

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Rankin v. Republican Attorneys General Association and associated RAGA Action Fund No. COPP 2020-CFP-057A	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On February 1, 2021, Sean Rankin of Washington, D.C. filed a campaign practices complaint against the Republican Attorneys General Association (RAGA). The complaint alleges that RAGA failed to properly report paid Facebook advertisements supporting or opposing Montana candidates as expenditures with the COPP. The complainant also questioned if these paid Facebook advertisements were coordinated with the campaign of Montana Attorney General candidate Austin Knudsen.

SUBSTANTIVE ISSUES ADDRESSED

Coordination between a political committee and a candidate's campaign;
proper and timely filing of campaign finance reports.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 0: Montana's General election was held on November 3, 2020. The electioneering period for the General election went into effect on August 6, 2020. (Commissioner's Records.)

Finding of Fact No. 1: The Republican Attorneys General Association (RAGA) is a national Republican political organization that “elects and re-elects Republican attorneys general nationally”.¹ RAGA did not register as a political committee or file finance reports with the COPP in the State of Montana. (Commissioner’s Records.)

An organization named RAGA Action Fund registered as a Federal political committee with the Federal Election Commission² and filed copies of its federal Statement of Organization and certain finance reports with the COPP. (Commissioner’s Records.)

Finding of Fact No. 2: According to its ads library, the RAGA Facebook page launched fifty-nine (59) paid advertisements on Facebook that directly reference Montana Attorney General candidates Austin Knudsen and/or Raph Graybill in September 2020 and twenty-eight (28) in October 2020.³ The first ads were launched on September 3, 2020 and the last ads were launched on October 29, 2020. Each individual ad contains a disclaimer indicating it was paid for by RAGA Action Fund. (Commissioner’s Records.)

Finding of Fact No. 2A: Austin Knudsen filed a C-1 Statement of Candidate as a Republican candidate for the office of Attorney General with the COPP on May 21, 2019. (Commissioner’s Records.)

Finding of Fact No. 2B: Raph Graybill filed a C-1 Statement of Candidate as a Democratic candidate for the office of Attorney General with the COPP on July 3, 2019. (Commissioner’s Records.)

Finding of Fact No. 3: On August 31, 2020, RAGA Action Fund Treasurer Russell Lee emailed the COPP a copy of its federal Statement of Organization. (Commissioner’s Records.)

Finding of Fact No. 4: On October 23, 2020, RAGA Action Fund filed a C-7E Notice of Pre-Election Expenditures with the COPP. This C-7E detailed three (3) Montana expenditures made by the committee each dated October 22, 2020, none of which are specifically identified or labeled as paid Facebook advertisement/s (see Table 1). (Commissioner’s Records.)

¹ <https://republicanags.com/about/>

² <https://www.fec.gov/data/committee/C00560904/?tab=about-committee>

³

https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=172298889630363

Finding of Fact No. 5: On October 26, 2020, RAGA Action Fund filed a C-7E Notice of Pre-Election Expenditures with the COPP. This C-7E detailed one (1) Montana expenditure made by the committee dated October 26, 2020, which was not specifically identified or labeled as paid Facebook advertisement/s (see Table 2). (Commissioner's Records.)

Finding of Fact No. 6: On October 26, 2020, RAGA Action Fund forwarded to the COPP a copy of its FEC finance report for the period of July 1, 2020 through September 30, 2020. RAGA Action Fund self-identified ten (10) Montana expenditures made by the committee during this period, none of which specifically identified or described paid Facebook advertisements (see Table 3). This report did not disclose any contributions, either monetary or In-kind, made by the committee to candidate Knudsen's campaign. (Commissioner's Records.)

Finding of Fact No. 7: On October 26, 2020, RAGA Action Fund forwarded to the COPP a copy of its FEC finance report for the period of October 1, 2020 through October 14, 2020. RAGA Action Fund self-identified seven (7) Montana expenditures made by the committee during this period, none of which specifically identified or described paid Facebook advertisements (see Table 4). This report did not disclose any contributions, either monetary or In-kind, made by the committee to candidate Knudsen's campaign. (Commissioner's Records.)

