

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Bondy v. Waller  No. COPP 2021-CFP-004	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On April 5, 2021, Lloyd Bondy of Lakeside, Montana, filed a campaign practices complaint against Amy Waller. The complaint alleges that the respondent failed to properly register as a candidate with the COPP despite participating as a candidate for election in both a past school trustee election as well as the current 2021 school trustee election.

**SUBSTANTIVE ISSUES ADDRESSED**

The proper and timely filing as a candidate with the Commissioner of Political Practices office.

**FINDINGS OF FACT**

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Amy Waller is a current member of the Kalispell School District #5 Board of Education.<sup>1</sup> Waller did not file a C-1A Statement of Candidate as a candidate for a school trustee position in a 2021 election with the COPP prior to the filing of this complaint. (Commissioner's Records.)

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<sup>1</sup> <https://www.sd5.k12.mt.us/Board/Members/11>

Finding of Fact No. 2: On May 7, 2019, Kalispell School District #5 held a school trustee election.<sup>2</sup> (Commissioner's Records.)

Finding of Fact No. 3: On April 7, 2021, Kalispell School District #5's Director of Business Services Gwyn Anderson emailed the COPP a copy of a Declaration and Oath of Candidacy for Trustee Candidates signed by Amy Waller and dated January 25, 2019, signaling her participation as a candidate in the Kalispell School District's May 7, 2019, school trustee election. A copy of a hard copy (paper) C-1A signed by candidate Waller was also included. While the C-1A was signed and dated January 25, 2019, it was not provided to the COPP by candidate Waller at that time. Finally, the email included a copy of a Certificate of Election of Trustee by Acclamation issued May 14, 2019 stating that candidate Waller "was duly elected by acclamation to fill the office of Trustee" (Commissioner's Records).

At no time did candidate Waller file a C-1A Statement of Candidate as a candidate for election to a school trustee position in Kalispell School District #5's May 7, 2019, election with the COPP. (Commissioner's Records.)

Finding of Fact No. 4: Kalispell School District #5 did not provide the COPP with a list of candidates who had registered to participate in the May 7, 2019, election at any time prior to the completion of that election, nor a list of winning candidates after the completion of that election. (Commissioner's Records.)

Finding of Fact No. 5: Kalispell School District #5 will hold a school trustee election on May 4, 2021. On April 2, 2021, Kalispell School District #5's Director of Business Services Gwyn Anderson notified COPP that Amy Waller had registered with the school district as a candidate for election to the Board in the 2021 election. On April 12, 2021, Gwyn Anderson emailed the COPP a copy of a Declaration and Oath of Candidacy for Trustee Candidates signed by Amy Waller and dated March 3, 2021, signaling her participation as a candidate in the Kalispell School District's May 4, 2021 school trustee election. (Commissioner's Records.)

Finding of Fact No. 6: On April 5, 2021, Amy Waller filed a C-1A Statement of Candidate as a candidate for election to a school trustee position in Kalispell School District #5's May 4, 2021, election with the COPP. (Commissioner's Records.)

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<sup>2</sup>[https://www.sd5.k12.mt.us/docs/district/new%20information/notice%20of%20absentee%20ballot%20counting\\_wordform.pdf?id=11152](https://www.sd5.k12.mt.us/docs/district/new%20information/notice%20of%20absentee%20ballot%20counting_wordform.pdf?id=11152)

Finding of Fact No. 7: On April 7, 2021, Kalispell School District #5 Director of Business Services Gwyn Andersen contacted the COPP via email. The email reads:

*I am in need of some clarification on the campaign practices as they relate to school district trustees.*

*As I stated in an earlier email, in the past I have printed the C1a form and ask the candidates to complete it and return it to me so that I knew they had done the paperwork. I then sent them on to the commissioner of political practices office in one mailing.*

*In the cases of the election being cancelled, because there was only one candidate for each open seat I did not send the paperwork on to the COPP office, because the election was cancelled. No election, no campaign, no campaign finance reports. That may have been my error.*

*Now of course it is an electronic only process. Going forward should I be advising them to complete that information even though the election has been cancelled?*

*Thank you for your guidance.*

(Commissioner's Records.)

## **DISCUSSION**

### *2021 Trustee election*

The first allegation raised by this complaint alleges Amy Waller failed to register with the COPP as candidate for a 2021 school trustee election.

Mont. Code Ann. §13-37-201 requires that candidates seeking election to public office register as such with the COPP “within 5 days after becoming a candidate”. While some school trustee candidates are exempted from this requirement under Mont. Code Ann. §13-37-206(1), Kalispell School District #5 is not among the exempted districts. School trustee candidates in Kalispell

School District #5 need to register as a candidate with the COPP under applicable Montana campaign finance law.

In this matter, Kalispell School District #5 confirmed that Amy Waller registered with the school district as a candidate for election to a school trustee election<sup>3</sup> position on March 3, 2021 (FOF No. 5). By filing a “declaration” of candidacy with Kalispell School District #5 for its 2021 school trustee election, Amy Waller became a 2021 candidate, Mont. Code Ann. §13-1-101(8) and would need to file a Statement of Candidate with the COPP no later than March 8, 2021.

