



NATIONAL
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Jon Waclawski
Vice President, Political Advocacy
Deputy Treasurer, NAR Fund

500 New Jersey Ave.
Washington, DC 20001
Phone: (202) 383-1248
Email: jwaclawski@nar.realtor



August 14, 2023

Via Email Only

Chris J. Gallus
Commissioner of Political Practices
1209 8th Avenue
PO Box 202401
Helena, MT 59620-2401
Christopher.gallus@mt.gov
Scook3@mt.gov
ktrujillo@mt.gov

Re: National Association of REALTORS Fund Response; *Pearson v. National Association of REALTORS et al.*, COPP-2023-CFP-011

Dear Mr. Gallus,

The National Association of REALTORS Fund (NAR Fund) received your letter dated August 4, 2023 regarding the complaint filed by C.B. Pearson.¹ NAR Fund accessed said complaint on the Montana Commissioner of Political Practice’s (COPP) website.²

The Montana Commissioner of Political Practices (COPP) is tasked to promote confidence, transparency, and accountability in Montana’s democratic process. In that vein, NAR Fund urges COPP to ignore the non-factual assumptions and undocumented assertions littering Mr. Pearson’s complaint and focus solely on the law and facts. Pertaining to NAR Fund, the complaint alleges that NAR Fund conducted a poll relating to the Missoula Mayoral election in early April and as a result, NAR Fund was required to disclose the value of the poll as well as related staff time on its filed reports with the COPP. For the reasons stated herein, COPP should dismiss the complaint and find that NAR Fund is in full compliance with Montana campaign finance laws.

FACTS

NAR Fund is a political organization under Internal Revenue Code Section 527, affiliated with the National Association of REALTORS (NAR), a national trade association. NAR Fund is

¹ Notably, while Mr. Pearson represents that he filed the complaint on his own behalf, a quick social media search of Mr. Pearson’s political preferences in the Missoula Mayoral race shows he is vocal supporter of candidate, Jordan Hess. Jordan Hess is a candidate running against Mike Nugent.

² <https://politicalpractices.mt.gov/Home/Docket-of-Formal-Complaints/>

operated to facilitate independent expenditures (IEs) at the state and local levels throughout the United States on behalf of REALTOR members. NAR cannot initiate nor run state or local IEs on its own accord. Only state or local REALTOR associations may request these funds by submitting a funding request application that is then reviewed by the NAR REALTOR Party Trustees for Campaign Services Committee. This committee is composed of twenty-seven volunteer REALTOR members and association staff with authority to review applications and grant funding approval. Because state and in some cases local campaign finance laws differ greatly, NAR Fund carefully tailors its IE application process as well its expenditure process to ensure it is in full compliance with all relevant laws and regulations.

To help ensure NAR Fund's compliance, NAR employs an in-house political law attorney, and it often leverages political law guidance and counsel from legal experts in respective states and localities throughout the country. Thus, NAR Fund's process varies depending on respective campaign finance laws and regulations. The program has been in existence for over thirteen years and has an outstanding compliance track record. It should go without saying that such a program is extremely valuable to state and local REALTOR associations and REALTOR members generally as it is a foundational tool, allowing REALTORS the ability to engage in political speech, a right protected under the First Amendment of the United States Constitution.

The poll referenced in Mr. Pearson's complaint was conducted between April 3-7 and was paid for by NAR, not NAR Fund. In almost all cases where a state or local association requests an IE grant, the NAR REALTOR Party Trustees for Campaign Services Committee requires a candidate viability poll to be conducted. Therefore, even before the Missoula Organization of REALTORS (MOR) submitted an application for IE grant funding, NAR, in conjunction with its polling vendor, put the candidate viability poll in the field.³ The poll results were then analyzed by NAR and MOR in compliance with Montana campaign finance law, where relevant parties used the poll, among other criteria, to determine Mike Nugent was the best pro-REALTOR candidate in the Missoula Mayoral race.

Contrary to allegations in the complaint, the poll was run to identify whether Mike Nugent was a viable candidate in the race, not to persuade voters, support or oppose a particular candidate, or otherwise inform an established IE effort. Looking at the timing of relevant activity helps to understand this fact. The poll was conducted April 3-7. MOR submitted an IE grant application to the NAR REALTOR Party Trustees for Campaign Services Committee roughly an entire month later, in early May. The grant application was approved on May 10 and the Missoula Mayor Independent Committee was not established until almost a month after that, on June 1. IE communications began running in June.

DISCUSSION

The Commissioner of Political Practices should dismiss the complaint because there are insufficient facts to show that a campaign practice violation occurred. As is the case with

³ The complaint supplied screen shots of all questions in the poll.

campaign finance complaints generally, unwarranted legal conclusions from asserted facts or mere speculation are not to be accepted as true and should not provide the basis for further investigation.

The Complaint Fails to Establish the Poll Constituted a Contribution

A contribution under Title 13 of the Montana Code states in pertinent part 13-1-101(9)(a)(i)

“Contribution” means: the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support or oppose a candidate or ballot issue.

