

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Eaton v. Neighbors for Responsible Legislators  No. COPP 2017-CFP-011	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION PARTIAL DISMISSAL OF COMPLAINT ON APPLICATION OF PRINCIPLE OF <i>De Minimis</i> DISMISSAL OF ALLEGED VIOLATIONS
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On November 30, 2017, Jake Eaton of Billings filed a campaign practices complaint against the Independent Committee Neighbors for Responsible Legislators and Committee Treasurer Karen Jarussi. The complaint alleges Neighbors for Responsible Legislators (NFRL), through Karen Jarussi, failed to:

1. properly report the candidate or candidates an independent expenditure made by the committee were intended to benefit, and did not provide proper quantity or description information for this expenditure;
2. improperly listed the occupation and employer information for individual contributor Gene Jarussi, accepted an contribution without providing that committee's true name or information;
3. failed to name the candidate or candidates paid Facebook posts donated in-kind to the committee by Karen Jarussi were intended to benefit and did not provide proper quantity or description information for these posts;
4. that the committee's chosen name was overly vague and did not disclose the purpose of the committee or the shared economic interest of the majority of its contributors;
5. additionally, Mr. Eaton alleged NFRL and Treasurer Karen Jarussi coordinated the above mentioned independent expenditure with the Karjala campaign, including travel to Texas to do background research on candidate Karjala's opponent, Robert Saunders,

that was intended to benefit the campaign, and; 6. the complaint alleges that NFRL did not report any expenditures associated with this travel to Texas on financial reports filed with the COPP as was required.

### **SUBSTANTIVE ISSUES ADDRESSED**

The decision addresses the proper reporting of independent expenditures, other expenditures and contributions. Committee naming and coordination are also addressed in this decision.

### **FINDINGS OF FACT**

The foundational facts necessary for this Decision is as follows:

Finding of Fact No. 1: Neighbors for Responsible Legislators (NFRL) filed a C-2 Statement of Organization as an Independent Committee on September 16, 2016. Karen Jarussi was listed as the committee Treasurer, with no other officers named. The purpose of the Committee was stated as support for Jessica Karjala. An amended version of this committee registration was filed on October 2, 2016, adding opposition to Robert Saunders to the purpose of Committee. (Commissioner's Records.)

Finding of Fact No. 2: As a registered Independent Committee, NFRL had required Periodic C-6 committee financial reports due to the COPP on October 4, 2016 (covering all financial activity from the formation of the committee through September 29, 2016), on October 27, 2016 (September 30 through October 22, 2016), and November 28, 2016 (October 23 through November 23, 2016), as well as an additional Year-End report due on or before January 31, 2017 (November 24 through December 31, 2016). (Commissioner's Records.)

Finding of Fact No. 3: Jessica Karjala filed a C-1 Statement of Candidate for the MT House of Representatives, with no seat specified, on September 11, 2015. (Commissioner's Records.)

Finding of Fact No. 4: Robert Saunders filed a C-1 Statement of Candidate for House District 48 on October 19, 2015. (Commissioner's Records.)

## **DISCUSSION**

The Complaint alleges that the NFRL committee failed to properly and fully detail committee finance reports as required and coordinated expenditures with a candidate's campaign. The Commissioner examines each of these allegations.

### Part 1: Campaign Finance Violations

The complaint alleges the NFRL failed to properly report independent expenditures.

Finding of Fact No. 5: NFRL filed an initial C-6 Committee Financial Report on October 6, 2016, that covered the dates of September 16 through October 4, 2016. The report showed \$1,000.00 in contributions received by NFRL during this time frame, as well as \$996.97 in expenditures. The financial report covering these dates was due on or before October 4, 2016. (Commissioner's Records.)

Finding of Fact No. 6: The October 6, 2016 financial report lists one expenditure for \$771.50 made to Allegra on October 3, 2016 with purpose listed as "Print door hangers and drill holes for hanging", and one expenditure for \$200.00 to Strange Sister Creative for "design door hangers". Both expenditures were reported as 'other expenditures'. (Commissioner's Records.)

