BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Republican Attorneys General Association v. Graybill No. COPP 2020-CFP-058B	DISMISSAL

On February 25, 2021, the Republican Attorneys General Association (RAGA) filed a campaign practices complaint against Raph Graybill, a candidate for the office of Montana Attorney General. The complaint alleges that candidate Graybill coordinated certain campaign activities with the Democratic Attorneys General Association (DAGA) but failed to properly disclose these coordinated activities as contributions received. The complaint also states that these coordinated activities exceeded Montana's contribution limits.

SUBSTANTIVE ISSUES ADDRESSED

Coordination between a candidate for office and political committee.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: The specific materials or communications RAGA alleges that candidate Graybill coordinated with DAGA include a June 3, 2020 Facebook post where DAGA endorses candidate Graybill; a June 3, 2020 statement issued by DAGA claiming that Montana "[was] a major pickup opportunity for DAGA"; a June 22, 2020 memorandum issued by DAGA

mentioning Austin Knudsen, the Republican candidate for Attorney General participating in Montana's general election; an August 5, 2020 digital advertisement supporting candidate Graybill and opposing candidate Knudsen; and a September 29, 2020 advertisement originally issued by DAGA People's Lawyer Project Montana. (Commissioner's Records.)

Finding of Fact No. 1A: Raph Graybill filed a C-1 Statement of Candidate as a Democratic candidate for the office of Attorney General in the State of Montana with the COPP on July 3, 2019. An individual named Jane Weber was listed as candidate Graybill's campaign Treasurer, and an individual named Justin Ailport was listed as the Deputy Treasurer. (Commissioner's Records.)

Finding of Fact No. 1B: Austin Knudsen filed a C-1 Statement of Candidate as a Republican candidate for the office of Attorney General in the State of Montana with the COPP on May 21, 2019. (Commissioner's Records.)

Finding of Fact No. 2: On July 8, 2019, candidate Graybill filed his initial C-5 campaign finance report, dated April 1, 2019 through June 30, 2019. This report did not disclose candidate Graybill as receiving any contributions, either monetary or in-kind, from DAGA or DAGA People's Lawyer Project Montana. This report was most recently amended on February 22, 2021. (Commissioner's Records.)

Finding of Fact No. 2A: On October 5, 2019, candidate Graybill filed a periodic C-5 campaign finance report, dated July 1, 2019 through September 30, 2019. This report did not disclose candidate Graybill as receiving any contributions, either monetary or in-kind, from DAGA or DAGA People's Lawyer Project Montana. This report was most recently amended on February 22, 2021. (Commissioner's Records.)

Finding of Fact No. 2B: On January 6, 2020, candidate Graybill filed a periodic C-5 campaign finance report, dated October 1, 2019 through December 31, 2019. This report did not disclose candidate Graybill as receiving any contributions, either monetary or in-kind, from DAGA or DAGA People's Lawyer Project Montana. This report was most recently amended on February 22, 2021. (Commissioner's Records.)

Finding of Fact No. 2C: On March 20, 2020, candidate Graybill filed a periodic C-5 campaign finance report, dated January 1, 2020 through March 15, 2020. This report did not disclose candidate

Graybill as receiving any contributions, either monetary or in-kind, from DAGA or DAGA People's Lawyer Project Montana. This report was most recently amended on February 22, 2021. (Commissioner's Records.)

Finding of Fact No. 2D: On April 20, 2020, candidate Graybill filed a periodic C-5 campaign finance report, dated March 16, 2020 through April 15, 2020. This report did not disclose candidate Graybill as receiving any contributions, either monetary or in-kind, from DAGA or DAGA People's Lawyer Project Montana. This report was most recently amended on February 22, 2021. (Commissioner's Records.)

Finding of Fact No. 2E: On May 20, 2020, candidate Graybill filed a periodic C-5 campaign finance report, dated April 16, 2020 through May 14, 2020. This report did not disclose candidate Graybill as receiving any contributions, either monetary or in-kind, from DAGA or DAGA People's Lawyer Project Montana. This report was most recently amended on February 22, 2021. (Commissioner's Records.)

Finding of Fact No. 2F: On June 22, 2020, candidate Graybill filed a periodic C-5 campaign finance report, dated May 15, 2020 through June 15, 2020. This report did not disclose candidate Graybill as receiving any contributions, either monetary or in-kind, from DAGA or DAGA People's Lawyer Project Montana. This report was most recently amended on February 22, 2021. (Commissioner's Records.)

Finding of Fact No. 2G: On August 20, 2020, candidate Graybill filed a periodic C-5 campaign finance report, dated June 16, 2020 through August 15, 2020. This report did not disclose candidate Graybill as receiving any contributions, either monetary or in-kind, from DAGA or DAGA People's Lawyer Project Montana. This report was most recently amended on February 22, 2021. (Commissioner's Records.)