Candidate Waller had not registered as a candidate with the COPP as of April 5, 2021, the date this complaint was received (FOF No. 1). Candidate Waller’s failure to timely file a Statement of Candidate is a violation of statutory requirements of Mont. Code Ann. §13-37-201.

Sufficiency Finding No. 1: Candidate Waller failed to file her Statement of Candidate with the COPP within 5 days of becoming a 2021 candidate for Kalispell School District #5 Trustee as required by Montana law.

The Commissioner notes the candidate did file a C-1A Statement of Candidate with the COPP indicating her candidacy for a 2021 school trustee position on April 6, 2021 (FOF No. 6).

#### *2019 Trustee Election*

The complaint additionally alleges that candidate Waller failed to properly register as a candidate with the COPP in a past trustee election.

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<sup>3</sup> Kalispell School District #5 candidate registration for the May 5, 2021 school trustee election closed on March 25, 2021.

Amy Waller became a candidate in the Kalispell School District #5's May 7, 2019, school trustee election on January 25, 2019, by filing a Declaration and Oath of Candidacy for Trustee Candidates with the school district (FOF No. 3). While candidate Waller appears to have completed and signed a hard copy C-1A Statement of Candidate indicating her candidacy in that election, she did not provide this document to the COPP (FOF No. 3). Candidate Waller failed to meet the requirements of Mont. Code Ann. §13-37-201 by failing to register as a candidate with the COPP for a 2019 election in which she had participated as a candidate.

Sufficiency Finding No. 2: Candidate Waller failed to file her Statement of Candidate with the COPP within 5 days of becoming a 2019 candidate for Kalispell School District #5 Trustee as required by Montana law.

The Commissioner finds candidate Waller failed to properly file a C-1A Statement of Candidate with the COPP indicating her candidacy for a 2019 school trustee position, a Montana campaign practices violation.

After the completion of the election in which she had participated in, candidate Waller was issued a Certificate of Election of Trustee by Acclimation by Kalispell School District #5, indicating that she had been "duly elected by acclimation to fill the office of Trustee" (FOF No. 3).

At no time was the COPP notified that candidate Waller had registered as a candidate for election to a school trustee position with the Kalispell School District #5 in 2019. Had the COPP been made aware of the candidacy, the agency would have contacted the individual immediately to notify of their requirement to register on forms filed with the COPP and provide any necessary

assistance in completing this process, as it routinely does with all candidates. The COPP cannot contact local candidates it does not know have become candidates under Montana campaign finance law; as noted above, COPP was never notified as to any candidate registrations for election to a school trustee position in Kalispell School District's 2019 trustee election.

Ultimate responsibility in meeting the requirements of Mont. Code Ann. §13-37-201, falls on the candidate, not the COPP or any other entity or agency which the candidate interacts with. Like any other candidate, school trustee candidates assume all responsibility for complying with applicable Montana campaign finance law regardless of what contact (if any) the candidate has with COPP staff.

### **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 candidate

Waller 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 candidate Waller. 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. *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 14<sup>th</sup> day of April 2021.



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



**CERTIFICATE OF ELECTION OF TRUSTEE BY ACCLAMATION**

THIS IS TO CERTIFY that **AMY WALLER** was duly elected by acclamation to fill the office of Trustee for the **FLATHEAD HIGH SCHOOL (DISTRICT III), KALISPELL** District No. 5, Flathead County, Montana, for the term of **TWO (2)** years, beginning on the **14th day of May, 2019**, and ending at the trustee organizational meeting in **May, 2022**, or until a successor has been elected or appointed and has been qualified. 21

ISSUED THIS **14th** day of **May, 2019**.

Board Chair: **LANCE ISAAK**

Board Chair Signature: *Lance Isak*

District Clerk: **GWYN ANDERSEN**

District Clerk Signature: *Gwyn Andersen*

School District No. 5, Flathead County, Montana

File the following oath of office with the county superintendent within fifteen (15) days of your receipt of this Certificate of Election. Upon completion of taking and filling the oath of office, you will have the rights and obligations of a Trustee of the School Board pursuant to Montana law and in accordance with 20-3-324, MCA. You will hold this position until your successor has been qualified.

**OATH OF OFFICE**

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution of the United States, and the Constitution of the State of Montana, and that I will discharge the duties of my office with fidelity (so help me God).

Signature of Newly Appointed Trustee: *Amy Waller*

Printed Name of Newly Appointed Trustee: AMY WALLER

Signed and sworn to before me this **14th** day of **MAY, 2019**.

\_\_\_\_\_  
Signature of County Superintendent

**JACK EGGENSPERGER**

Printed Name of County Superintendent

~~Canvassed results must be published once in a newspaper that will give notice to the largest~~  
number of people of the district. 20-20-416, MCA.



