

OFFICE OF THE SECRETARY OF STATE, ELECTIONS DIVISION

STATE OF COLORADO

IN THE MATTER OF TIM JONES, AS REGISTERED AGENT OF CONCERNED CITIZENS
FOR PARK COUNTY

2022-86

NOTICE OF INITIAL REVIEW AND OPPORTUNITY TO CURE

Cynthia Lynn Sherriff (“Complainant”) filed complaint 2022-86 on October 5, 2022, under section 1-45-111.7(2), C.R.S., alleging that Tim Jones¹ as Registered Agent of Concerned Citizens For Park County, (“Respondent”), violated Colorado campaign finance laws.² Concerned Citizens For Pueblo County is a registered independent expenditure committee with the purpose “To Support And Campaign For The Democratic Candidate, Ashley Girodo, For Park County Commissioner District 3.”³ Complainant alleges that Respondent made an inaccurate or incomplete filing related to registering as an independent expenditure committee, failed to make a proper disclosure related to an expenditure, and failed to register as a political committee.⁴

The Division notified Respondent of the Complaint on October 5, 2022.

The Division has completed its initial review according to section 1-45-111.7(3), C.R.S. For the reasons stated below, the Division initially determines that Complainant identified potential violations of Colorado campaign finance laws. The Division also initially determines that one or more of the alleged violations may be curable.

Respondents will have ten (10) business days from the date of this notice to submit a Notice of Intent to Cure form to the Division and to cure any deficiencies specified in this notice or provide other relevant information on how Respondent has cured the alleged violations and substantially complied with the law.⁵

¹ The Complainant incorrectly named Respondent Tim Jones as Tom Jones in the Complaint. In addition, though the Complainant did not include the committee’s name as Respondent, the Division is considering the Respondent as Tim Jones, as Registered Agent of Concerned Citizens For Park County.

² Complaint 2022-86.

³ See [TRACER - Committee Detail \(colorado.gov\)](https://tracer.colorado.gov/CommitteeDetail).

⁴ Complaint 2022-86. The Complainant appears to be alleging that the committee filed as the incorrect type of committee based on their activities.

⁵ Section 1-45-111.7(4)(a)-(b), C.R.S.

Analysis

Any person who believes that a violation of Colorado campaign finance law has occurred may file a complaint with the Colorado Secretary of State.⁶ Upon receipt, the Division must initially review a complaint to determine: (1) whether the complaint was timely filed; (2) whether the complaint specifically identified one or more violations of Colorado campaign finance law; and (3) whether the complaint alleged sufficient facts to support a factual and legal basis for the complaint.⁷

1. The Complaints were timely filed.

The Division initially determines that the Complaints were timely filed. A complaint must be filed no later than 180 days after the date on which the complainant knew or should have known, by the exercise of reasonable diligence, of the alleged violation.⁸

Complainant alleges that they were first made aware of the potential violations for the Complaint on October 4, 2022, but does not detail how they became aware of the potential violations. Along with the Complaint form, Respondent included a post from the Nextdoor app (social media platform connecting neighbors) showing an advertisement or political sign for “Republicans Supporting Ashley Girodo”; however, the date of the post is illegible, and it is unclear if or how Respondent is affiliated with the post.⁹ The Complaint was filed October 5, 2022.

Based on the information provided by Complainant, the Division initially finds that the Complaint was timely filed per section 1-45-111.7(2)(b), C.R.S., as the Complaint was filed within 180 days of when Complainant knew, or should have known, of the alleged violations.

2. Complainant identifies one or more potential violations of Colorado campaign finance law.

The Division makes the initial determination that Complainant identifies one or more possible violations of Colorado campaign finance law.

Here, Complainant alleges that Respondent:

- (1) made an inaccurate or incomplete filing related to an independent expenditure committee (IEC) because the committee registered as an IEC before spending in excess of \$1,000 in reportable expenditures or collecting in excess of \$1,000 for the purpose of making an expenditure;
- (2) failed to make a proper disclosure related to an expenditure in the form of a large sign for candidate Ashley Girodo, a photo of which was attached to the Complaint;¹⁰ and

⁶ Section 1-45-111.7(2)(a), C.R.S.

⁷ Section 1-45-111.7(3)(a), C.R.S.

⁸ Section 1-45-111.7(2)(b), C.R.S.

⁹ Complaint 2022-86.

¹⁰ *See id.*

(3) failed to properly register a committee; Complainant seems to be alleging that Respondent registered as an IEC when he should have registered as a political committee and the error was a violation of Colorado law.