Finding of Fact No. 8: A March 31, 2021 review by COPP determined that on December 3, 2020, RAGA Action Fund filed a Post-General 2020 finance report with the FEC, dated October 15, 2020 through November 23, 2020.⁴ This report disclosed three (3) Montana expenditures made by the committee (see Table 5).⁵ COPP was at no time provided with a copy of this report by RAGA Action Fund. This report did not disclose any contributions, either monetary or In-kind, made by the committee to candidate Knudsen's campaign. (Commissioner's Records.)

Finding of Fact No. 9: On C-5 campaign finance reports filed with the COPP, candidate Knudsen did not disclose receiving any contributions, either monetary or in-kind, from RAGA or RAGA Action Fund. (Commissioner's Records.)

Finding of Fact No. 10: On February 19, 2021, RAGA and RAGA Action Fund, through counsel Dickinson Wright PLLC, provided

⁴ <https://www.fec.gov/data/committee/C00560904/?tab=filings>

⁵ <https://docquery.fec.gov/cgi-bin/forms/C00560904/1478770/sb/29>

the COPP with its response to this complaint. The response stated that RAGA itself made no reportable expenditures in the State of Montana's 2020 elections- all spending, it stated, was done by RAGA Action Fund, "RAGA's affiliated Super PAC". The response argued that RAGA Action Fund "registered and reported with the COPP accordingly" and that "it is clear that both RAGA Action Fund and RAGA have been fully compliant and transparent with their operations in the State" of Montana.

The response also denied that any of RAGA Action Fund's "expenditures in Montana were done "in cooperation with, in consultation with, under the control of, or at the direction of, in concert with, or at the request of suggestion of, or with the express consent"" of the Knudsen campaign. (Commissioner's Records.)

Finding of Fact No. 11: On March 3, 2021, candidate Knudsen, through Jake Eaton, provided the COPP with his response to this complaint. The response denied the suggestion that RAGA had coordinated any Montana expenditures with candidate Knudsen, noting that all expenditures cited in the complaint "are ads produced and paid for by the Republican Attorneys General Association, not AFM [candidate Knudsen's campaign]. AFM had nothing to do with the production or distribution of the ads in question". The response goes on to state that "Simply put AFM did not coordinate with RAGA" on the paid Facebook ads "or any other expenditure". (Commissioner's Records.)

DISCUSSION

Coordination

The first allegation raised by the complainant in this matter is a suggestion that RAGA coordinated certain campaign expenditure activities with Montana candidate Austin Knudsen. See the discussion in *Rankin v Knudsen*, COPP-2020-CFP-057B, for discussion about the coordination component of the complaint. The allegation RAGA engaged in coordination with candidate Knudsen is hereby dismissed.

Reporting Facebook Expenditures

The complaint further alleges the RAGA failed to report Montana expenditures with the COPP. Specifically, the complaint references paid Facebook ads run on RAGA's official Facebook page intended to benefit candidate Knudsen at the expense of his Democratic opponent Raph Graybill.

The term expenditure is defined under Mont. Code Ann. §13-1-101(18) as:

(18) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

(i) made by a candidate or political committee to support or oppose a candidate or a ballot issue; or

(ii) used or intended for use in making independent expenditures or in producing electioneering communications.

(b) The term does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (9);

(ii) payments by a candidate for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(c) This definition does not apply to Title 13, chapter 37, part 6.

COPP's review of RAGA's Facebook ads library determined the organization launched fifty-nine (59) paid Facebook ads mentioning Montana Attorney General candidates Austin Knudsen and/or Raph Graybill in

September of 2020, and an additional twenty-eight (28) in October of 2020 (FOF Nos. 2, 2A, 2B). According to the RAGA Facebook ads library, the earliest ad was launched on September 3, 2020 and the last was launched on October 29, 2020. Each paid ad included an attribution message indicating it had been paid for by a group named RAGA Action Fund.