DECLARATION OF INTENT AND OATH OF CANDIDACY FOR TRUSTEE CANDIDATES

To the School District Clerk/Election Administrator of School District No. 5, Flathead County, State of Montana:

Filing for the office of School District Trustee: For a 2-year term at the Annual Regular School District Election to be held on the 7th day of May, 2019.

Candidate Name (Print): Amy Waller

Mailing address: 770 Egan Slough Rd.

City and State: Kalispell, MT Zip Code: 59901

Residence address: 770 Egan Slough Rd.

City and State: Kalispell, MT Zip Code: 59901

Contact Phone: (406)314-7331 Email Address: amywmontana@gmail.com

I hereby affirm that I possess, or will possess, within the constitutional and statutory deadlines, the qualifications prescribed by the Constitution and law of the United States and the State of Montana. DATED this 27 day of January, 2019

Amy Waller  
(Signature of Candidate)

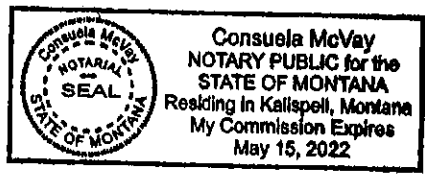
Candidate must sign and acknowledge this Declaration of Intent before a Notary Public, if mailed, or before the Election Administrator or Deputy, if delivered in person.

State of Montana, County of Flathead

Signed and sworn to before me this 27 day of Jan, 2019 by Amy Waller  
Printed Name of Candidate

Consuela McVay  
Signature of Notary or Public Official  
Consuela McVay  
Printed name of Notary or Public Official

SEAL/STAMP



Notary Public for the State of Montana  
Residing at: Kalispell, MT  
My Commission Expires: May 15, 2022

THE STATE OF MONTANA

COMMISSIONER OF POLITICAL PRACTICES  
1209 Eighth Avenue  
Post Office Box 202401  
Helena, MT 59620-2401  
TELEPHONE: 406-444-2942  
FAX NUMBER: 406-444-1643  
WEBSITE: [www.politicalpractices.mt.gov](http://www.politicalpractices.mt.gov)

FOR OFFICE USE ONLY  
Date Received and Postmark Date

Form C-1-A (Revised 01/18)

Statement of Candidate

TO BE FILED by CANDIDATE for COUNTY, MUNICIPAL or SCHOOL OFFICE

ORIGINAL FILING  AMENDED FILING

TYPE OR PRINT IN INK ALL INFORMATION WITH EXCEPTION OF SIGNATURE

FULL NAME OF CANDIDATE Amy Waller

COMPLETE DESCRIPTION OF OFFICE SOUGHT Flathead High School District No. 5 District III Board of Trustee

PARTY AFFILIATION, if any \_\_\_\_\_ COUNTY OF RESIDENCE Flathead

COMPLETE MAILING ADDRESS 770 Egan Slough Rd., Kalispell, MT 59901  
(Including City, State, Zip Code)

COMPLETE STREET ADDRESS 770 Egan Slough Rd., Kalispell, MT 59901  
(Including City, State, Zip Code)

Amyw.montana@gmail.com (406) 752-0782 (406) 314-7331 \_\_\_\_\_  
E-Mail Address (Please Print) Home Telephone Number Work Telephone Number Facsimile Number

FULL NAME OF CAMPAIGN TREASURER Amy Waller  
(Must be registered to vote in Montana)

COMPLETE MAILING ADDRESS 770 Egan Slough Rd., Kalispell, MT 59901  
(Including City, State, Zip Code)

COMPLETE STREET ADDRESS 770 Egan Slough Rd., Kalispell, MT 59901  
(Including City, State, Zip Code)

Amyw.montana@gmail.com (406) 752-0782 (406) 314-7331 \_\_\_\_\_  
E-Mail Address (Please Print) Home Telephone Number Work Telephone Number Facsimile Number

FULL NAME OF DEPUTY TREASURER, if any \_\_\_\_\_  
(Must be registered to vote in Montana)

COMPLETE MAILING ADDRESS \_\_\_\_\_  
(Including City, State, Zip Code)

\_\_\_\_\_  
E-Mail Address (Please Print) Home Telephone Number Work Telephone Number Facsimile Number

CAMPAIGN ACCOUNT INFORMATION

FULL NAME OF BANK Three Rivers Bank of Montana

COMPLETE ADDRESS P.O. Box 7250, Kalispell, MT 59904  
(Including City, State, Zip Code)

AFFIDAVIT OF REPORTING STATUS (Check one) a treasurer and bank must be designated.

B  I certify that I expect the total amount of contributions or expenditures will not exceed \$500 (including personal funds); however, if more than \$500 is received and/or expended, within 5 days of reaching this threshold I will file an initial financial report (form C-5) and I will file additional financial reports according to schedule.

C  I expect to receive contributions and/or make expenditures exceeding \$500 (including personal funds). I will file an initial financial report (form C-5) according to schedule.

CERTIFICATION: I declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true, complete and correct.

Amy Waller \_\_\_\_\_  
Candidate's Signature Date 1/25/2019