

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Dodd v. Schoby No. COPP 2021-CFP-016	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On June 16, 2021, Jeni Dodd of Great Falls, Montana filed a campaign practices complaint against Gregory Schoby, also of Great Falls. The complaint alleges that candidate Schoby failed to timely register as a candidate with the COPP as a candidate for election in a 2021 municipal (city) election.

SUBSTANTIVE ISSUES ADDRESSED

Timely filing of a Statement of Candidate and proper filing of a campaign finance report.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: On April 22, 2021, a Facebook page named Schoby for Commissioner was created. That same day, a picture of Mr. Schoby was posted to the page, accompanied by a statement of "I am happy to announce my run at GF City Commissioner! After having several different conversations over the last few months I have made a decision to jump on board. This Position is a stepping stone for me in politics. 2 Reasons off the bat that I want to take this on. 1, for YOU and our community to better and keep our great city going!!! 2. I'm all for business we need economic growth in Great Falls!! #better4businessbetter4greatfalls" (Commissioner's Records).

Finding of Fact No. 2: On April 22, 2021, candidate Schoby filed a Declaration for Nomination and Oath of Candidacy with the Cascade County Elections Department, signaling his participation as a candidate for the office of City Commission in the City of Great Falls.¹ (Commissioner's Records).

Finding of Fact No. 3: On June 7, 2021, a picture of a contributor form distributed by candidate Schoby was posted to the Schoby for Commissioner Facebook page, accompanied by a statement of "Hey all! Its that time that I ask you for some financial support. Campaign cost are not cheap. I am asking that if you can help please print this form off and mail to address listed. or if you want i can also meet with you personally. Just shoot me a message. Great Falls needs something new, something fresh. Message me directly with any questions and thanks again for Your Support! Reminder that there is a MAX amount that can be donated of \$180 per person".² The contributor form included an attribution message of "Paid for by Schoby for Commissioner Treasurer Chance Muretta 225 RiverView 1 E Great Falls, MT 59404". (Commissioner's Records).

Finding of Fact No. 4: On June 21, 2021, candidate Schoby filed a C-1A Statement of Candidate as a candidate for city council in the City of Great Falls with the COPP. Under Reporting Status, candidate Schoby certified that his campaign "Will spend more than \$500.00" (see Exhibit C). (Commissioner's Records).

Finding of Fact No. 5: Candidates for election to municipal office who certify that the campaign "Will spend more than \$500.00" had C-5 campaign finance reports due on or before Monday, June 21, 2021. Candidate Schoby did not file a C-5 campaign finance report on or before June 21, 2021. (Commissioner's Records).

DISCUSSION

Candidate registration

The first allegation raised by this complaint concerns candidate registration for Montana's 2021 municipal (city) elections. The complaint

¹ <https://www.cascadecountymt.gov/DocumentCenter/View/2415/City-of-GF>

² <https://www.facebook.com/Schoby4GFCommish/photos/a.102865351951656/123602709877920/>

argues that despite participating as a candidate for election to municipal office in the City of Great Falls, candidate Schoby did not timely file a statement of candidate with the COPP.

Mont. Code Ann. §13-37-201 requires that candidates seeking election to public office register with the COPP “within 5 days after becoming a candidate”. While exemptions exist for certain school districts and special districts, municipal candidates are not provided any sort of exemption. This means that any candidate seeking election to a municipal office is required to register as a candidate with the COPP “within five days after becoming a candidate”.

Under Montana campaign finance law, an individual becomes a candidate by filing “a declaration or petition for nomination”, Mont. Code Ann. §13-1-101(8)(a). On April 22, 2021, Gregory filed a Declaration for Nomination and Oath of Candidacy with the Cascade County Elections Department declaring his candidacy for election to a municipal office in the City of Great Falls (FOF No. 2). By filing a Declaration for Nomination with the Cascade County Elections Department, Gregory Schoby became a candidate under applicable Montana campaign finance law.