Finding of Fact No. 2H: On September 21, 2020, candidate Graybill filed a periodic C-5 campaign finance report, dated August 16, 2020 through September 15, 2020. This report did not disclose candidate Graybill as receiving any contributions, either monetary or in-kind, from DAGA or DAGA People's Lawyer Project Montana. This report was most recently amended on February 22, 2021. (Commissioner's Records.)

Finding of Fact No. 2I: On October 20, 2020, candidate Graybill filed a periodic C-5 campaign finance report, dated September 16, 2020 through October 14, 2020. This report did not disclose candidate Graybill as receiving any contributions, either monetary or in-kind, from DAGA or DAGA People's Lawyer Project Montana. This report was most recently amended on February 22, 2021. (Commissioner's Records.)

Finding of Fact No. 2J: On November 20, 2020, candidate Graybill filed a periodic C-5 campaign finance report, dated October 15, 2020 through November 15, 2020. This report did not disclose candidate Graybill as receiving any contributions, either monetary or in-kind, from DAGA or DAGA People's Lawyer Project Montana. (Commissioner's Records.)

Finding of Fact No. 2K: On February 8, 2021, candidate Graybill filed a Closing C-5 campaign finance report. This report did not disclose candidate Graybill as receiving any contributions, either monetary or in-kind, from DAGA or DAGA People's Lawyer Project Montana. This report was most recently amended on February 22, 2021. (Commissioner's Records.)

Finding of Fact No. 3: The Democratic Attorneys General Association (DAGA) is a national Democratic political organization solely dedicated to electing and supporting Democratic state Attorneys General".[1] DAGA lists its mailing address as PO Box 3445, Washington, DC 20005. DAGA did not register as a political committee or file campaign finance reports with the COPP. (Commissioner's Records.)

Finding of Fact No. 3A: On June 3, 2020, DAGA posted a picture of candidate Graybill to its Facebook account with the text "Raph Graybill. DAGA Endorsed. MT Approved". This post appeared on DAGA's regular Facebook page feed. A May 6, 2021 review of DAGA's Facebook Ads Library determined that DAGA did not run any paid advertisements supporting candidate Graybill or opposing candidate Knudsen in 2020. (Commissioner's Records.)

Finding of Fact No. 3B: On June 3, 2020, DAGA posted a statement to its website offering "congratulations to Raph Graybill for winning the Democratic nomination for Attorney General in Montana...Montana is a major pickup opportunity for DAGA this cycle". (Commissioner's Records.)

[1] https://dems.ag/about/

Finding of Fact No. 3C: On June 22, 2020, DAGA posted a "Memo" to its website stating "Austin Knudsen Does Not Care About Montanans". While the post does not directly oppose candidate Knudsen at any point, it repeatedly mentions him and/or refers to his candidacy directly. (Commissioner's Records.)

Finding of Fact No. 3D: On August 5, 2020, DAGA debuted a video on YouTube titled "Austin Knudsen's Attack on MT Public Lands". The ad ends by stating "Don't let Austin Knudsen destroy Montana's public lands. Vote Graybill for Attorney General" and "Join Us" with the DAGA website URL and organizational logo visible.

Also on August 5, 2020, DAGA posted a statement on its website stating that "today, the Democratic Attorneys General Association (DAGA) released a new video slamming Republican nominee for AG Austin Knudsen's anti-access record on public lands". (Commissioner's Records.)

Finding of Fact No. 3E: On September 29, 2020, DAGA posted a statement on its website stating that "Today, DAGA People's Lawyers Project Montana, an independent organization backed by the Democratic Attorneys General Association, released a new 30-second TV ad titled "Can't Trust"". As of May 6, 2021, COPP review of the DAGA website determined the links provided to this ad were no longer active, so COPP was unable to watch the ad. The post did include a self-titled script for this ad; while the script does not include language directly opposing candidate Knudsen, it repeatedly mentions him and/or refers to his candidacy directly. (Commissioner's Records.)

Finding of Fact No. 4: On March 12, 2020, an organization named DAGA People's Lawyer Project Montana filed a C-2 Statement of Organization as an Independent political committee with the COPP. An individual by the name of Aaron Pickrell of Washington, DC was listed as the committee's Treasurer, and the committee's mailing address was listed as PO Box 3445, Washington, DC 20005. The committee described its Purpose as "Make independent expenditures in support of Democratic candidates for AG, and in opposition to Republican candidates for AG". COPP review of committee finance reports filed by DAGA People's Lawyer Project determined the committee reported making forty-nine (49) independent expenditures intended to benefit candidate Graybill.

