY OF STATE, COLORADO DEPARTMENT OF STATE, <i>in re</i> ED 2023-24</p> <p>ELECTIONS DIVISION OF THE SECRETARY OF STATE,</p> <p>Complainant,</p> <p>vs.</p> <p>JESSICA HEARNS FOR D51 SCHOOL BOARD</p> <p>Respondent.</p>	<p>▲ COURT USE ONLY ▲</p> <p>CASE NUMBER</p> <p>2024 AHO _____</p>
<p>COMPLAINT</p>	

Pursuant to § 1-45-111.7, C.R.S. (2023) and Rule 24 of the Secretary’s Rules on Campaign and Political Finance, 8 CCR 1505-6, the Elections Division of the Secretary of State files this Complaint against Jessica Hearns For D51 School Board (“Respondent”).

BACKGROUND

1. To foster transparency and assist voters in assessing the sources of electioneering communications, Colorado law requires any person spending one thousand dollars or more on electioneering communications to include a “paid for by” disclaimer on the communication. This disclaimer must clearly and conspicuously include the name of the entity paying for the communication, and if the entity is not a natural person, it must also identify the entity’s registered agent.

2. Here, Respondent paid for and distributed over \$1,000 worth of regular biennial school board electioneering communications in the months leading up to the 2023 election. These communications included business cards, yard signs, a campaign website, Meta (formerly Facebook) ads, postcards, and a newspaper ad. The communications failed to include compliant “paid for by” disclaimer statements.

3. Accordingly, the Division brings this complaint for appropriate relief.

PARTIES

4. Complainant is the Elections Division (“Division”) of the Colorado Secretary of State.

5. Respondent is Jessica Hearn For D51 School Board, a committee registered with the Colorado Secretary of State, ID # 20235045454.

JURISDICTION AND VENUE

6. The Hearing Officer has jurisdiction under § 1-45-111.7.

7. The Division files this complaint with a hearing officer consistent with § 1-45-111.7(5)(a)(IV), (6).

8. This complaint is timely filed within fourteen business days of the Deputy Secretary’s denial of the Division’s motion to dismiss under § 1-45-111.7(5)(a)(IV).

9. Venue is proper before the hearing officer under § 1-45-111.7(5).

ALLEGATIONS

10. Jessica Hearn For D51 School Board is a candidate committee registered with the Secretary of State. Its purpose is to “accept contributions and formulate expenditures in efforts to secure Jessica Hearn as a candidate in the November 2023 election for Mesa County Valley District 51 School Board director election.”

11. In the months leading up to the election, Respondent distributed electioneering communications related to its purpose.

12. Respondents’ communications (website, Meta ads, newspaper ad, mailers, business cards, and yard signs) were all electioneering communications because they were distributed during the electioneering window, unambiguously referred to a candidate- Jessica Hearn, were distributed to an audience that included members of the electorate, and contained electoral advocacy or were intended to influence the outcome of an election. The aggregate of Respondent’s spending on these electioneering communications was \$1,515.39:

Communication	Distribution	Spending	Cost	Running total
Business cards	8/16-9/8/2023	8/1/2023	\$ 39.47	\$ 39.47
Yard signs	8/16-10/16/2023	8/5/2023	\$ 325.38	\$ 364.85
Website	7/30-8/24/2023	7/24/2023	\$ 38.99	\$ 403.84
Facebook ads	7/30-8/16/2023	8/1/2023	\$ 70.01	\$ 473.85
Facebook ads	8/31-9/8/2023	9/7/2023	\$ 39.99	\$ 513.84
Postcards	10/9-10/23/2023	10/9/2023	\$ 441.12	\$ 954.96
Facebook ads	10/2-10/18/2023	10/18/2023	\$ 50.00	\$ 1,004.96
Newspaper ad	10/21/2023	10/18/2023	\$ 150.00	\$ 1,154.96
Facebook ads	10/18-10/23/2023	10/23/2023	\$ 41.75	\$ 1,196.71
Website	9/25-10/24/2023	10/24/2023	\$ 9.00	\$ 1,205.71
Facebook ads	11/1-11/2/2023	11/2/2023	\$ 50.00	\$ 1,255.71
Facebook ads	11/1-11/3/2023	11/3/2023	\$ 75.00	\$ 1,330.71
Facebook ads	11/3-11/6/2023	11/6/2023	\$ 125.00	\$ 1,455.71
Website	10/25-11/24/2023	11/24/2023	\$ 9.00	\$ 1,464.71
Facebook ads	11/5-11/7/2023	11/25/2023	\$ 50.68	\$ 1,515.39

13. With the exception of the newspaper ad (which contained a non-compliant disclaimer), none of these communications originally contained a “paid for by” disclaimer. However, disclaimers were not required until the \$1,000 threshold was reached on October 18, 2023, with the purchase of additional Meta ads.

14. After the \$1,000 threshold was reached, disclaimers were required on any new or continuing electioneering communications other than small items such as business cards. Thus, disclaimers were required on the website, Meta ads, newspaper ad, and all yard signs that were distributed after the threshold was reached or that were continuing to be displayed after the threshold was reached.

15. On August 15, 2023 the Division received a campaign finance complaint against Respondent filed by Thomas Keenan. The Keenan Complaint alleged that Respondent failed to include compliant disclaimer statements on campaign communications including Meta ads and a website.

16. The Division reviewed and investigated the complaint, and originally moved to dismiss the complaint. The Deputy Secretary denied that Motion to Dismiss on February 13, 2024.

17. The Deputy Secretary determined that once Respondent reached the \$1,000 threshold, a disclaimer was required on all additional electioneering communications for the remainder of the electioneering window and that any continuing communications required disclaimer statements.

18. Upon receiving notice of the Keenan Complaint, Respondent added “paid for by” disclaimers to the website and Meta ads. However, the disclaimers were not compliant because they failed to identify a natural person, Respondent’s registered agent.

COLORADO CAMPAIGN FINANCE LAW

19. Under Colorado law, “any person who expends one thousand dollars or more per calendar year on . . . regular biennial school electioneering communications shall, in accordance with the requirements specified in section 1-45-107.5(5), state in the communication the name of the person making the communication.” § 1-45-108.3(3), C.R.S.

20. Under § 1-45-107.5(5), C.R.S. the disclaimer must include “A statement that: (I) The communication has been ‘paid for by (full name of the person paying for the communication)’; and (II) Identifies a natural person who is the registered agent of if the person identified in subsection (5)(a)(I) of this section is not a natural person.”

CLAIM ONE Failure to Include a Sufficient Disclaimer (§ 1-45-108.3(3), C.R.S.)

21. All preceding allegations are incorporated.

22. Respondent is Jessica Hearn For D51 School Board, was a committee registered with the Colorado Secretary to support Jessica Hearn candidacy for School District 51 Board Director in the November 2023 coordinated election.

23. In the months leading up to that election, Respondent distributed regular biennial school electioneering communications.

24. The communications did not originally contain compliant “paid for by” disclaimers.

25. When Respondent crossed the \$1,000 threshold, it did not add compliant “paid for by” disclaimers to the electioneering communications.

26. The Division is entitled to relief under Article XXVIII of the Colorado Constitution and the Fair Campaign Practices Act, § 1-45-101 *et seq.*

Respectfully submitted this 5th day of March, 2024.

PHILIP J. WEISER
Attorney General

/s/ Peter G. Baumann

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CERTIFICATE OF SERVICE

This is to certify that I will cause the within filing to be served by mail this 5th day of March, 2024, addressed as follows:

Jessica Hearn For D51 School Board
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Respondent

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Third-Party Complainant

s/ Peter G. Baumann