

COMMISSIONER OF  
POLITICAL PRACTICES



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STATE OF MONTANA

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JEFF MANGAN  
COMMISSIONER  
TELEPHONE (406) 444-2942  
FAX (406) 444-1643  
[www.politicalpractices.mt.gov](http://www.politicalpractices.mt.gov)

1209 EIGHTH AVENUE  
P.O. BOX 202401  
HELENA, MT 59620-2401

May 20, 2020

Charles R. Spies  
Dickinson-Wright

Via email [CSpies@dickinson-wright.com](mailto:CSpies@dickinson-wright.com)

RE: *Oestreicher v. American Prosperity Group*, COPP-2020-CFP-007

Upon review of your earlier detailed correspondence regarding APG and subsequent Declaration (attached), I hereby reclassify APG as an incidental committee and ask that you file as such. Should you require assistance, please feel free to contact the office.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "JM", with a stylized flourish extending to the left.

Jeff Mangan  
Montana Commissioner of Political Practices



1825 EYE STREET, N.W. SUITE 900  
WASHINGTON, DC 20006-5403  
TELEPHONE: (202) 457-0160  
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<http://www.dickinsonwright.com>

CHARLES R. SPIES  
[CSPIES@DICKINSONWRIGHT.COM](mailto:CSPIES@DICKINSONWRIGHT.COM)  
(202) 466-5964

May 19, 2020

Jeffrey A. Mangan  
Commissioner of Political Practices  
P.O. Box 202401  
1209 8<sup>th</sup> Avenue  
Helena, MT 59620

**Via Legal Investigator Scott Cook:** [SCook3@mt.gov](mailto:SCook3@mt.gov)

Re: APG Request to Confirm Incidental Committee Status

Dear Commissioner Mangan,

Our client American Prosperity Group (hereinafter “APG”) is receipt of your May 15, 2020 correspondence in *Ostreicher v. American Prosperity Group*, No. COPP 2020-CFP-007 and intends to comply with the requirements of your decision in a timely manner and work with you to resolve this matter. A point of clarification, however, is that you reference APG as an independent political committee under Montana law, and your Decision requires APG to register and file periodic reports accordingly. That committee characterization was understandable based upon the facts before you at the time (assuming you had not been following APG’s advocacy in other states), but in reality APG is a national organization that since its founding has spent the majority of its resources outside of Montana and intends to continue its policy advocacy in multiple states outside of Montana. Consequently, we respectfully request that you confirm that APG is correctly considered an incidental committee under Montana law. Upon confirmation of that classification, APG will immediately file those required Montana disclosure forms.

An incidental committee is a political committee that does not have the primary purpose of supporting or opposing candidates or ballot issues. M.C.A. § 13-1-101(23)(a). The term “primary purpose” refers to the major principal, important goal, or the reason for existence for a committee. A.R.M. § 44.11.203. The Commissioner is responsible for determining an organization’s primary purpose, which is done on a case-by-case basis. M.C.A. § 13-1-101(23)(b). Factors in determining an organization’s primary purpose include (1) allocation and source of budget; (2) allocation of staff or member’s activity, both during an election and otherwise; (3) the statement of purpose, articles of incorporation, bylaws, or goals; (4) reportable election activity; (5) the history of the committee and the numbers of elections in which it has participated or registered; (6) receipt of contributions in response to an appeal or that are designated for a specified candidate, ballot issue, petition, or reportable election activity; (7) the number or cost of reportable election expenditures made; (8) coordination with any candidates or other political committees; (9) ordinary business actually conducted; (10) if a corporation, whether it was created and maintained as provided by law; or (11) the date of founding, incorporation, or organization.

APG is a national policy organization incorporated in March of 2019 and based in Washington DC, *see* Attachment 1, that paid for one set of advertisements over a short period of time in Montana, and meets the four-corners of factors for classification as an incidental committee.

First, APG is registered as a 501(c)(4) organization under the Internal Revenue Code and is organized and operated with the purpose of promoting social welfare, not engaging in political activity. APG is committed to promoting fiscal conservatism, judicial restraint, the rule of law, and individual liberty throughout the United States. *See* Attachment 2. To further its efforts, APG accepts contributions and grants from individuals, corporations, unions, or trade associations solely for that national conservative policy purpose. *See* Attachment 2 (disclaimer at bottom explains that only contributions for the general purpose of the organization are accepted). The national conservative policy focus reflected in APG's organizational documents and donor form is also consistent with the written donor assurances made by APG's President in Attachment 3.

Second, APG has raised over \$175,000 in 2020 and already spent over \$100,000 of those funds on policy advocacy efforts outside of the state of Montana.<sup>1</sup> In addition, APG currently has donor commitments of over \$100,000 in additional funds, with plans to spend such funds on advocacy activities outside the state of Montana. In contrast to this national scope of the organization, APG disseminated one advertisement in the State of Montana, which, as you stated in your Decision, did not support or oppose a candidate for office. That electioneering communication, costing roughly \$28,000, is APG's only activity in Montana, and also the group's only activity that could be considered "political activity" under IRS rules. Since its creation in 2019, APG has not triggered political committee status under federal law or under any state law.