Finding of Fact No. 7: NFRL's response also stated that Stranger Sister Creative charged NFRL \$250.00 for the graphic design of the 400 door hangers printed by Allegra, of which \$200.00 was paid by NFRL. The remaining \$50.00 balance was waived and was reported as an in-kind donation received from Strange Sister Creative to NFRL on its October 6, 2016 report (see FOF No. 11). (Commissioner's Records.)

Finding of Fact No. 8: The October 6, 2016 financial report lists one \$50.00 in-kind contribution from an Incidental Committee named Stranger Sister Creative on September 26, 2016, with Description "Donated design services for door hanger". No Incidental Committee filed either a Statement of Organization or financial reports using the name Strange Sister Creative during the 2016 election cycle. (Commissioner's Records.)

Finding of Fact No. 9: On October 26, 2016, NFRL's October 11 campaign financial report was amended to report one \$65.00 In-Kind contribution made to NFRL from Karen Jarussi for "Promotion of Facebook posts". No candidate(s) or committee(s) were named as benefitting from these Facebook posts, nor was quantity or content description information provided for this contribution. (Commissioner's Records.)

On its October 6, 2016 finance report, NFRL failed to properly report the quantity and detailed purpose of door hangers that had been purchased from Allegra, as required by §13-37-229(2)(a)(i) and (vii), MCA. Further, the door hanger expenditure was reported as an 'other expenditure'. The Commissioner concluded the NFRL and the candidate supported in the communication did not coordinate on the expenditure, and therefore it is required to be reported as an independent expenditure. Independent expenditures must include "the name of the candidate or committee the independent expenditure was intended to benefit, and the fact that the expenditure was independent", 44.11.502(b), ARM. Although the expenditure was reported, it did not contain the detail required when reporting an independent expenditure, including whom the independent expenditure was intended to benefit (FOF No. 6).

An amended version of NFRL's October 11, 2016 financial report filed on October 27, 2016 reported an in-kind contribution valued at \$65.00 to NFRL from Karen Jarussi for "Promotion of Facebook posts". The Commissioner concluded there were three separate posts promoted, and that NFRL did not include quantity and description information required for each under 13-37-229(1)(k), MCA, "other information required by the commissioner to fully disclose the sources of funds used to support or oppose candidates or issues". This information is required for the public can differentiate between these multiple activities that were similar in nature. (FOF No. 9).

The promoted Facebook activity may have constituted either Election or Electioneering activity (it is impossible to tell, as the posts that accompanied the articles are apparently unrecoverable and the NFRL page they were placed

on deactivated). Each post lacked a 'paid for by' attribution<sup>1</sup> as required, however this activity occurred before the ruling in *Bennet v. Vent Missoula* clarifying that all paid social media posts do in fact require the attribution, and the violation is dismissed.

The complaint alleges the NFRL failed to properly report contribution information as required.

Finding of Fact No. 10: The October 6, 2016 financial report lists one \$500.00 contribution from individual contributor Gene Jarussi. Mr. Jarussi's occupation is listed as 'Retired' and Employer as 'N/A'. (Commissioner's Records.)

Finding of Fact No. 11: The October 6, 2016 campaign finance report includes a 50.00 in-kind donation received from Strange Sister Creative for 'donated design services for door hanger'. (Commissioner's Records.)

On its October 6, 2016 committee finance report, the NFRL reported contributor Gene Jarussi's occupation and employer information as 'Retired, N/A'. While it is true Mr. Jarussi provides pro bono legal work, he is retired. Individuals are not required to report their volunteer activity under Montana's political finance reporting statutes as an occupation. (FOF No. 10). This alleged violation is hereby dismissed.

NFRL properly reported the in-kind contribution from Strange Sister Creative on its October 6, 2016 report. It is not the obligation of a candidate or committee receiving contributions from an Incidental Committee to ensure that said Incidental Committee registers and reports with this office<sup>2</sup>; rather, that is ultimately the responsibility of the Incidental Committee itself. NFRL did properly disclose receiving this contribution on a C-6 financial report, as required (FOF No. 11). The alleged violation is hereby dismissed.