First, “independent expenditure committee” is “one or more persons that make an independent expenditure in an aggregate amount in excess of one thousand dollars or that collect in excess of one thousand dollars from one or more persons for the purpose of making an independent expenditure.”¹¹ An “independent expenditure” is an expenditure that is not controlled by or coordinated with any candidate or agent of such candidate. Expenditures that are controlled by or coordinated with a candidate or candidate’s agent are deemed to be both contributions by the maker of the expenditures, and expenditures by the candidate committee.¹²

Next, “political committee” means “any person, other than a natural person, or any group of two or more persons, including natural persons that have accepted or made contributions or expenditures in excess of \$200 to support or oppose the nomination or election of one or more candidates.”¹³

Under Colorado law, all candidate committees, political committees, issue committees, and political parties, must report contributions received and expenditures made.¹⁴

A contribution is:

- (I) The payment, loan, pledge, gift, or advance of money, or guarantee of a loan, made to any candidate committee, issue committee, political committee, small donor committee, or political party;
- (II) Any payment made to a third party for the benefit of any candidate committee, issue committee, political committee, small donor committee, or political party;
- (III) The fair market value of any gift or loan of property made to any candidate committee, issue committee, political committee, small donor committee or political party;
- (IV) Anything of value given, directly or indirectly, to a candidate for the purpose of promoting the candidate’s nomination, retention, recall, or election.¹⁵

¹¹ Section 1-45-103(1.5), C.R.S.

¹² COLO. CONST. art. XXVIII, § 2(9).

¹³ COLO. CONST. art. XXVIII, § 2(12)(a).

¹⁴ Section 1-45-108(1)(a)(I), C.R.S.

¹⁵ COLO. CONST. art. XXVIII, § 2(5)(a).

"Expenditure" means "any purchase, payment, distribution, loan, advance, deposit, or gift of money by any person for the purpose of expressly advocating the election or defeat of a candidate or supporting or opposing a ballot issue or ballot question."¹⁶

Next, Colorado law requires candidates and committees to report their contributions and expenditures. Specifically:

- (1) A candidate committee, political committee, issue committee, small donor committee, political organization, political party, or other person making an expenditure in excess of or spending more than one thousand dollars per calendar year on a communication that must be disclosed under article XXVIII of the state constitution or under this article 45 or supports or opposes a ballot issue or ballot question, and that is broadcast, printed, mailed, delivered; placed on a website, streaming media service, or online forum for a fee; or that is otherwise distributed shall include in the communication a disclaimer statement in accordance with subsection (2) of this section.
- (2) The disclaimer statement required...must conform to the requirements specified in 1-45-107.5(5) for content, size, duration, and placement.
- (3) In addition to any other applicable requirements provided by law, any person who expends one thousand dollars or more per calendar year on electioneering communications or 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. For purposes of this subsection (3), an "electioneering communication" also includes any communication that satisfies all other requirements set forth in section 2 (7) of article XXVIII of the state constitution but that is broadcast, printed, mailed, delivered, or distributed between the primary election and the general election.¹⁷

Additionally:

any communication that is broadcast, printed, mailed, delivered; placed on a website, streaming media service, or online forum for a fee; or that is otherwise distributed that constitutes an independent expenditure for which the person making the independent expenditure expends in excess of one thousand dollars on the communication shall include a disclaimer statement.¹⁸

Finally, the disclaimer requirements contained in section 1-45-107.5, C.R.S. state:

¹⁶ COLO. CONST. art. XXVIII, § 2(8)(a).

¹⁷ Section 1-45-108.3, C.R.S.

¹⁸ Section 1-45-107.5(5)(a), C.R.S.

... the communication shall include in the communication 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 if the person identified in subsection (5)(a)(I) of this section is not a natural person.¹⁹

In short, for any electioneering communication, if a candidate has spent one thousand dollars or more in the calendar year on aggregate electioneering communications, then a disclaimer statement is needed on each subsequent electioneering communication.²⁰ For any non-electioneering communication, if the candidate spent more than one thousand dollars on that particular communication, then a disclaimer statement is required.