Two components of this definition are lacking in the matter at hand. First, the poll did not have value to the respective IE effort. Second, the poll, substantively, was not in support or opposition to a candidate.

NAR (not NAR Fund), paid for a candidate viability poll to determine the political landscape of the Missoula Mayoral race. The value of the poll therefore, was to both NAR and MOR, not in relation to any IE effort or other political/candidate support activity. Instead, the poll helped the two REALTOR organizations establish the very foundation of knowledge to help identify which candidate to focus attention to. Or to put it differently, the poll allowed both organizations to identify the candidate most supportive of the real estate issues and concerns relative to their respective organizations. Recall from the facts above, that the poll took place in April, a month in advance of MOR submitting its IE grant application to NAR. The poll, therefore, had no value to the Missoula Mayor Independent Committee, formed in early June. In light of the time differential between when the poll was run (April) and when the IE began (June), any information associated with the poll significantly if not entirely became valueless.

Polling is a time-sensitive and strategic tool used for many different political strategies. Here the poll was used to test candidate viability and not to influence an IE. Sure, NAR Fund could have run a poll that would have been useful for developing messaging and targeting key demographics relevant to this IE effort, as it does in many other IE efforts across the country. However, if NAR Fund were to do that, such a poll would have been run much closer in time to the actual IE, after the IE grant request was made and approved, and with substantially different questions that would have actually helped and given value to the underlying IE effort. And, if NAR Fund had conducted such a poll, and made it available to the Missoula Mayor Independent Committee, it would have reported the value of the poll as an in-kind contribution to the Missoula Mayor Independent Committee.

Furthermore, review of the poll questions shows that the poll was not in support of or in opposition to any identified candidate. This was not a push poll whereby poll respondents were presented with tactics or messaging aimed at influencing respondents to vote a certain way. The questions were straightforward and sought to identify respondents’ inclinations toward certain

candidates in a way that would allow an organization to identify, given the results, which candidates may have a chance for success in the given election. The purpose of polls like the one at hand is to allow organizations like NAR and MOR to choose a candidate to support, not to directly support or oppose any candidate.

NAR Fund did not trigger the Montana Code Title 13 contribution definition because there was nothing of value transferred from NAR Fund to Missoula Mayor Independent Committee and the poll/expenditure was not supporting or opposing an identified candidate.

Despite the Argument Above, if the Poll is Deemed to Meet the Contribution Definition, any Attributable Value to the Poll Is De Minimis and Therefore, Not Reportable

A de minimis act under Title 13 of the Montana Code states in pertinent part 13-1-101(11):

“De minimis act” means an action, contribution, or expenditure that is so small that it does not trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant enforcement as a campaign practices violation under Title 13, chapter 37.

Under Title 44 of the Administrative Rules of the State of Montana, de minimis is further defined in relevant part in 44.11.603(1)(a)-(e):

“A de minimis act” is defined in 13-2-101 MCA. The Commissioner may consider the following factors in determining whether specific acts, contributions, or expenditures are de minimis and therefore do not trigger registration, reporting, attribution, or disclosure requirements, or warrant enforcement as a campaign practices violation:

- (a) Whether the act, contribution, or expenditure has an ascertainable fair market value, and if so the amount of that value
- (b) In the case of an act that results in the provision of
- (c) Whether the act, contribution, or expenditure at issue is a single, one-time event or occurrence or multiple events or occurrences
- (d) The extent to which a particular campaign practices violation deprives the public of disclosure
- (e) Other factors and circumstances similarly showing limited value or minimal harm.

As noted above, political polling produces time-sensitive information that loses substantial value over short periods of time. It is well known within the political polling industry that days, weeks and months have incredible impacts on the usefulness of underlying polling data. Furthermore, applying a fair market value to polls, especially polls like the one at hand, can be very difficult and requires an assessment of not just the poll in its entirety, but an assessment of aspects of the poll that actually have value to the perceived recipient. In other words, because the poll at hand is a candidate viability poll it is unfathomable that the entirety of the poll would be valuable to Missoula Mayor Independent Committee. If COPP deems there is value, it would



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need to identify the individual questions that would be valuable to the IE and then reduce that value even more due to the lapse in time between when the poll was run and when the Independent Committee was formed and IE began (presumed use of the poll).

The timing of the poll in relation to the IE activity, coupled with the fact that only a small portion of the poll is even relatable to the IE suggest any value that could be attributable to the poll is de minimis and therefore not reportable.

CONCLUSION

NAR Fund wants nothing more than to ensure that it is in full compliance with Montana's campaign finance laws. It's actions over the course of more than a decade show a track record of campaign finance compliance throughout the country. NAR Fund is absolutely not in the business of hiding its political activity or evading the law. That said, Mr. Pearson's complaint makes allegations and assertions that are misleading and that do not establish the legal foundation for campaign finance disclosures beyond those that have already been made. However, if COPP determines NAR Fund bears a reporting obligation for the candidate viability poll NAR conducted far in advance of any IE activity, NAR Fund will amend its filing and comply with COPP's determination.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jon Waclawski'.

Jon Waclawski
NAR Vice President, Political Advocacy
Deputy Treasurer, National Association of REALTORS Fund