Once a complaint is filed the Commissioner "shall investigate any other alleged violation ..." §13-37-111(2)(a), MCA. This investigative authority

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<sup>1</sup> The lack of an attribution was self-reported by Karen Jarussi during the COPP investigation

<sup>2</sup> Incidental committees are required to register with the COPP upon contributions or expenditures of \$250 or more

includes authority to investigate “all statements” and examine “each statement or report” filed with the COPP. §13-37-111, 123 MCA. The Commissioner is afforded discretion in exercising this authority. *Powell v. Motl*, OP-07111, Supreme Court of Montana, November 6, 2014 Order.

Finding of Fact No. 12: On October 11, 2016, NFRL filed a periodic committee financial report covering the dates of October 5 through October 27, 2016. This report included one contribution of \$100.00 from an individual named Catherine Bentler, with occupation described only as “Independent Consultant” and employer “Self-employed”. (Commissioner’s Records.)

Finding of Fact No. 13: On December 29, 2016, NFRL filed its closing committee financial report covering the dates of October 28 through December 29, 2016, disclosing no further political finance activity. NFRL did not file its periodic committee finance report due November 28, 2016. (Commissioner’s Records.)

NFRL failed to properly report the occupation and employer information for individual contributor Christine Bentler. The provided occupation information of “Independent Consultant” is vague and does not provide any insight or information on the specific type or types of consulting done, a violation of 13-37-229(1)(k), MCA. The Commissioner finds this to be an error of oversight rather than intention, and thus applies the *de minimis* principle.

The COPP began to regularly apply a *de minimis* exception to civil enforcement of a technical or minor violation of Montana’s campaign practice, when directed to do so law by the Ninth Circuit Court of Appeals in its decision in the Matter of *Canyon Ferry Rd. Baptist Church of E. Helena, Inc. v. Unsworth* 556 F. 3d 1021, 1028-29 (9th Cir. 2009). The *de minimis* actions identified by the Court in *Canyon Ferry* were the limited use of staff and copying expenditures by a party involved in a ballot issue campaign.



NFRL had required periodic financial reports due on October 4 and 27 2016, and November 28, 2016. A year-end report due on or before January 31, 2017 (Nov. 24 through either Dec. 31 or the closing of the committee, whichever came first) (FOF No. 2). NFRL late filed on two separate occasions, as the required October 4 report was not filed until October 6, 2016 and the required November 28 report was not filed until December 29, 2016 and filed as a committee closing report.

### Part 2: Campaign Organization Reporting Violations

The complaint alleges the NFRL failed to properly name its committee. The name of each registered political committee should clearly identify “the economic or other special interest, if identifiable, of a majority of its contributors”, §13-37-210, MCA. An *Interpretation and Enforcement of Naming and Labeling Statute* opinion published by the COPP in 1999 notes that the test for the determination of ‘shared economic or special interests’ is to be based on “the name of the employer’ and ‘occupation’ information provided by the contributor and listed in the political committee’s C-6 report” [http://politicalpractices.mt.gov/Portals/144/pdf/5cfp/2001opinions-naming\\_labeling\\_statute.pdf](http://politicalpractices.mt.gov/Portals/144/pdf/5cfp/2001opinions-naming_labeling_statute.pdf). NFRL reported six different contributors during the 2016 campaign, five of whom contributed \$35.00 or more. Two contributors were committees: the Montana Trial Lawyers Association, a registered Incidental Political Committee, and Strange Sister Creative, a local business. Of the three individual contributors over \$35.00, two were retired, and one was listed as an ‘Independent Consultant’. A review of the contributor information does not provide a clear or easily identifiable shared economic or special interest. Further, the original Statement of Organization filed by NFRL denotes its support for Jessica Karjala under Purpose (FOF 1). The allegation of improper naming is hereby dismissed.

