

OFFICE OF THE SECRETARY OF STATE, ELECTIONS DIVISION
STATE OF COLORADO

IN THE MATTER OF KRISTINA COOK v. JARED POLIS

2018-12

FINAL AGENCY DECISION

Kristina Cook (Complainant) filed this complaint with the Elections Division on October 9, 2018, pursuant to Campaign and Political Finance (CPF) Rule 18.2¹, alleging that Congressman Jared Polis² (Respondent) failed to disclose financial interests on his Personal Financial Disclosure form (PFD).

The Elections Division notified the Respondent of the complaint by email on October 11, 2018. The Elections Division has conducted an initial review in accordance with CPF Rule 18.2.6.

For the reasons set forth below, the Elections Division finds that the complaint fails to allege a violation of Colorado campaign finance law. Therefore, the complaint is dismissed.

Findings

- 1. The complainant does not allege a violation of Colorado Constitution Art. XXVIII, the Fair Campaign Practices Act, or the Secretary of State's Rules concerning Campaign and Political Finance.*

The complainant fails to allege a violation of Colorado campaign finance law. The complainant alleges that Respondent failed to disclose certain financial interests on his PFD, which he filed with the Secretary of State on June 20, 2017.

Under the state's campaign finance laws, each candidate for governor must file a "statement disclosing the information required by section 24-6-202(2) with the appropriate officer, on a form approved by the secretary of state," within ten days of filing a candidate affidavit.³

¹ 8 CCR 1505-6, Rule 18.2.

² Jared Polis is the Democratic candidate for Governor in the 2018 general election.

³ Section 1-45-110(2)(a), C.R.S.

Candidates are required to update their PFDs no more than 30 days after any termination or acquisition of interests that must be disclosed.⁴

Statewide candidates must file PFDs with the Secretary of State.⁵ The Public Official Disclosure Law, which is not under the purview of the Secretary of State, outlines what disclosure information is required in the PFD.⁶ One of the many disclosures required is the “name of each business, insurance policy, or trust in which he, his spouse, or minor children residing with him has a financial interest in excess of five thousand dollars.”⁷ A candidate who fails to timely file a PFD is subject to fines⁸ and disqualification from the ballot.⁹ However, while failure to timely file a PFD *at all* is a campaign finance violation, subjecting a candidate to possible disqualification after notice and opportunity to file,¹⁰ failure to disclose required *information* on a timely-filed PFD implicates the Public Official Disclosure Law, not Colorado campaign finance law.¹¹

Respondent timely filed his PFD on June 20, 2017, within ten days of filing his candidate affidavit for governor on June 12, 2017.¹² The complainant does not allege that Respondent failed to timely file his PFD; instead, she asserts that the PFD is inaccurate and/or incomplete. Thus, rather than implicating Colorado campaign finance law, her complaint appears to allege a violation of the Public Official Disclosure law—a statute that the Elections Division is not authorized to enforce.

The complaint fails to allege a violation of Colorado Constitution Article XXVIII, the Fair Campaign Practices Act, or the Secretary of State’s rules concerning campaign and political finance, and therefore must be dismissed.

⁴ Section 1-45-110(4), C.R.S.

⁵ Section 1-45-109(1)(a)(I), C.R.S.

⁶ Section 24-6-202(2), C.R.S.

⁷ *Id.* at (d).

⁸ Colo. Const. Art. XXVIII, Sec. 10 (2)(a).

⁹ Section 1-45-110(3), C.R.S.

¹⁰ Section 1-45-110(2), C.R.S. and Colo. Const. Art. XXVIII, Sec. 10 (2)(a). The Elections Division also notes that its practice is to enforce section 1-45-110(3), C.R.S. by notifying candidates who have not filed a candidate affidavit or PFD prior to ballot certification. The Secretary of State certified statewide content for the November election on September 10, 2018, nearly a month before the complaint was filed.

¹¹ Section 24-6-202(7), C.R.S. (“Any person who willfully files a false or incomplete disclosure statement...or who willfully fails to make any filing required by this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars”).

¹² Information found on the Secretary of State’s campaign finance filing database, TRACER.

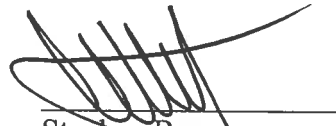
2. *The Elections Division need not determine whether the complainant has alleged sufficient facts to support a legal and factual basis for the complaint.*

Because the Elections Division has determined that the complaint does not allege a violation of Colorado campaign finance law, the Division need not determine whether sufficient facts were alleged to support the complaint.

Conclusion

For the reasons set forth above, the Elections Division finds that the complaint does not allege a violation of Colorado Constitution Article XXVIII, the Fair Campaign Practices Act, or the Secretary of State's rules concerning campaign and political finance. The complaint is dismissed.¹³

Dated this 19th day of October, 2018.



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¹³ The dismissal is a final agency action, and subject to review under section 24-4-106, C.R.S.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Final Agency Decision was served by electronic transmission to:

Jared Polis
compliance@polisforcolorado.com

Kristina Cook
c/o Scott Gessler
sgessler@klendageslerblue.com

on this 19th day of October, 2018.



Elections Division