Also on March 12, 2020, Deputy Treasurer Megan Mielnik emailed the COPP a copy of "DAGA People's Lawyer Project Montana's

firewall policy". This firewall policy was established by the committee "to ensure that any election communication, electioneering communication, or election activity sponsored by the Organization [DAGA People's Lawyer Project Montana] is not made in cooperation with, in consultation with, under the control of, or at the direction of, in concert with, at the request or suggestion of, or with the express prior consent of a candidate, the candidate's agent or the candidate's principal campaign committee" (see Attachment A). (Commissioner's Records.)

Finding of Fact No. 5: On March 30, 2021, candidate Graybill emailed the COPP his response to this complaint. The response states that "The Campaign [candidate Graybill] did not coordinate in any way with the DAGA People's Lawyer Project ("PLP"), an independent organization...The campaign is unaware of any paid advertising disseminated in Montana by the Democratic Attorneys General Association ("DAGA") directed to the 2020 race for Attorney General". (Commissioner's Records.)

Finding of Fact No. 6: On March 19, 2021, DAGA (through counsel Perkins Coie, LLP) emailed the COPP with its response to this complaint. The response stated that "DAGA did not pay to place any of the communications in question...DAGA paid no costs specifically for this post and therefore made no expenditures".

The response also states that DAGA People's Lawyers Project Montana ("PLP Montana" operated as a separate entity from DAGA at large and independently made expenditures concerning Montana's November 3, 2020 general election. "PLP Montana and DAGA are separate legal entities" the response notes. "PLP does not coordinate with any candidate, candidate's agent or candidate's principal campaign committee". (Commissioner's Records.)

DISCUSSION

Coordination

The complaint alleges that candidate Graybill coordinated various advertisements intended to benefit his campaign with the Democratic Attorneys General Association (DAGA) in violation of Montana campaign finance law.

Mont. Code Ann. §13-1-101(10) defines the term coordinated:

> "Coordinated", including any variations of the term, means 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

Further, 44.11.602, ARM. Subsection (1) states that:

> A "coordinated expenditure" means any election communication, electioneering communication, or reportable election activity that is made by a person in cooperation with, in consultation with, under the control of, or at the direction of, in concert with, at the request or suggestion of, or with the express prior consent of a candidate or an agent of the candidate. The coordination of an expenditure need not require agreement, cooperation, consultation, request, or consent on every term necessary for the particular coordinated expenditure, but only requires proof of one element, such as content, price, or timing, to be met as a fact of a coordinated expenditure.

It is important to note that coordination itself is ***NOT*** a violation of Montana campaign finance law. In the event an election communication or other reportable election activity is coordinated between a candidate for election and a political committee, each entity would be required to disclose the activity on the relevant finance report filed with the COPP. All coordinated activity "shall be treated and reported as an in-kind contribution from and expenditure by the person funding, facilitating, or engaging in" the activity, 44.11.602(5), ARM. Coordinated activities would be subject to Montana's contribution limits but are not by themselves a violation of any Montana campaign finance rule or law.

Raph Graybill ran as the Democratic candidate for election to the office of Attorney General in Montana's 2020 General election (FOF No. 1A). DAGA is a national political organization dedicated to the election of Democratic attorneys general across the United States (FOF No. 3). Candidate Graybill did not report

receiving any contributions, either monetary or in-kind, from DAGA (FOF Nos. 2-2K). DAGA itself did not file finance reports with the COPP disclosing any contributions, either monetary or in-kind, made to candidate Graybill (FOF No. 3).

The specific materials this complaint references as evidence of coordination between candidate Graybill and DAGA were posts made to various internet websites by DAGA (FOF No. 1). DAGA was not responsible for creating or distributing all of the materials noted by this complaint- an entity named DAGA People's Lawyer Project MT financed one (1) advertisement intended to benefit candidate Graybill (see RAGA v. DAGA COPP-2020-CFP-58A). DAGA People's Lawyer Project MT registered as a Montana independent political committee with the COPP and filed campaign finance reports disclosing the committee's expenditures; the specific expenditure noted by this complaint as evidence of coordination between candidate Graybill and DAGA appears to have been reported as an independent expenditure by DAGA People's Lawyer Project MT, insinuating that it was not coordinated with any candidate, including candidate Graybill, §13-1-101(25), Mont. Code Ann. (see RAGA v. DAGA COPP-2020-CFP-58A).

