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September 14, 2023

Via Email Only

Chris J. Gallus
Commissioner of Political Practices
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Re: National Association of REALTORS/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 (NAR) and the National Association of REALTORS Fund (NAR Fund) received your email on August 31, 2023, notifying that complainant C.B. Pearson sent the Commissioner multiple emails with additional information seemingly in response to our letter dated August 14, 2023.¹ Commissioner Gallus accepted the additional information as an Amendment to the complaint. Commissioner Gallus requested that NAR and NAR Fund as well as the other respondents provide a supplemental written response addressing the specific issues in the Amendment as well as provide responses to six additional questions.

Mr. Pearson's repeated non-factual assumptions appear to represent an intentional strategy motivated by political bias and are fraught with embellishment. Such additions to an original, baseless complaint do not change the facts. For these reasons and the reasons stated below, we respectfully request the Montana Commissioner of Political Practices (COPP) dismiss the complaint and find that NAR and NAR Fund are in full compliance with Montana campaign finance laws.

SUPPLEMENTAL QUESTIONS AND RESPONSES

1. What was the process and timeline for NAR authorizing and implementing its April 3-7 poll regarding the Mayoral race in the City of Missoula?
- 2.

¹ After our response letter was submitted, Mr. Pearson sent three separate emails to Commissioner Gallus dated August 17, August 22, and August 29 requesting additional information be added to his complaint.



The Missoula Organization of REALTORS (MOR) sent NAR a State & Local Candidate Polling request on December 15, 2022. NAR connected with its polling vendor to discuss running a poll. Once it was confirmed the purpose of the poll would be for testing candidate viability as well as general REALTOR messaging, it was decided the poll would be held in early April.

The poll ran between April 3-7 and the polling vendor shared the poll results with NAR as well as MOR.

MOR submitted its application to NAR for a State and Local Candidate Independent Expenditure on May 1, 2023.

3. Who designed or wrote the specific poll questions or otherwise designed the response methodology used in NAR's April 3-7 poll?

NAR has a contractual arrangement with the polling firm, American Strategies. American Strategies has been providing polling services to NAR for many years and as a result has been able to implement efficiencies into its polling process since many of the REALTOR interests remain aligned no matter where polls are run.

To NAR's knowledge, American Strategies designed and wrote the specific questions and is responsible for the overall methodology of the April 3-7 poll.

4. What was the full cost of creating and circulating NAR's April 3-7 poll, including any paid time spent by NAR, MOR, or related organization staff?

As noted in the response to question 2, NAR's multi-year contractual agreement with American Strategies is substantial and encompasses polling efforts across NAR advocacy teams as well across the country. Because of the all-encompassing nature of the agreement, NAR and American Strategies structured a payment means based on polling credits and not on cost per poll. That said, NAR has worked with American Strategies to adopt a process whereby American Strategies applies industry accepted best practices and assesses the Fair Market Value for each poll it runs. The Fair Market Value of the Missoula Mayoral poll when it was run was \$22,317.22. As a candidate viability poll, it was designed to determine the political landscape of the Missoula Mayoral race and did not provide value to an Independent Expenditure Committee. It helped MOR understand which candidates had a path to victory as well as how REALTOR messaging resonated generally.

Further, as noted in our initial response, polling is a time-sensitive tool that loses value over time and eventually becomes worthless. If COPP finds the poll did have value to the Independent Expenditure Committee, it must look only to the questions that would be valuable to strategy for the Independent Expenditure Committee. The minimum amount

of questions relatable, plus the amount of time between the poll and start of the independent expenditure would render the value de minimis, and thus, not be reportable.²

5. After NAR had concluded its April 3-7 poll, to whom were all collected responses or data originally provided?

To NAR's knowledge, American Strategies provided responses to NAR on April 7, 2023. NAR sent the responses to MOR on April 11, 2023. American Strategies presented a summary of the responses to NAR and MOR on April 17, 2023.

6. How were all collected responses or data from NAR's April 3-7 poll utilized by NAR and MOR after polling had been concluded?

NAR never utilized the responses. Once NAR sent the responses to MOR, it no longer had control over the responses.

7. Was the Missoula Mayor political committee provided with all collected responses or data from NAR's April 3-7 poll? If so, by whom was it provided, and when?

NAR does not have this information. Once NAR sent the responses to MOR, it no longer had awareness of how the poll was utilized.