In its response to this complaint, RAGA (through counsel) states that the organization made no reportable expenditures in Montana's 2020 primary or general elections. The response goes on to state that all Montana expenditures were made by RAGA Action Fund, "RAGA's affiliated Super PAC" (FOF No. 10). COPP has no evidence to dispute the claim that RAGA Action Fund, not RAGA itself, financed the eighty-seven (87) paid Facebook ads directly referencing Montana candidates Knudsen and/or Graybill, as indicated in the attribution message.

Each paid Facebook advertisement noted in this complaint was financed by RAGA Action Fund, not RAGA itself. The RAGA Action Fund would be the entity required to disclose these ads with the COPP. The allegation that RAGA failed to properly disclose paid Facebook advertisements on campaign finance reports filed with the COPP is hereby dismissed.

RAGA Action Fund did provide the COPP with a copy of its federal Statement of Organization on August 31, 2020 (FOF No. 3).

Other Issues- RAGA Action Fund

Reporting Paid Facebook advertisements

RAGA Action Fund financed eighty-seven (87) paid Facebook ads directly referencing Montana candidates Austin Knudsen and/or Raph Graybill between September 3, 2020 and October 29, 2020 (FOF No. 2). All would meet the definition of an electioneering communication in the State of Montana under Mont. Code Ann. §13-1-101(16). Each was “publicly distributed by...internet website” (Facebook), each was “made within 60 days of the initiation of voting” in Montana’s November 3, 2020 general election, the ads do not “support or oppose” any individual Montana candidates, and each could “be received by more than 100 recipients in the district voting on the candidate” (in the case of the office of Attorney General, the entire State of Montana would be the relevant district); while not directly supporting or opposing candidates Knudsen or Graybill, each ad specifically “depicts the name, image, or likeness” of one or both candidates. And, most importantly, RAGA Action Fund paid to place each ad on Facebook. As electioneering communications, each of these eighty-seven (87) paid Facebook ads would qualify as expenditures under §13-1-101(18)(a)(ii), Mont. Code Ann.

When reporting expenditures in the State of Montana, Mont. Code Ann. §13-37-229(2) requires that:

(a) Except as provided in subsection (2)(c), the reports required under 13-37-225 through 13-37-227 from candidates, ballot issue committees, political party committees, and independent committees must disclose the following information concerning expenditures made:

(i) the full name, mailing address, occupation, and principal place of business, if any, of each person to whom expenditures have been made by the committee or candidate during the reporting period,

including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person;

(ii) the full name, mailing address, occupation, and principal place of business, if any, of each person to whom an expenditure for personal services, salaries, and reimbursed expenses has been made, including the amount, date, and purpose of that expenditure and the total amount of expenditures made to each person;

(iii) the total sum of expenditures made by a political committee or candidate during the reporting period;

(iv) the name and address of each political committee or candidate to which the reporting committee or candidate made any transfer of funds, together with the amount and dates of all transfers;

(v) the name of any person to whom a loan was made during the reporting period, including the full name, mailing address, occupation, and principal place of business, if any, of that person and the full names, mailing addresses, occupations, and principal places of business, if any, of the endorsers, if any, and the date and amount of each loan;

(vi) the amount and nature of debts and obligations owed by a political committee or candidate in the form prescribed by the commissioner; and

(vii) other information that may be required by the commissioner to fully disclose the disposition of funds used to support or oppose candidates or issues.

(b) Reports of expenditures made to a consultant, advertising agency, polling firm, or other person that performs services for or on behalf of a candidate or political committee must be itemized and described in sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was made.

(c) A candidate is required to report the information specified in this subsection (2) only if the transactions involved were undertaken for the purpose of supporting or opposing a candidate.

Montana Administrative Rule 44.11.305 allows nonresident and federally filing political committees who become involved in Montana's elections through contribution or expenditure activity to file their home state or federal finance

reports with the COPP instead of reporting on Montana's forms in some instances. As a political committee registered with the Federal Election Commission (FEC) involved in various federal and state elections across the country, RAGA Action Fund would qualify as a federally filing committee under this rule. Federally filing committees who choose to meet their Montana reporting obligations by forwarding copies of federal finance reports may do so as long as those reports "fully disclose the source and disposition of all contributors and expenditures used in elections in Montana", 44.11.305(2)(a). The rule also makes it clear that these reports "shall contain the information required by 13-37-229 through 13-37-232, MCA", 44.11.305(1)(c). If a federally committee is unable to disclose its Montana expenditures with all required information through its federal finance reports, that committee is required to disclose its Montana activity to the COPP on Montana's reporting forms, 44.11.305(1)(c), ARM.

