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| <p>STATE OF COLORADO SECRETARY OF STATE 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 2024-31</p> <p>ELECTIONS DIVISION OF THE SECRETARY OF STATE,</p> <p>Complainant,</p> <p>vs.</p> <p>DONNA OKRAY-PARMAN</p> <p>Respondent.</p> | <p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>CASE NUMBER</p> <p>2024 AHO _____</p> |
| <p>COMPLAINT</p> | |

Pursuant to § 1-45-111.7, C.R.S. (2024) 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 Donna Okray-Parman (“Respondent”).

BACKGROUND

1. To foster transparency and assist voters in assessing the sources of campaign communications, Colorado law requires most persons making electioneering communications to report those communications to the Secretary of State and include a “paid for by” disclaimer on the communication.

2. Here, Respondent distributed over \$1,000 worth of postcards that met the definition of electioneering communications under Colorado law. But none of the postcards identified the person who paid for the communications, and Respondent failed to report these communications to the Secretary of State.

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 Donna Okray-Parman, a natural person residing in Colorado.

JURISDICTION AND VENUE

6. The Division 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 30 days of the Division’s July 8, 2024, Notice of Investigation according to § 1-45-111.7(5)(a)(IV).

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

ALLEGATIONS

10. Jessica Kays—who also goes by Jessica Kays Lovingier—was a candidate for Gilpin County Commissioner, District 1 in 2024. She appeared on the June 25, 2024, Republican Primary ballot in Gilpin County.

11. On June 1, 2024, Donna Okray-Parman mailed 2,700 postcards to persons in Gilpin County, including eligible voters in the June 25, 2024, Republican primary. The total cost to print and mail the postcards was \$1,581.44.





12. The postcards unambiguously referred to Kays, were distributed to members of the Republican primary electorate in Gilpin County, and were distributed within 30 days of the June 25, 2024, Republican primary election.

13. The postcards include electoral advocacy, plainly referencing Kays’s candidacy for commissioner, and would tend to influence the outcome of the commissioner election.

14. On June 6, 2024, Kays filed a campaign finance complaint with the Division. The Kays Complaint alleged that Okray-Parman had violated Colorado campaign finance law by (1) failing to register an independent expenditure committee; (2) failing to report an electioneering communication; and (3) failing to include a “paid for by” disclaimer on the postcards.

15. The Division reviewed and investigated the Kays Complaint. The Division corresponded with Respondent during its investigation.

16. According to Respondent:

- a. The postcards were “supposed to go to almost all residential addresses in Gilpin County;” and
- b. The postcards cost \$1,015.88 to print, and \$565.56 to mail.

COLORADO CAMPAIGN FINANCE LAW

17. Under Colorado law, an electioneering communication includes “any communication . . . directly mailed . . . to personal residences . . . that: (I) Unambiguously refers to any candidate; and (II) Is . . . mailed . . . within thirty days before a primary election . . . ; and (III) Is . . . mailed to . . . an audience that includes members of the electorate for such public office.” Colo. Const. art. XXVIII, § 2(7)(a).

18. “Any person who expends one thousand dollars or more per calendar year on 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.

19. That disclaimer statement must include “a statement that: (I) the communication has been ‘paid for by (full name of the person paying for the communication.’” § 1-45-107.5(5)(a).

20. In addition, “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.” § 1-45-108(1)(a)(III).

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

21. All preceding allegations are incorporated.

22. Donna Okray-Parman distributed over \$1,000 worth of postcards in 2024.

23. Those postcards unambiguously referred to Jessica Kays, a candidate in the June 25, 2024, Republican Primary Election, were distributed within 30 days of June 25, 2024, and were distributed to members of the Republican Primary electorate in Gilpin County.

24. Those postcards did not include a “paid for by” disclaimer.

25. The Division is entitled to relief under Article XXVIII of the Colorado Constitution and the Fair Campaign Practices Act, § 1-45-101 et seq., including, but not limited to:

- a. Under Rule 23.3.3(d), a penalty of 10% of the cost of the postcards, or \$158.
- b. Such other relief as the Court deems just and proper.

CLAIM TWO
Failure to Report Electioneering Communication
(§ 1-45-108(1)(a)(III), C.R.S.)

26. All preceding allegations are incorporated.

27. Donna Okray-Parman distributed over \$1,000 worth of postcards in 2024.

28. Those postcards unambiguously referred to Jessica Kays, a candidate in the June 25, 2024, Republican Primary Election, were distributed within 30 days of June 25, 2024, and were distributed to members of the Republican Primary electorate in Gilpin County.

29. Okray-Parman did not report these electioneering communications to the Secretary of State in accordance with section 1-45-108.

30. The Division is entitled to relief under Article XXVIII of the Colorado Constitution and the Fair Campaign Practices Act, § 1-45-101 et seq., including, but not limited to:

- a. Under Rule 23.3.3(b)(1), a penalty of \$100 per report that was not correctly filed plus 5% of the activity not reported, or \$179.
- b. Under rule 23.3.4(a)(3), an order requiring Respondent to file a disclosure report as to the electioneering communications.
- c. Such other relief as the Court deems just and proper.

CLAIMS NOT PURSUED BY THE DIVISION

1. The Kays Complaint also included allegations that Respondent had failed to register an independent expenditure committee.

2. Under Colorado law, an “expenditure” is any purchase or payment made “for the purpose of expressly advocating the election or defeat of a candidate[.]” Colo. Const. art. XXVIII, §2(8)(a).

3. Express advocacy is a term of art used to identify a discrete category of political speech. Specifically, speech that contains “magic words,” or their equivalent, that explicitly exhort the viewer to vote for or against a candidate. *See Colo. Ethics Watch v. Senate Majority Fund, LLC* 269 P.3d 1248, 1256 (Colo. 2012).

4. Here, the postcards, although tending to influence the election, did not contain the magic words or their equivalent.

5. Accordingly, the Division is not pursuing claims that would require the postcards to be “expenditures” under Colorado law, including claims relating to Okray-Parman’s failure to register an independent expenditure committee.

Respectfully submitted this 7th day of August, 2024.

PHILIP J. WEISER
Attorney General

/s/ Peter G. Baumann

PETER G. BAUMANN*
Senior Assistant Attorney General,
No. 51620
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, Colorado 80203
Telephone: 720-508-6152
Fax: 720-508-6041
peter.baumann@coag.gov
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I will cause the within filing to be served by mail and/or email this 7th day of August 2024, addressed as follows:

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

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

/s/ Peter G. Baumann