

OFFICE OF THE SECRETARY OF STATE, ELECTIONS DIVISION

STATE OF COLORADO

IN THE MATTER OF HUGH MCKEAN

2022-07

MOTION TO DISMISS

The Elections Division of the Secretary of State’s Office (“Division”) moves the Deputy Secretary of State (“Deputy Secretary”) to dismiss the above-entitled Complaint on the basis that it finds that Complainant has failed to specifically identify one or more violations of Colorado campaign finance laws per section 1-45-111.7(3)(b)(I), C.R.S.

Procedural Background

Austin Hein (“Complainant”) filed a complaint on February 22, 2022, under section 1-45-111.7(2), C.R.S. alleging that Hugh McKean (“Respondent”) violated Colorado campaign finance law.¹ Complainant alleged that Respondent violated campaign and political finance law by submitting an inaccurate or incomplete filing. Specifically, Complainant alleged that Respondent listed his physical address on his voter registration, which is the location of an empty lot. Complainant also alleged that Respondent listed a UPS Store PO Box as his physical and mailing address on his candidate affidavit.²

The Division notified Respondent of the Complaint on February 22, 2022.³

The Division has completed its initial review according to section 1-45-111.7(3), C.R.S. The Division moves to dismiss the Complaint on the grounds that Complainant fails to specifically identify one or more violations of Colorado campaign finance law.

Factual Findings

The Division makes the following factual findings. Respondent is the current state representative for Colorado House of Representatives District 51. Respondent filed a candidate affidavit on November 23, 2021, certifying that Respondent is a candidate for the 2022 election for state representative for Colorado House of Representatives District 51, understands that campaign finance activities in Colorado are governed by Article XXVIII of the Colorado Constitution, the

¹ A separate Elections Complaint was also filed with the Elections Division pursuant to section 1-1-107(2)(b), C.R.S., regarding allegations related to Respondent’s address information on his candidate affidavit and voter registration.

² Exhibit A – Complaint.

³ Exhibit B – Notice of Complaint.

Fair Campaign Practices Act, and the Secretary of State's Rules Concerning Campaign and Political Finance, and certifying that Respondent is familiar with the Colorado Fair Campaign Practices Act.⁴ Respondent listed the same address for both the physical and mailing address on the candidate affidavit, 1151 Eagle Dr. #193, Loveland, CO, 80537.⁵

Complainant alleged that the physical address Respondent used for his voter registration is the location of an empty lot. Complainant also alleged that Respondent listed a UPS Store PO Box as his physical and mailing address on his candidate affidavit, and "[t]here is no physically possible way [Respondent] lives there."⁶

The Division determines that Complainant has failed to specifically identify one or more violations of Colorado campaign finance law, as they have not specifically identified a violation of Colorado Constitution Article XXVIII, the Fair Campaign Practices Act, or the Secretary of State's Rules Concerning Campaign and Political Finance.

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.⁷ 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.⁸ If the Division makes an initial determination that the complaint was not timely filed, has not specifically identified one or more violations of Colorado campaign finance law, or does not assert facts sufficient to support a factual or legal basis for an alleged violation, the Division shall prepare and file with the Deputy Secretary a motion to dismiss the complaint.⁹

The Division moves the Deputy Secretary of State to dismiss the above-entitled Complaint under section 1-45-111.7(3)(b)(I), C.R.S. on the grounds that Complainant has failed to identify one or more violations of Colorado campaign finance law, as they have not specifically identified a violation of Colorado Constitution Article XXVIII, the Fair Campaign Practices Act, or the Secretary of State's Rules Concerning Campaign and Political Finance.

Complainant alleged that the physical address used by Respondent for his voter registration is the address of an empty lot.¹⁰ Qualifications and registration of electors is addressed by Article 2, Title 1 of the Colorado Revised Statutes. Section 1-2-201, C.R.S., establishes the registration

⁴ Exhibit C – Candidate Affidavit. TRACER shows an amended candidate affidavit filed December 2, 2021, that reflects the same information as initially filed.

⁵ *Id.*

⁶ Exhibit A – Complaint.

⁷ Section 1-45-111.7(2)(a), C.R.S.

⁸ Section 1-45-111.7(3)(a), C.R.S.

⁹ Section 1-45-111.7(3)(b)(I), C.R.S.

¹⁰ Exhibit A – Complaint.

requirement and requires electors to answer the questions in section 1-2-204, C.R.S., which includes providing the “elector’s place of residence.” Furthermore, no vacant lot or business address shall be considered a residence and a post office box number shall not be used as a place of residence for purposes of subsection 1-2-204(2).¹¹ Additionally, challenges of illegal or fraudulent registration can be made by any registered elector under section 1-9-101, C.R.S. Complainant alleges that Respondent listed the address of an empty lot for his voter registration, which relates to voter registration requirements, and not Colorado campaign and political finance law.¹²

Complainant further alleges that Respondent listed a UPS Store PO Box as his physical and mailing address on his candidate affidavit.¹³ The candidate affidavit filing requirement is established by section 1-45-110, C.R.S., which requires “[w]hen any individual becomes a candidate, such individual shall certify, by affidavit filed with the appropriate officer within ten days, that the candidate is familiar with the provisions of this article...” Candidates are required to file candidate affidavits electronically using the Secretary of State’s online campaign finance filing system.¹⁴ The candidate affidavit provision requires candidates to certify that the candidate is familiar with Colorado campaign finance laws.¹⁵ Colorado campaign and political finance law does not require candidates to provide an address on the candidate affidavit.

Thus, the Division determines that Complainant has failed to specifically identify one or more violations of Colorado campaign finance law, as they have not identified a violation of Colorado Constitution Article XXVIII, the Fair Campaign Practices Act, or the Secretary of State’s Rules Concerning Campaign and Political Finance.

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¹¹ Section 1-2-204(2)(b), C.R.S.

¹² Section 1-4-501, C.R.S., establishes that only eligible electors are eligible to hold any office in Colorado. The designated election official shall not certify the name of any designee or candidate who fails to swear or affirm under oath that they will fully meet the qualifications of the office if elected; or who is unable to provide proof that he or she meets any requirements of the office relating to registration, residence, or property ownership; or who the designated election official determines is not qualified to hold the office that they seek based on residency requirements. Additionally, the qualification of any candidate may be challenged by an eligible elector as outlined in section 1-4-501, C.R.S.

¹³ Exhibit A – Complaint.

¹⁴ 8 CCR 1505-6, Rule 2.3.

¹⁵ Section 1-45-110(1), C.R.S.

Conclusion

For the reasons stated above, the Division moves to dismiss the Complaint on the basis that Complainant has failed to identify a violation of Colorado Constitution Article XXVIII, the Fair Campaign Practices Act, or the Secretary of State's Rules Concerning Campaign and Political Finance.

Dated this 8th day of March 2022.

/s/ Luis Lipchak
Luis Lipchak
Elections Division
1700 Broadway, Suite 550
Denver, CO 80290

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Motion to Dismiss was served by electronic transmission to:

Complainant – Austin Hein
austin@heinforcolorado.com

Respondent – Hugh McKean
hugh.mckean.state@gmail.com
mckeanhugh@gmail.com
hugh.mckean.house@state.co.us

Deputy Secretary of State – Christopher Beall
chris.beall@coloradosos.gov

on this 8th day of March 2022.

Luis Lipchak
Elections Division
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