Third, APG has no affiliation with any candidate, candidate committee, or ballot issue. APG is an independent organization, and does not coordinate any of its activity with any candidate, candidate committee, ballot issue committee, or political party committee. *See* Attachment 3.

We appreciate your prompt consideration of this issue. If you have any questions or would like additional information, please do not hesitate to contact us directly at [cspies@dickinsonwright.com](mailto:cspies@dickinsonwright.com) or at (202) 466-6964.

Sincerely,



Charles Spies  
Katie Reynolds  
*Counsel to American Prosperity Group, Inc.*

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<sup>1</sup> A Declaration from APG Treasurer Charles Gantt confirming these budget facts is available upon request.

# ATTACHMENT #1



**DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS**  
**District of Columbia Government**  
Corporations Division

**Articles of Incorporation of Domestic Nonprofit Corporation**

**One or more persons acting as the incorporator or incorporators under the provisions of the Title 29 of D.C. Code (Business Organizations Act) adopt the following Articles of Incorporation:**

**First:** Corporation Name:  
American Prosperity Group, Inc.

**Second:** The corporation will have members: No

**Third:** Registered Agent's name and address in the District Columbia:  
CORPORATION SERVICE COMPANY  
1090 VERMONT AVE. NW  
Washington, District of Columbia 20005

**Fourth:** The corporation is incorporated as a nonprofit corporation under D.C. Code Title 29 Chapter 4.

**Fifth:** Miscellaneous Provisions (may attach the statement):

The purpose of the Corporation is to promote social welfare within the meaning of Section 501(c)(4) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any future United States internal revenue law (the "Code"), and within the meaning of District of Columbia Title 29 Chapter 4.

**Sixth:** Directors Name & Address:

No directors.

**Seventh:** Incorporators Name & Address:

Name	Address
Scott Will	1001 Pennsylvania Avenue NW, Suite 1300 South, Washington , District of Columbia 20004

**Eighth:** Incorporators executing this form:

No information provided.

**If you sign this form you agree that anyone who makes a false statement can be punished by criminal penalties of a fine up to \$1000, imprisonment up to 180 days, or both, under DCOC § 22-2405;**

**Amount Paid:** \$80.00

**Date:** 3/26/2019 4:31 PM

**E-Signed**

# ATTACHMENT #2

# AMERICAN PROSPERITY

★ ★ ★ GROUP ★ ★ ★

American Prosperity Group is a Section 501 (c)(4) social welfare organization committed to promoting fiscal conservatism, judicial restraint, the rule of law, and individual liberty throughout the United States. It is our belief that the more our citizens and elected leaders strive to embody and promote these ideals, the more prosperous every corner of America will become.

## Donor Information

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Employer: \_\_\_\_\_ Occupation: \_\_\_\_\_

## Corporate Donor Information

Name of Corporation: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Primary Contact Phone: \_\_\_\_\_ Primary Contact Email: \_\_\_\_\_

Signature of Corporate Representative: \_\_\_\_\_ Date: \_\_\_\_\_

## Contribution Amount

Please input your contribution amount. There is no maximum contribution limit \$ \_\_\_\_\_

## Payment Information

Please find my contribution enclosed.

Please make your check payable to **American Prosperity Group, Inc.** and return it addressed to:

American Prosperity Group  
C/O Bulldog Compliance  
138 Conant Street, 2<sup>nd</sup> Floor  
Beverly, MA 01915

## Wiring Instructions for Chain Bridge Bank, N.A., McLean, VA

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Confirm Your Eligibility

\_\_\_\_\_ Please check this line to confirm the following statements are true:

I am a United States citizen or an individual admitted with permanent residence status (e.g. a “green card holder”) and the funds for this contribution are from domestic (American) sources. In addition, this contribution, whether personal or corporate, will not be reimbursed by another person or entity.

American Prosperity Group, Inc. is an organization formed under Section 501(c)(4) of the Internal Revenue Code and accepts unlimited contributions from individuals, corporations, unions, or trade associations made **solely for the general purpose of the organization**. However, American Prosperity Group, Inc. does not accept contributions from foreign entities, or any contribution designated for a specific purpose. American Prosperity Group, Inc.’s policy is to not provide the names of its donors to the general public. Contributions to American Prosperity Group, Inc. are not deductible as charitable contributions for federal income tax purposes.

# ATTACHMENT #3



[REDACTED]

March 17, 2020

Scott Will  
American Prosperity Group, C/O Bulldog Compliance  
138 Conant St, 2<sup>nd</sup> Floor  
Beverly, MA 01915

Re: American Prosperity Group

Dear Mr. Will:

We are pleased to inform you that [REDACTED] will provide a grant to the American Prosperity Group ("Grant Recipient") in the amount of \$50,000 (the "Grant").

