

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Stop I-186 to Protect Miners v. Yes for Responsible Mining  No. COPP 2018-CFP-048	DECLARATION OF MERIT OF COMPLAINT  MEMORIALIZATION OF NOTIFICATION OF MERIT TO COMMITTEE  RESOLUTION OF COMPLAINT BY PROMPT REMEDIAL ACTION BY COMMITTEE  DISMISSAL OF COMPLAINT
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On October 16, 2018, David Galt of Stop I-186 to Protect Miners and Jobs filed a campaign practices complaint against YES for Responsible Mining (YFRM). The complaint alleged that the YFRM sent out text messages that did not contain an attribution as required, and that the text messages contained misleading or inaccurate statements.

Findings of Fact

Finding of Fact No. 1: Stop I-186 to Protect Miners and Jobs filed a C-2 Statement of Organization as a ballot issue committee with the COPP on May 14, 2018. (Commissioner's Records.)

Finding of Fact No. 2: YES for Responsible Mining (YFRM) filed a C-2 Statement of Organization as a ballot issue committee with

the COPP on March 21, 2018. (Commissioner's Records.)

### Discussion

Under Montana law “all election communications...must clearly and conspicuously include the attribution ‘paid for by’ followed by the name and address of the person who made or financed the expenditure for the communication.” Mont. Code Ann. §13-35-225(1). If unable to meet the attribution requirement of due to size constraints of the communication, Montana law provides:

Mont. Code Ann. § 13-35-225(4)

(4) If a document or other article of advertising is too small for the requirements of subsections (1) through (3) to be conveniently included, the candidate responsible for the material or the person financing the communication shall file a copy of the article with the commissioner of political practices, together with the required information or statement, at the time of its public distribution

The complaint included an attached a copy of a text and reply text. The YFRM's election communication via text messaging failed to include an attribution, and YFRM had not provided the COPP a copy of the election communication with an attribution prior to its dissemination.

Montana law requires an accelerated review (“as soon as practicable”) of a campaign practice complaint alleging an attribution violation. Accordingly, YFRM was contacted by the Commissioner's office upon receipt of the complaint and on October 19, 2018 provided a Notice of Non-Compliant

Election Communication Correction. YFRM responded with a response via email the afternoon of October 19, 2018. The response included the copy of the text, a reply text, the number of messages sent, and an attribution that was to accompany the message (see Attachment 1). YFRM was also required to submit a media release with a statement correcting the error.

The law governing complaints of failure to properly attribute a paid election communication provides precise directions to the Commissioner:

1. The Commissioner is to immediately assess the merits of the Complaint. Mont. Code Ann. §13-35-225(7)(a). The Commissioner found merit to the Complaint and hereby memorializes that finding.

2. The Commissioner shall notify the committee of the merit finding, requiring YFRM to bring the messaging into compliance. Mont. Code Ann. §13-35-225(7)(a). The Commissioner, by delivering the Notice by email to YFRM, did this and hereby memorializes the Notice.

3. YFRM was provided two business days to bring the messaging into attribution compliance. Mont. Code Ann. §13-35-225(7)(b). YFRM provided the required attribution for the communication October 19, 2018.

By this Decision the Commissioner declares his satisfaction that the committee has acted promptly and properly to correct the attribution deficiency. Under Montana law the committee with the attribution deficiency is relieved of a

campaign practice violation, provided the committee promptly carries out the attribution correction.

The use of texts are prominent in the 2018 election cycle, and while explored in prior elections, this is the first time the Commissioner has examined the issue in a decision. The committee did not reach out to the Commissioner's office to ask for advice on how to properly attribute the text prior to sending the messages. We encourage candidates and committees who intend to engage in emerging technologies to send their message to voters to contact the Commissioner's office in advance of sending the paid communications.

The purpose of the attribution statute is to inform voters as to who is financing the communication that they are receiving during the election and trying to influence their vote at the ballot box. Here, the attribution statute itself contains the solution to the issue at hand. If an item is "too small" to contain the attribution language, the candidate or committee should file a copy of the communication or item and the attribution required to the Commissioner's office, Mont. Code Ann. §13-35-225(4) and Mont. Admin. R. 44.11.601(6). In turn, the Commissioner's office is adapting to the evolving communication methods used by candidates and committees by creating a place on our webpage <http://politicalpractices.mt.gov/> for the public to have access to the current "too small" disclosures which will also be maintained in the appropriate candidate and committee files<sup>1</sup>.