On October 23, 2020, RAGA Action Fund filed a hard copy (paper) C-7E Notice of Pre-Election expenditures directly with the COPP disclosing three (3) Montana expenditures made by the committee on October 22, 2020 (FOF No. 4). None of these three (3) expenditures specifically disclosed or mentioned paid Facebook ads that directly reference Montana candidates Knudsen and/or Graybill purchased by RAGA Action Fund (FOF No. 4, Table 1).

On October 26, 2020, RAGA Action Fund filed a second hard copy (paper) C-7E Notice of Pre-Election expenditures directly with the COPP disclosing one Montana expenditure made by the committee on October 26, 2020 (FOF No. 5).

This expenditure does not specifically disclose or mention paid Facebook ads that directly reference Montana candidates Knudsen and/or Graybill purchased by RAGA Action Fund (FOF No. 5, Table 2).

Also on October 26, 2020, RAGA Action Fund forwarded the COPP copies of two (2) FEC finance reports filed federally by the committee. The first report was dated July 1, 2020 through September 30, 2020 and disclosed ten (10) Montana expenditures made by RAGA Action Fund, none of which were specifically identified or labeled as paid Facebook advertisements that directly reference Montana candidates Knudsen and/or Graybill (FOF No. 6, Table 3). The second report was dated October 1, 2020 through October 14, 2020 and disclosed seven (7) Montana expenditures, none of which were specifically identified or labeled as paid Facebook advertisements that directly reference Montana candidates Knudsen and/or Graybill (FOF No. 7, Table 4).

In this case, COPP's investigation determined that RAGA Action Fund financed no fewer than eighty-seven (87) paid Facebook advertisements that directly reference Montana Attorney General candidates Austin Knudsen and/or Raph Graybill. Despite this, not a single expenditure disclosed by RAGA Action Fund to the COPP through either its federal finance reports or on Montana's C-7E form described or otherwise identified paid Facebook advertisements. RAGA Action fund failed to itemize and describe its Montana expenditures so that they disclose the "specific services performed", paid Facebook ads. RAGA Action Fund failed to properly and appropriately disclose

no fewer than eighty-seven (87) Montana expenditures to Facebook as required under Mont. Code Ann. §13-37-229(2)(b).

Expenditure Detail

As noted by Commissioner Mangan in the matter of Oestreicher v AB PAC, COPP-2020-CFP-027, federally filing political committees who intend to fulfill their Montana reporting obligations by forwarding the COPP copies of federal finance reports must meet still meet all Montana disclosure requirements. Simply put, when a federally filing political committee finances a reportable expenditure in the State of Montana, that committee is required to disclose the expenditure with the same level of information a Montana candidate or committee is required to provide. A committee's status as a federally filing entity does not exempt that committee from Montana's disclosure requirements when reporting Montana expenditures.

As noted by RAGA Action Fund in copies of the two (2) federal finance reports forwarded by the committee to the COPP, the committee claims to have made seventeen (17) expenditures connected to Montana elections (FOF Nos. 6, 7 and Tables 3, 4). COPP review determined RAGA Action Fund made no fewer than an additional three (3) Montana expenditures, bringing its total to twenty (20) (FOF No. 8, Table 5).⁶ Of these twenty (20) expenditures, four (4) were disclosed to the COPP on both federal finance reports and a C-7E Notice of Pre-

⁶ Because RAGA Action Fund has failed to itemize expenditures made to Facebook for paid ads on that platform referencing Montana candidates, COPP cannot determine the true number of Montana expenditures made by the committee. While its self-reported number of twenty (20) will this be used for these purposes, that number is likely much higher (for example, eighty-seven (87) individual paid Facebook ads directly referencing Montana candidates were financed by the committee).

Election Expenditures (Table 5). Between its FEC finance reports forwarded to the COPP and C-7E reports filed directly with the COPP, no single Montana expenditure reported by RAGA Action Fund contains the level of disclosure information required.