We request that you review and agree to the terms set forth herein on behalf of Grant Recipient and confirm to us that the representations and covenants included herein are accurate and complete by signing and returning a copy of this letter to us as described below. [REDACTED] will make the Grant available after receiving the signed letter.

Representations

Grant Recipient hereby makes the following representations:

- 1) It operates as tax-exempt under Section 501(c)(4) of the Code.
- 2) It is an organization organized in the United States with no foreign shareholders.
- 3) It is in compliance with all applicable federal and state laws relating to the maintenance of its exempt status and intends to remain in such compliance.
- 4) It is not registered or acting as a political committee under federal election law or any state or local election law.
- 5) It does not make contributions to candidates, parties, or committees that make contributions to candidates or parties, and will not use these funds to make contributions to ballot initiatives.

- 6) It is not now nor has it ever been established, maintained, financed, or controlled by a national, state, or local party committee, or a particular federal, state, or local candidate or officeholder.

You agree to not disclose [REDACTED] contribution, support, or relationship with respect to Grant Recipient, except as may be required by court order or by an authorized government agency. You agree to notify [REDACTED] within five (5) days of the request for such information. If disclosure is required by court order or an authorized government agency, you agree to take all reasonable efforts to have information provided under court seal and/or not to be made publicly available. Notwithstanding the foregoing, Grant Recipient shall report the Grant on Schedule B of its Internal Revenue Service ("IRS") Form 990 in accordance with the requirements of the Internal Revenue Code (the "Code"). Any other registration and reporting obligations related to the Grant and this letter agreement, or of your activities supported, directly or indirectly by the Grant, are the responsibility of Grant Recipient.

You agree to (i) not coordinate your activities in any way that would constitute a contribution under federal, state or local campaign finance or election law with a national, state, or local party committee; or a federal, state, or local candidate or candidate's campaign; or a federal, state, or local PAC, and (ii) not use the Grant in any way that is directly or indirectly prohibited under applicable federal, state, or local law; including, but not limited to, activity engaged in through direct expenditures by Grant Recipient or through arrangements with third parties.

You agree that the Grant may not be used for activities that would constitute:

- 1) contributions, expenditures, electioneering communications or independent expenditures under the Federal Election Campaign Act, as amended, or any similar state or local campaign finance law;
- 2) lobbying activities under state or local law requiring disclosure of donors for lobbying activities or federal direct lobbying;
- 3) any other activities that would require registration, reporting, or disclosure of the Grant or the involvement of any organization or person affiliated with [REDACTED] [REDACTED] under applicable state or federal law (other than confidential disclosure as required by IRS Form 990).

You agree that the Grant will not be used for activity in support or in opposition to a ballot initiative, nor for any contribution to any organization which spends funds in support of or in opposition to a ballot initiative.

You agree to provide to [REDACTED] upon request, annual narrative and financial reports and such other information as may be reasonably requested about the use of the Grant.

Any use of the Grant inconsistent with this letter agreement will be promptly reported to [REDACTED], and Grant Recipient shall return to [REDACTED] all funds so used.

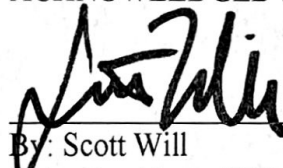
The terms and conditions contained in this letter agreement supersede all prior oral or written agreements and understandings between the parties and shall constitute the entire agreement between the parties with respect to the matters contained herein. This letter agreement shall not be modified or amended except by a writing duly executed by authorized representatives of the parties.

If you are in agreement with the terms of this letter, please indicate by signing below and sending a signed copy via email to [REDACTED]

[REDACTED]

[REDACTED]

ACKNOWLEDGED AND AGREED:

 3/17/20

By: Scott Will  
Title: President, APG

## DECLARATION

The Commonwealth of Massachusetts

County of Essex

I, Charles Gantt of Bulldog Compliance in Beverly Massachusetts MAKE OATH AND  
DECLARE THAT:

1. I serve in a professional capacity as Treasurer for American Prosperity Group (“APG”), a national non-profit policy advocacy group organized under Sec. 501(c)(4) of the Internal Revenue Code.
2. In my role as Treasurer for APG, I have access to APG’s financial books and bank account at Chain Bridge Bank, N.A. I have reviewed these financial records and confirm that APG has raised and deposited over \$175,000 in 2020.
3. Prior to mid-March of 2020 the organization (APG) spent over \$100,000 on state-level policy advocacy efforts outside of the state of Montana.
4. The cost APG’s total activity in Montana, including electioneering communications and associated costs, totals \$40,000 spent over a three week period. This Montana spending is less than 23% of the funds already raised by APG in 2020 and less than 10% of APG’s planned 2020 budget.

Signature:

A handwritten signature in black ink, appearing to read 'Charles Gantt', with a stylized flourish at the end.

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Charles Gantt

Date: May 20, 2020