Gregory Schoby became a candidate for election to a municipal office in the City of Great Falls on April 22, 2021 by filing a Declaration for Nomination and Oath of Candidacy with the Cascade County Elections Department (FOF No. 2). Under Mont. Code Ann. §13-37-206(1), candidate Schoby was required to file a Statement of Candidate with the COPP for this election on or before April 27, 2021, five days after becoming a candidate. Candidate Schoby filed

his Statement of Candidate with the COPP on June 21, 2021, later than five days after becoming a candidate (FOF No. 3).

Sufficiency Finding No. 1: Gregory Schoby failed to file the required Statement of Candidate report with the COPP within 5 days of filing for municipal office.

There are sufficient facts to find candidate Schoby violated the requirements of Mont. Code Ann. §13-37-206(1), by failing to file a Statement of Candidate with the COPP within five days of becoming a candidate as required by law. Candidate Schoby filed the Statement of Candidate on June 21, 2021, 55 days late.

Campaign Finance Reporting

The COPP's investigation into this matter determined that candidate Schoby failed to timely file a campaign finance report. On his Statement of Candidate, candidate Schoby certified that his campaign expenditure activity would exceed \$500.00 (FOF No. 4). Municipal candidates who anticipate "receiving contributions in a total amount of less than \$500 and anticipates making expenditures in a total amount of less than \$500 for all elections in a campaign" are exempted from filing campaign finance reports, 44.11.304, Administrative Rules of Montana. However, in this case candidate Schoby indicated on his Statement of Candidate that his expenditures would exceed \$500.00, meaning the campaign would be required to financial reports under Mont. Code Ann. §13-37-226.

Municipal candidates must file finance reports starting "on the 20th day of June...of the year of the election in which the candidate participates", Mont.

Code Ann. §13-37-226(4)(a), June 20 being the date the initial campaign finance report is due for municipal candidates was established by the 2021 Montana Legislature through its passage of House Bill 71; HB 71 took effect on April 8, 2021, when it was signed into law by Montana Governor Greg Gianforte. With June 20 falling on a Sunday, the due date for the initial report for 2021 municipal candidates was pushed to Monday, June 21, Mont. Code Ann. §1-1-216(1)(a), All municipal candidates who indicated that their campaign expenditures would exceed \$500.00 in total had campaign finance reports due on or before June 21, 2021.

Candidate Schoby became a candidate in 2021 by filing a Declaration for Nomination and Oath of Candidacy on April 22, 2021, after the provisions of HB 71 took effect. Because he certified that campaign expenditures would exceed \$500, candidate Schoby's initial campaign finance report was due on or before June 21, 2021. This report was required to disclose all contributions received and expenditures made by candidate Schoby between April 22 (the date he became a candidate) and at least June 15, 2020 (five days prior to the date of filing), §13-37-228(1), Mont. Code Ann.

Sufficiency Finding No. 2: Gregory Schoby failed to file the required campaign finance report with the COPP due June 21, 2021.

There are sufficient facts to find candidate Schoby failed to file a C-5 campaign finance report disclosing contributions received and expenditures made between the start of his campaign and June 15 on or before June 21, 2021 as required under Mont. Code Ann. §13-37-226(4)(a), (FOF No. 5).

The Commissioner notes Candidate Schoby's June 7, 2021 Facebook post soliciting contributions indicates that his campaign engaged in reportable contribution and expenditure activity during the reporting period (FOF No. 3). By failing to timely file his initial C-5 campaign finance report, candidate Schoby failed to disclose reportable election activity and deprived opposing candidates, political committees, and interested members of the public of this information.

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 Schoby 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).

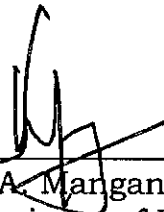
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of Candidate Schoby. 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. § 13-37-226(4)(a), 13-37-228(1). *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 29th day of June 2021.



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