Looking solely at the committee's FEC finance reports, the repeated use of overbroad, generic phrases to describe RAGA Action Fund's Montana expenditures fails to meet the requirements of Mont. Code Ann. §13-37-229(2)(b). The committee's reliance on broad, generic phrases such as "Nonfederal TV Advertising- Montana" (two occasions), "Nonfederal Mail-Montana" (six occasions) and "Nonfederal Digital Advertising- Montana" (five occasions) fail to itemize and disclose the *specific* service provided for any single expenditure. Crucially, the name of the individual candidate/s or ballot issue/s these expenditures are meant to support or oppose are not named or identified in any way.

For those four (4) expenditures disclosed on both federal finance reports and form C-7E, RAGA Action Fund still fails to provide required information as laid out under Mont. Code Ann. §13-37-229(2)(b), (Tables 1, 2). Again, none identify the specific candidate/s or ballot issue/s the material is meant to support or oppose.

Filing Reports with COPP

44.11.305(1)(a), ARM, makes it clear that federally filing committees must "fully disclose the source and disposition of all contributions and

expenditures used in elections in Montana”. In this matter, RAGA Action Fund has failed to meet this requirement.

RAGA Action Fund forwarded the COPP copies of two FEC finance reports in election year 2020, covering the periods of July 1, 2020 through September 30, 2020 and October 1, 2020 through October 14, 2020 (FOF Nos. 6, 7 and Tables 3, 4). RAGA Action Fund also filed hard copy (paper) C-7E Notice of Pre-Election Expenditures reports directly with the COPP on October 23 (covering expenditures dated October 22, 2020) and October 26, 2020 (covering expenditures dated October 26, 2020) (FOF Nos. 4, 5 and Tables 1, 2). RAGA Action Fund did not disclose any additional expenditure activity to the COPP.

As part of this investigation, COPP was able to determine that RAGA Action Fund filed a federal finance report dated October 15, 2020 through November 23, 2020 with the FEC that disclosed no fewer than three (3) additional Montana expenditures (FOF No. 8, Table 5). As each was described as “Nonfederal” and specifically identified Montana on this finance report, RAGA Action Fund cannot reasonably argue these expenditures were not reportable to the COPP. Despite this, the COPP was never provided with a copy of this federal finance report by RAGA Action Fund.

COPP review of this report determined that RAGA Action Fund had previously disclosed one (1) of the Montana expenditures included on this federal finance report via a C-7E filed directly with the COPP on October 26, 2020, however, the other two (2) Montana expenditures were never directly

disclosed to the COPP by the committee (Table 5). RAGA Action Fund failed to report no fewer than two (2) Montana expenditures to the COPP as required under Mont. Code Ann. §13-37-229(2) and to “fully disclose the source and disposition of all contributions and expenditures used in elections in Montana” as required under 44.11.305(1)(a), ARM.

Sufficiency Finding No. 1: The RAGA Action Fund failed to properly report Montana expenditures.

The Commissioner finds there are sufficient facts the RAGA Action Fund failed to properly disclose specific services provided when reporting its Montana election expenditures as required by Montana campaign finance and practices law.

Under Mont. Code Ann. §13-37-226(2)(b), a political committee making reportable expenditures in Montana’s 2020 election “shall” file financial reports on the “30th day of March, April, May, June, August, September, October, and November”. According to FEC finance reports provided by the committee to the COPP, RAGA Action Fund made its first reportable Montana expenditure on August 18, 2020- \$242,390.28 for "Non-Federal Mail - Montana" (Table 3). Because its first reportable Montana expenditure occurred after July 30, 2020, RAGA Action Fund’s initial campaign finance report was due in the State of Montana on or before August 30, 2020.

Nonresident and federally filing committees whose reports “fully disclose the source and disposition of all contributions and expenditures used in elections in Montana” may file copies of “such reports in lieu of the periodic reports prescribed by the Campaign Finances and Practices Act”,

44.11.305(1)(a), ARM. As previously discussed, however, RAGA Action Fund did not “fully disclose the source and disposition of all contributions and expenditures used in elections in Montana” on federal finance reports forwarded to the COPP. This means the committee was required to follow Montana’s periodic financial reporting requirements prescribed under Mont. Code Ann.§13-37-226(2)(b).