Candidate Graybill, in his response to this complaint, denied all accusations of coordination between his campaign and DAGA, stating that his campaign "is unaware of any paid advertising disseminated in Montana by the Democratic Attorneys Association (DAGA) directed to the 2020 race for Attorney General" (FOF No. 5). Candidate Graybill also denied any coordination

had occurred between his campaign and DAGA People's Lawyer Project MT (FOF No. 5). DAGA also denied all claims of coordination addressed to itself, arguing specifically that "DAGA did not pay to place any of the communications in question" (FOF No. 6). Prior to the filing of this complaint, DAGA People's Lawyer Project MT had emailed the COPP a copy of a Firewall Policy established "to ensure that any election communication, electioneering communication, or election activity sponsored by the Organization [DAGA People's Lawyer Project Montana] is not made in cooperation with, in consultation with, under the control of, or at the direction of, in concert with, at the request or suggestion of, or with the express prior consent of a candidate, the candidate's agent or the candidate's principal campaign committee" (FOF No. 4). Based on their relevant registration statements and other available information, candidate Graybill's campaign did not share any officers with DAGA or DAGA People's Lawyer Project MT (FOF Nos. 1A, 4).

In this matter, the COPP found no evidence to support the claim that the specific materials noted by the complainant were coordinated between candidate Graybill and DAGA. The COPP found no evidence to suggest that any election communications or other reportable election activities were carried out by DAGA in "cooperation with, in consultation with, at the request of, or with the express prior consent of" candidate Graybill or his campaign, §13-1-101(10), Mont. Code Ann. Both candidate Graybill and DAGA directly denied this accusation.

In determining if coordination has occurred, the COPP can also consider if a candidate or individuals associated with that candidate's campaign have "made or participated in any discussion or in making any decision regarding the content, timing, location, media, intended audience, volume of distribution, or frequency of placement" of materials finance by an outside entity, 44.11.602(2)(e), ARM. COPP has no evidence to suggest that candidate Graybill or individuals associated with his campaign engaged in discussions of any sort with DAGA regarding the specific materials noted in this complaint. Candidate Graybill specifically denied knowledge of any paid materials intended to benefit his campaign financed by DAGA.

The COPP found no evidence to suggest that DAGA coordinated reportable campaign activities with candidate Graybill. The allegation that candidate Graybill coordinated reportable campaign activities with DAGA in violation of Montana campaign finance law is hereby dismissed.

Further, the evidence in this case would not support any claim of coordination between DAGA People's Lawyer Project MT and candidate Graybill's campaign. All expenditures intended to specifically benefit candidate Graybill's campaign made by DAGA People's Lawyer Project MT were reported as independent expenditures by the committee, indicating that candidate Graybill was not involved. The committee also provided the COPP with a copy of a Firewall Agreement laying out how such instances of coordination between the committee and any candidate's campaign would be avoided. The evidence in this matter does not support any argument that DAGA People's Lawyer

Project MT coordinated reportable Montana expenditures with candidate Graybill.

Reporting Contributions Received and Contribution Limits

The complainant in this matter also alleges that candidate Graybill failed to properly report the specific materials noted by this complaint as in-kind contributions received by his campaign, and that the value of these contributions exceeded the amount candidate Graybill was allowed to accept under Montana's campaign contribution limits.

§13-1-101(9), Mont. Code Ann. defines a contribution as:

> (a) "Contribution" means:
>
> (i) 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 a ballot issue;
>
> (ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;
>
> (iii) the receipt by a political committee of funds transferred from another political committee; or
>
> (iv) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.
>
> (b) The term does not mean services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual.
>
> (c) This definition does not apply to Title 13, chapter 37, part 6.

Any reportable election activities coordinated between candidate Graybill and DAGA or DAGA People's Lawyer Project MT, would require candidate Graybill to disclose each as an in-kind contribution received from that committee on finance reports filed with the COPP, Mont. Code Ann. §13-1-101(9)(a)(ii), and their value would assessed to the relevant campaign contribution limits. However, as noted earlier, COPP has no evidence that either DAGA or DAGA People's Lawyer Project MT coordinated reportable election activities with candidate Graybill.

All available evidence and statements made by the respondents to this matter indicate that any reportable election activities financed and distributed by DAGA and/or DAGA People's Lawyer Project MT constitute independent expenditures under Mont. Code Ann. §13-1-101(25). An independent expenditure made by an entity other than a candidate or candidate's campaign would not qualify as a contribution received by that candidate because the candidate did not receive an "advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value", nor was the expenditure coordinated, Mont. Code Ann. §13-1-101(9). Further, relevant campaign finance rules clearly state that "the candidate or political committee benefitting from" an independent expenditure "does not have to report the expenditure", 44.11.502(8)(c), ARM.

The allegation that candidate Graybill failed to report in-kind contributions received from DAGA or DAGA People's Lawyer Project MT is hereby dismissed.

The allegation that candidate Graybill violated Montana's campaign contribution limits through the acceptance of these materials as in-kind contributions is hereby dismissed.

DECISION

The Complaint is hereby dismissed.

DATED this 30th day of July 2021.

Jeffrey A. Mangan
Commissioner of Political Practices
Of the State of Montana
P.O. Box 202401
1209 8th Avenue
Helena, MT 59620
Phone: (406)-444-3919