### Part 3: Coordination:

As defined by §13-1-101(10), MCA, coordinated expenditures are “made in cooperation with, in consultation with, at the request of, or with the express prior consent of a candidate or political committee or an agent of a candidate or political committee”. Both NFRL and candidate Karjala stated in response to this complaint that candidate Karjala was in no way involved in the formation of NFRL as a committee or its activities.

Finding of Fact No. 14: On April 20, 2018, Deputy Commissioner of Political Practices Kirsten K. Madsen released an Order Dismissing Complaint in *Eaton v. Gene Jarussi*, No. COPP 2018-CFP-010. (Commissioner’s Records.)

Finding of Fact No. 15: On September 15, 2016, Karen Jarussi hosted a fundraiser for candidate Karjala’s campaign and provided food and beverages for the event valued at \$120.00, for which she was reimbursed by the Karjala campaign. A C-5 campaign financial report filed by candidate Karjala on Oct. 3, 2016 showed a \$120.00 payment made from the campaign to Karen Jarussi. (Commissioner’s Records.)

The allegation of coordination involving an alleged opposition research trip to San Antonio, Texas and related expenses is fully addressed in *Eaton v. Gene Jarussi*, No. COPP 2018-CFP-010 (FOF No. 14). The Commissioner incorporates and adopts the findings and decision in *Eaton v. Gene Jarussi*, and hereby dismisses the alleged violation.

The complaint further alleges candidate Karjala reported an \$120.00 payment, first reported as a debt, to Karen Jarussi, and therefore she served as paid agent of the campaign under 44.11.602(2)(c)(i) and (ii), ARM:

When determining whether a communication or reportable election activity is coordinated the following may be considered, whether:

(a) it is based on information that is provided by the candidate or agent of the candidate directly or indirectly to the person funding or facilitating the communication or activity, or any person involved in creating, producing, or disseminating it.

(b) it was made by or through any candidate's agent in the course of the agent's involvement in the current campaign.



(c) the person funding or facilitating the communication or reportable election activity retains the paid services of a person or individual who:

(i) currently, or during the six months immediately preceding the election in which the candidate's name will appear on the ballot, received compensation from the candidate or the candidate's agent; and

(ii) the person or individual is involved in creating, producing, or disseminating the communication or reportable election activity.

The complainant alleged that because Karen Jarussi was listed as the sole officer of NFRL, her receiving payment from the Karjala campaign made NFRL a paid agent of the campaign by extension. Both Karen Jarussi and candidate Karjala independently stated that the \$120 payment was to cover the cost of food and beverages provided by Karen Jarussi for a September 15, 2016 fundraiser, and in no way created, produced, or disseminated a communication or involved further reportable election activity. This \$120.00 payment did not involve NFRL as a committee. The purpose of this payment was to reimburse Karen Jarussi, an individual, for goods provided for a fundraiser for the Karjala campaign, and the reimbursement was reported as such by candidate Karjala. (FOF No. 15). The alleged violation is hereby dismissed.

## **FINDINGS**

The Commissioner examined the proper reporting of independent expenditures as required by NFRL on its committee finance reports.

Sufficiency Finding No. 1: There are sufficient facts to show that the NFRL committee finance reports failed to properly report an independent expenditure. (FOF Nos. 5, 6)

The Commissioner finds NFRL reported an expenditure to Allegra as an 'other expenditure' rather than an 'independent expenditure' and did not provide the level of detail, including reporting the candidate benefitting from the independent expenditure, as required by ARM 44.11.502.

The Commissioner examined the sufficiency of in-kind contribution detail provided by NFRL committee finance reports.

Sufficiency Finding No. 2: There are sufficient facts to show that the NFRL committee finance reports failed to provide sufficient detail describing an in-kind contribution. (FOF No. 9)

NFRL reported an in-kind contribution from Karen Jarussi of \$65 for the paid advertising of facebook posts, however it was reported as an in-kind contribution as personal funds were used, rather than an independent expenditure using committee funds. The Commissioner finds the level of detail, including purpose, quantity, subject matter and in this case, whom it was intended to benefit, should have been included in the description at the time of the expenditure. The committee could have entered the information in the in-kind description field or as an addendum provided to the COPP.