In this matter, RAGA Action Fund provided the COPP with copies of committee finance reports on October 26, 2020 (covering the period of July 1, 2020 through September 30, 2020), and a second on October 26 (covering the period of October 1, 2020 through October 14, 2020). (FOF Nos. 6, 7).

By not providing the COPP with its committee financial report by the statutory due date, RAGA Action Fund failed to timely file required August 30 and September 30 finance reports and failed to file the required November 30, 2020 monthly finance report. RAGA Action Fund did timely file a October 26, 2020 required monthly financial report, however the report did not cover the entire reporting period- while that report disclosed activity through October 14, 2020, Mont. Code Ann. §13-37-228(2) requires that periodic reports must cover “the period of time from the closing of the previous report to 5 days before the filing of a report” (emphasis added). RAGA Action Fund’s October 30, 2020 report did not cover to the five days before the report was due as required under Montana law.

Sufficiency Finding No. 2: The RAGA Action Fund Pac failed to properly and timely file required committee finance reports with the COPP.

There are sufficient facts to determine the RAGA Action Fund failed to file three (1) required monthly financial reports, failed to timely file two (2) required monthly financial reports, and failed to fully disclose activity during the reporting period in one (1) required monthly financial report as required by Montana campaign finance law.

COPP review of the RAGA Action Fund's FEC finance reports additionally determined that the committee failed to provide its Statement of Organization to the COPP in a timely manner. The RAGA Action Fund first became a political committee in Montana as defined under Mont. Code Ann. §13-1-101(31), on August 18, 2020. That is the date the committee first exceeded \$250.00 in Montana expenditures, reporting a \$242,390.28 expenditure for "Non-Federal Mail -Montana" on that date (see Table 3). Mont. Code Ann., §13-37-201(1)(b), requires a Montana political committee file a Statement of Organization with the COPP "within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first". While federally filing committees such as the RAGA Action Fund may file their federal Statement of Organization to meet this requirement under 44.11.305(1)(a), ARM, Commissioner Mangan's Decision in Oestreicher v AB PAC, COPP-2020-CFP-027, clarified that the five-day filing requirement specified under §13-37-201 does apply to federally filing committees participating in Montana's elections.

As it first became a political committee under Montana campaign finance law on August 18, 2020, the RAGA Action Fund was required to provide the

COPP with a copy of its federal Statement of Organization no later than August 25, 2020. The RAGA Action Fund did not provide the COPP with a copy of its federal Statement of Organization until August 31, 2020, outside the required five day period (FOF No. 3).

Sufficiency Finding No. 3: The RAGA Action Fund failed to file its Statement of Organization with the COPP within 5 days of becoming a Montana political committee.

There are sufficient facts to determine RAGA Action Fund failed to timely files its Statement of Organization with the COPP as required by Montana campaign finance and practice law.

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. Mont. Code Ann. § 13-37-111(2)(a). The mandate to investigate is followed by a mandate to take action; where there is “sufficient evidence” of a violation the Commissioner must (“shall notify,” *see id.*, at § 13-37-124) 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 RAGA Action Fund 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*. *Id.* (discussing *de minimis* principles).

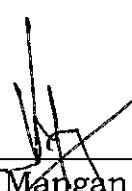
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of RAGA Action Fund. Because of the nature of the violation, this matter is referred to the County Attorney of Lewis and Clark County for his consideration as to prosecution. *Id.*, at (1). Should the County Attorney waive the right to prosecute (*id.*, at (2)) or fail to prosecute within 30 days (*id.*, at (1)) 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 id.*) 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 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 of Mont. Code Ann. §§ 13-37-201(2)(b), 13-37-228(2), 13-37-229. *See id.*, at § 13-37-128. Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

DATED this 12th day of July 2021.



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Table 1: Montana expenditures as reported by RAGA Action Fund on its October 23, 2020 C-7E Notice of Pre-Election Expenditures.