AMENDMENT

Amendment to Complaint 1

Mr. Pearson sent an email to Commissioner Gallus on August 17, 2023, requesting NAR be added to his complaint "based upon the response from NAR Fund."

Commissioner Gallus accepted this amendment.

Amendment to Complaint 2

Mr. Pearson sent another email to Commissioner Gallus on August 22, 2023, with five additional points. NAR and NAR Fund believe these were addressed above in the responses to Commissioner Gallus' questions.

Amendment to Complaint 3

Mr. Pearson sent a third email to Commissioner Gallus on August 29, 2023, attaching a copy of a direct mail piece alleging the mailer contained nearly exact language to language used

² De minimis contributions are contributions that are so small they do not trigger reporting requirements. Mont. Code Ann. § 13-1-101(11).

in the April 3-7 poll. As stated previously above, NAR had no control over the poll responses once they were sent to MOR.

DISCUSSION

As the answers to the questions above show, the candidate viability poll was not a contribution. It was a viability poll to assess the candidate landscape and to inform MOR which of the field of mayoral candidates would best serve the interest of REALTOR members. The poll was conducted April 3-7 and MOR submitted its Independent Expenditure grant request almost one month later. The Independent Expenditure Committee was established an entire month later, in June. If the intent of the poll was for strategic communication purposes, which would be valuable to the Independent Expenditure Committee, it would have been conducted much closer to communication dissemination and not two full months prior to the establishment of the Independent Expenditure Committee. Because there was no value attributable to the candidate viability poll, no contribution was made.

Secondly, even if COPP determines the poll constituted a contribution, its value at the time it was actually used for the independent expenditure was so low it rendered it de minimis and therefore was not reportable. “De minimis” is defined as an action, contribution, or expenditure that is so small that it does not trigger registration, reporting, disclaimer, or disclosure obligations ... or warrant enforcement as a campaign practices violation...” Mont. Code Ann. § 13-1-101(11).

If COPP finds the contribution was de minimis, COPP must dismiss the complaint as frivolous. “Complaints identified as frivolous will be swiftly dismissed so as to lessen the burden on participants (contributors, candidates, ballot committees and others) frivolously accused of campaign practice violations.” *Landsgaard v. Peterson and Wilks*, No. COPP 2014-CFP-008 at 3. In *Landsgaard*, the Commissioner set out indicia of a frivolous complaint in response to a high increase of complaints to COPP:

- Indicia No. 1. A demand for restriction on base level participation.
- Indicia No. 2. A demand for increased disclosure burden on individuals.
- Indicia No. 3. A complaint is directed to a corrected campaign practice.
- Indicia No. 4. De minimis violations are not favored.

Under the “de minimis indicia” the Commissioner stated “[t]he constitutional and policy principles, including over regulation and cost of participation, apply to this indicia of a trivial complaint.” *Landsgaard* at 13.

Here, even if the poll contained something of value, it would be so low it would be de minimis and not be reportable.

This type of complaint fodder is exactly why the COPP established “Indicia of a Frivolous Complaint” in order to reduce the effects of “applying limited public resources to less

worthy complaint issues rather than prosecution of serious campaign violations.” *Landsgaard* at 5. Mr. Pearson’s multiple follow-up emails indicate this is merely a political tactic to harass political opponents and bog down the COPP complaint process in order to create political press hits. This is the very type of complaint that COPP had in mind when deciding *Landsgaard* and the Commissioner should dismiss this complaint as frivolous.

CONCLUSION

NAR and NAR Fund respectfully affirm arguments made in our initial response in addition to those made here and request COPP dismiss the complaint. Mr. Pearson failed to establish a violation of Montana campaign finance law. The candidate viability poll is not a contribution because it did not provide anything of value to the Independent Expenditure Committee. Any value that could be applied would be so small it would be deemed de minimis; therefore, no reporting requirement was triggered and the complaint must be dismissed as frivolous. NAR and NAR Fund have the utmost respect for the law and have a stellar record and reputation of complying with reporting requirements. NAR and NAR Fund vehemently disagree with Mr. Pearson’s complaint. However, as noted in our initial response, if COPP determines the poll was in fact a contribution triggering further reporting obligations, NAR and NAR Fund will comply with COPP’s determination.

Sincerely,

Sincerely,



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