The Commissioner examined the timeliness of the NFRL committee finance reports.

Sufficiency Finding No. 3: There are sufficient facts to show that NFRL failed to file committee finance reports on or before the dates required on 2 occasions. (FOF Nos. 5, 13)

The Commissioner finds NFRL failed to timely report on two occasions as required by §13-37-228, MCA.

### **DECISION**

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner “shall investigate” any alleged violation of campaign practices law. § 13-37-111(2)(a), MCA. The mandate to investigate is followed by a mandate to take action. The

law requires that where there is “sufficient evidence” of a violation the Commissioner must (“shall notify,” *see* §13-37-124, MCA) initiate consideration for prosecution.

Second, having been charged to make a decision, the Commissioner must follow substantive law applicable to a particular campaign practice decision. This Commissioner, having been charged to investigate and decide, hereby determines that there is sufficient evidence to show that NFRL committee violated Montana’s campaign practice laws, including, but not limited to the laws set out in the Decision. Having determined that sufficient evidence of a campaign practice violation exists, the next step is to determine whether there are circumstances or explanations that may affect prosecution of the violation and/or the amount of the fine.

The failure to fully and timely report and disclose cannot generally be excused by oversight or ignorance. Excusable neglect cannot be applied to oversight or ignorance of the law as it relates to failures to file and report. *See Matters of Vincent*, Nos. COPP-2013-CFP-006, 009 (discussing excusable neglect principles). Likewise, the Commissioner does not normally accept that failures to file or report be excused as *de minimis*. *See Matters of Vincent*, Nos. COPP-2013-CFP-006, 009 (discussing *de minimis* principles).

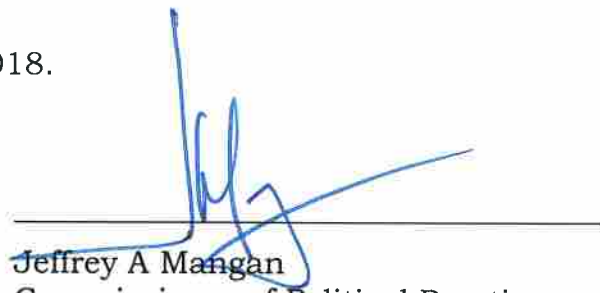
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. § 13-37-124, MCA. The Commissioner hereby issues a “sufficient evidence” Finding and Decision

justifying a civil fine or civil prosecution of the NFRL committee. Because of the nature of the violations (the failure to report and disclose occurred in Lewis and Clark County), this matter is referred to the County Attorney of Lewis and Clark County for his consideration as to prosecution. § 13-37-124(1), MCA. Should the County Attorney waive the right to prosecute (§ 13-37-124(2), MCA) or fail to prosecute within 30 days (§ 13-37-124(1) MCA) this Matter returns to this Commissioner for possible prosecution.

Most of the Matters decided by a Commissioner and referred to the County Attorney are waived back to the Commissioner for his further consideration. Assuming that the Matter is waived back, this Finding and Decision does not necessarily lead to civil prosecution as the Commissioner has discretion (“may then initiate” see § 13-37-124(1), MCA) in regard to a legal action. Instead, most of the Matters decided by a Commissioner are resolved by payment of a negotiated fine. In setting that fine the Commissioner will consider matters affecting mitigation, including the cooperation in correcting the reports at issue when the matter was raised in the Complaint.

While it is expected that a fine amount can be negotiated and paid, in the event that a fine is not negotiated and the Matter resolved, the Commissioner retains statutory authority to bring a complaint in district court against any person who intentionally or negligently violates any requirement of campaign practice law, including those cited above. See § 13-37-128, MCA. Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

DATED this 21<sup>st</sup> day of April 2018.



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