Entity	Date	Purpose	Amount
Smart Media Group LLC	10/22/2020	TV Advertising	\$510,509.80
Smart Media Group LLC	10/22/2020	Radio Advertising	\$117,725.90
Smart Media Group LLC	10/22/2020	Digital Advertising	\$27,544.45
			\$655,780.15

Table 2: Montana expenditures as reported by RAGA Action Fund on its October 26, 2020 C-7E Notice of Pre-Election Expenditures.

Entity	Date	Purpose	Amount
FP1 Strategies, LLC	10/26/2020	TV Production and Shipping	\$25,890.00
			\$25,890.00

Table 3: Itemized Disbursements (expenditures) as reported by RAGA Action Fund disclosing Montana activities on its July 1, 2020 through September 30, 2020 FEC finance report.

Full Name	Date of Disbursement	Purpose of Disbursement	Amount of Disbursement
Creative Direct LLC	09/18/2020	Nonfederal Mail - Montana	\$99,888.00
Creative Direct LLC	09/22/2020	Nonfederal Mail - Montana	\$99,888.00
Creative Direct LLC	09/29/2020	Nonfederal Mail - Montana	\$88,047.00
IMGE, LLC	08/24/2020	Nonfederal Digital Advertising - Montana	\$148,462.50
IMGE, LLC	09/11/2020	Nonfederal Digital Advertising - Montana	\$5,000.00
IMGE, LLC	09/16/2020	Nonfederal Digital Advertising - Montana	\$206,521.33
Smart Media Group, LLC	09/01/2020	Nonfederal Digital Advertising - Montana	\$18,921.44
Smart Media Group, LLC	09/17/2020	Nonfederal TV Advertising - Montana	\$307,295.43
Smart Media Group, LLC	09/28/2020	Nonfederal TV Advertising - Montana	\$326,378.86
Victory Enterprises, Inc.	08/18/2020	Nonfederal Mail - Montana	\$242,390.28
			\$1,542,792.84

Table 4: Itemized Disbursements (expenditures) as reported by RAGA Action Fund disclosing Montana activities on its October 1, 2020 through October 14, 2020 FEC finance report.

Full Name	Date of Disbursement	Purpose of Disbursement	Amount of Disbursement
Creative Direct LLC	10/05/2020	Nonfederal Mail - Montana	\$88,494.00
Creative Direct LLC	10/07/2020	Nonfederal Mail - Montana	\$100,890.00
FP1 Strategies, LLC	10/06/2020	Nonfederal shipping and production - Montana	\$57,945.00
IMGE, LLC	10/07/2020	Nonfederal production - Montana	\$4,000.00
IMGE, LLC	10/13/2020	Nonfederal Digital - Montana	\$120,000.00
Smart Media Group, LLC	10/05/2020	Nonfederal TV and Radio - Montana	\$376,730.11
Smart Media Group, LLC	10/08/2020	Nonfederal TV and Radio - Montana	\$490,496.28
			\$1,238,555.39

Table 5: Itemized Disbursements (expenditures) as reported by RAGA Action Fund disclosing Montana activities on its October 15, 2020 through November 23, 2020 FEC finance report. RAGA Action Fund did not provide COPP with a copy of this report.

Full Name	Date of Disbursement	Purpose of Disbursement	Amount of Disbursement
FP1 Strategies, LLC	10/26/2020	Nonfederal shipping and production - Mon	\$25,890.00*
Smart Media Group, LLC	10/15/2020	Nonfederal TV and Radio - Montana	\$560,008.68^
Smart Media Group, LLC	10/22/2020	Nonfederal TV and Radio - Montana	\$655,790.15^
			\$1,241,688.83

*Expenditure previously disclosed in Montana via a C-7E Notice of Pre-Election Expenditures filed with the COPP by RAGA Action Fund on October 26, 2020 (see Table 2).

^Expenditure never directly disclosed by RAGA Action Fund to COPP.

Highlighted rows represent expenditures made to a “consultant, advertising agency, polling firm, or other person that performs services for or on behalf of” by RAGA Action Fund that are not “itemized or described in sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was made”, §13-37-229(2)(b), Mont. Code Ann.