Next:

"Electioneering communication" means any communication broadcasted by television or radio, printed in a newspaper or on a billboard, directly mailed or delivered by hand to personal residences or otherwise distributed that:

- (I) Unambiguously refers to any candidate; and
- (II) Is broadcasted, printed, mailed, delivered, or distributed within thirty days before a primary election or sixty days before a general election; and
- (III) Is broadcasted to, printed in a newspaper distributed to, mailed to, delivered by hand to, or otherwise distributed to an audience that includes members of the electorate for such public office.²¹

Here, Complainant alleges that Respondent: (1) made an inaccurate or incomplete filing related to an independent expenditure committee; (2) failed to make a proper disclosure related to an expenditure; and (3) failed to register a committee. These allegations are related the Respondent's registering as an independent expenditure committee, the lack of disclosure related to a sign, billboard, or communication indicating “Republicans Supporting Ashley Girodo For Park County Commissioner District 3”, and the alleged failure of the committee to file as a “political committee”.

As alleged, Complainant specifically identifies one or more violations of article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, or the rules concerning campaign and political finance.

¹⁹ Section 1-45-107.5(5)(a), C.R.S.

²⁰ See COLO CONST. art XXVIII, § 2(7)(a).

²¹ See *id.*

3. Complainant alleges sufficient facts to support a factual and legal basis for the Complaints.

The Division initially determines that Complainant alleges sufficient facts to support a factual and legal basis for the Complaints.

First, Complainant alleges the Respondent registered as an independent expenditure committee which requires one or more persons that make an independent expenditure in excess of one thousand dollars or that collect in excess of one thousand dollars from one or more persons making an independent expenditure.²² The Complainant stated that the committee has expenditures of \$718.51 and contributions of \$718.51. Next the Complainant indicated a sign, billboard, or communication failed to include a proper disclosure. The Complainant submitted a copy of a page from Nextdoor showing an advertisement that Complainant alleges, “does not contain the name of person mak[ing] the expenditure or a statement that the advertisement i[s] not authorized by the candidate.” Finally, Complainant indicates the committee failed to file as a “political committee” as required under the Colorado Constitution.²³

Based on the information Complainant provided, the Division determines that Complainant alleges fact that, if proven, could establish that Respondent violated Colorado campaign finance laws.

4. Respondent has the opportunity to cure the alleged violations.

The Division makes the initial determination that the alleged violations, in this case, may be curable. Under section 1-45-111.7(4), C.R.S., under certain circumstances, a respondent may cure alleged campaign finance violations. If Respondent intends to cure, Respondent has ten business days from the date of this notice to do so, by **November 1, 2022**. Respondent must file with the Division a Notice of Intent to Cure form with reports, amendments, or other relevant information on how the deficiencies or the violations have been cured and demonstrate how Respondent has substantially complied with the law.

When determining whether Respondent has substantially complied with the law, the Division must consider:

- (1) The extent of the respondent’s noncompliance;
- (2) The purpose of the provision violated and whether the purpose was substantially achieved despite the noncompliance; and
- (3) Whether the noncompliance can properly be viewed as an intentional attempt to mislead the electorate or election officials.²⁴

²² Section 1-45-103(11.5).

²³ Complaint 2022-86.

²⁴ Section 1-45-111.7(4)(f), C.R.S.

However, if Respondent disputes the allegations, Respondent may also provide the Division with such information for further review under section 1-45-111.7(5)(a), C.R.S. The Division may ask Respondent for additional information including the production of documents or other tangible items during the cure or investigation.²⁵

Please note that all documents and records related to the alleged violations in the Complaints, including email communications, financial records, and other relevant documentation must be maintained until the final agency decision has been reached or appeals have been exhausted.

Conclusion

For the reasons stated above, the Division makes the initial determination that potential violations of Colorado campaign finance laws exist, but that the alleged violations may be curable.

If Respondent disputes the allegations, the Division will conduct an additional review within thirty days, under sections 1-45-111.7(5), C.R.S., to determine whether to file a motion to dismiss the Complaints with the Deputy Secretary of State or file a complaint with a hearing officer.

Dated this 18th day of October 2022.

/s/ Timothy Gebhardt

Timothy Gebhardt

Campaign and Political Finance Enforcement

Elections Division

Colorado Secretary of State

²⁵ Section 1-45-111.7(4)(c), C.R.S.; Section 1-45-111.7(5)(a), C.R.S.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Notice of Initial Review and Opportunity to Cure was served by electronic transmission to:

Respondent –

Tim Jones, Registered Agent: Concerned Citizens For Park County
Timj110822@gmail.com

Complainant –

Cynthia Lynn Sherriff
Cyndie.sherriff@gmail.com

On this 18th day of October 2022.

/s/Timothy Gebhardt

Timothy Gebhardt
Campaign and Political Finance Enforcement
Elections Division
Colorado Secretary of State