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<sup>1</sup> The COPP is currently working with the Montana State Information Technology Services

In this matter, YRMS identified themselves by name as supporting a ballot initiative in the initial text received by 56,797 voters. The link to the committee's website was only provided to the 2,683 voters who responded to the initial text, and received the second text message. The Commissioner, upon receipt of the complaint, notified YRMS of the attribution omission who took action the same day to correct the error. Yes for Responsible Mining has met the duties of the attribution statute and correct, and is therefore relieved of a campaign practice violation, Mont. Code Ann. 13-35-225(7)(b).

Similarly situated committees who have used text messaging in the 2018 election cycle should also submit a Notice of Non-Compliant Election Communication Correction with the Commissioners office by January 1, 2019. YES for Responsible Mining has met these duties and is therefore relieved of a campaign practice violation under Mont. Code Ann. §13-35-225(7)(b).

The Complaint also alleges that YES for Responsible Mining made a false statement in the communication to voters. Montana Campaign Finance and Practices laws do not regulate the how a committee chooses to make their arguments in support of or opposition to a ballot issue. In order to protect the First Amendment rights of speakers, the Courts have found the remedy to incorrect speech in an election to be corrective speech. The Commissioner's office does not have jurisdiction to determine who is making the correct argument regarding the issue on the ballot. Rather, each voter makes that determination at the ballot box this fall. Therefore the Commissioner dismisses

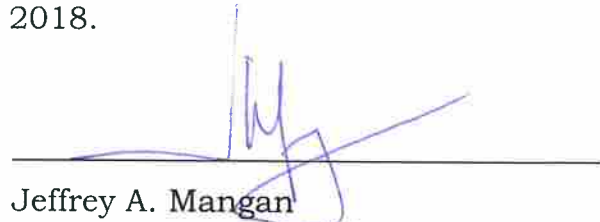
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Division (ITSD) to update the COPP site.

the false statement allegations. The Complaint is hereby dismissed.

Normally the Commissioner first provides Decisions to the parties and public on the following day. The Legislature, however, has set very tight timelines on this sort of attribution Complaint. Accordingly, the Commissioner provides this Decision to the parties and public on the day it is made.

DATED this 22nd day of October, 2018.



Jeffrey A. Mangan  
Commissioner of Political Practices  
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October 19, 2018

Yes for Responsible Mining  
Kirk D. Evenson, Treasurer  
P.O. Box 1524  
Great Falls, MT 59403

Re: Stop I-186 to Protect Miners and Jobs vs. YES for Responsible Mining,  
COPP-2018-CFP-048

Dear Mr. Evenson;

The COPP is in receipt of your October 18, 2018, initial response to the above referenced cause in this matter. The Commissioner has determined that the text messages are "electronic communications" within the express meaning of "election communication, Mont. Code Ann. § 13-1-101(14)(a)(ii) and 46-5-601(2)(a)(i). All election communications in Montana elections are required to have an attribution, Mont. Code Ann. §§ 13-35-225(1)(b). Therefore the above referenced complaint in this matter has merit, *id.* (7)(a).

This communication is the **official notice** which the commissioner shall issue according to statute. The Yes for Responsible Mining ballot issue committee shall take action **within 2 business days** of the receipt of this notice to bring the material into compliance with the requirements of Montana law.

In this matter, the Commissioner determines that the appropriate actions to bring the text messages into compliance are the following:

- (1) Submit a Notice of Non-Compliant Election Communication Correction to the Commissioner of Political Practices, [CPPCompliance@mt.gov](mailto:CPPCompliance@mt.gov). The notice shall include correct attribution for the text messages sent, the number of initial and reply text messages sent, and the dates the text messages were made, Mont. Code Ann. § 13-35-225(4); and
- (2) Inform the Commissioner within the following two business days that either the Committee will issue a press release regarding the steps taken to notify the public of the correction; or that the Committee will defer to the Commissioner to issue a press release of the correction.



The Commissioner is drafting a final sufficiency finding, and anticipates it being released within the next 10 business days. In the meantime, although the law is outside of the Commissioner's jurisdiction, we encourage you to review the Federal Communications Commission's information regarding robotexts <https://www.fcc.gov/political-campaign-robocalls> .

Jeffrey A. Mangan  
Commissioner of Political Practices