

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Schneider v. John Birch Society No. COPP 2021-LOB-001	DISMISSAL
--	-----------

On March 23, 2021, David Schneider, representing Convention of States Action in San Diego, CA filed a lobbying complaint against the John Birch Society. The complaint alleges that the John Birch Society engaged in Montana lobbying activity without registering as a principal or filing finance reports as required.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: The John Birch Society (JBS) is a national organization that states “our mission is to bring about less government, more responsibility, and – with God’s help – a better world by providing leadership, education, and organized volunteer action in accordance with moral and Constitutional principles”.¹ JBS did not register as a Principal with the COPP for Montana’s 2021 Legislative Session by filing an L-2 Principal Authorization form or an L-3 Principal Registration Request. (Commissioner’s Records.)

Finding of Fact No. 2: On January 22, 2021, the Senate Judiciary committee held a hearing on SJ 2, short title “Resolution for Article

¹ <https://jbs.org/about/>

V of US Constitution convention of states”.² An individual named Leah Southwell, who identified herself as a Montana Field Coordinator for JBS, testified as an opponent of SJ 2. An individual named Caleb Collier, identified as the Executive Field Coordinator for JBS, also spoke in opposition to SJ 2; an exhibit connected to this individual’s testimony includes lines stating “Representing an Entity/Another Person: No” and “Organization: N/A”³. An individual named Robert Brown also testified as an opponent to SJ 2; an exhibit connected to this individual’s testimony includes lines stating “Representing an Entity/Another Person: No” and “Organization: N/A”.⁴

According to the official minutes for this committee hearing, the hearing on SJ 2 lasted approximately two hours and forty-two minutes. (Commissioner’s Records.)

Finding of Fact No. 2A: On the JBS website, Leah Southwell is listed as a JBS Coordinator and National Speaker.⁵ Caleb Collier is not listed on or otherwise mentioned by the website. Robert Brown is listed as a National Speaker who “served as a Coordinator and Regional Field Director for the John Birch Society”.⁶ (Commissioner’s Records.)

Finding of Fact No. 3: On April 23, 2021, COPP received JBS’s response to this complaint. The response stated that “The John Birch Society has undertaken no lobbying activities” in Montana in 2021. While the response notes that each of Leah Southwell, Caleb Collier, and Robert Brown testified in a January 22, 2021 hearing in front of the Senate Judiciary Committee, they “lobbied the committee as individuals. Contrary to the complainant’s belief, neither Brown, Collier or Southwell appeared before the Committee in any representative capacity of the JBS. Each individual appeared in his/her individual capacity as citizens participating in self-government”. The response goes on to state that “Coordinators are simply not permitted to represent the Society in the legislative sphere”. The letter was signed by JBS CEO William Hahn. (Commissioner’s Records.)

² <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20210122/-1/41939#handoutFile>

³ [jus15a07.pdf \(mt.gov\)](https://leg.mt.gov/bills/2021/Minutes/Senate/Exhibits/jus15a07.pdf)

⁴ <https://leg.mt.gov/bills/2021/Minutes/Senate/Exhibits/jus15a09.pdf>

⁵ <https://jbs.org/education/topics/>

⁶ <https://jbs.org/education/topics/>

Finding of Fact No. 3A: On August 5, 2021, COPP Legal Investigator contacted the John Birch Society via email and traditional mail requesting additional information. The letter asked “Specifically, did the John Birch Society provide financial compensation to one or more of Robert Brown, Caleb Collier, or Leah Southwell in connection to their testimony at a hearing of the Montana Senate Judiciary Committee on January 22, 2021? If yes, did the amount provided to any individual meet or exceed \$2,650.00?”.

On August 12, 2021, John Birch Society CEO William Hahn responded to the COPP via email and traditional mail answering “No”. (Commissioner’s Records.)

Finding of Fact No. 4: Included with this complaint was content posted on the JBS website. Titled “OPPOSE MONTANA BBA CON-CON RESOLUTION HJ 13”, JBS urged viewers to “**Urge the committee members to oppose HB 13**”. This post also stated that “This development comes after members of the John Birch Society and their allies helped convince Montana’s Senators to defeat SJ 2”. The end of the post states:

Although we provide a way to easily email legislators (blue box), we know from long experience that it takes a lot more interaction with your legislators to get your point across than that provided by email alone.

That’s why we provide an easy way not only to email them, but to contact them by phone, tweet, and email message them.

The post included two (2) fields viewers could utilize to contact Montana legislators.

In investigating this complaint, COPP could not find this specific post on the JBS website. COPP could not determine the date this specific post was made on the JBS website or when or if this specific post was removed from the JBS website. (Commissioner’s Records.)

Finding of Fact No. 5: On February 24, 2021, the House Judiciary Committee held a hearing on HJ 13, short title “Resolution for Article V US constitution convention of states”.⁷ No individuals with identified associations to JBS testified as either proponents or opponents of HJ 13. None of Leah Southwell, Caleb Collier, or

⁷ <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/42589?agendaId=202416#handoutFile>

Robert Brown were listed as proponents or opponents of the bill.
(Commissioner's Records.)

DISCUSSION

In this matter, the complainant alleges that the John Birch Society (JBS) engaged in reportable Montana lobbying activity but failed to register as a principle and disclose its lobbying payments as required. The complaint references two specific instances: a January 22, 2021 hearing of the Senate Judiciary committee, and content posted on the JBS website referring to proposed legislation in Montana.

Before considering the facts specific to this case, it is helpful to examine Montana's applicable lobbying laws. The term lobbying is defined under Mont. Code Ann. §5-7-102(11) as:

(11) (a) "Lobbying" means:

(i) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or legislators; and

(ii) the practice of promoting or opposing official action of any public official or the legislature.

(b) The term does not include actions described in subsections (11)(a)(i) and (11)(a)(ii) when performed by a public official, an elected local official, an elected federal official, or an elected tribal official while acting in an official governmental capacity.

Similarly, the term lobbyist is defined under Mont. Code Ann. §5-7-102(12):

(12) (a) "Lobbyist" means a person who engages in the practice of lobbying.

(b) Lobbyist does not include:

(i) an individual acting solely on the individual's own behalf;

(ii) an individual working for the same principal as a licensed lobbyist if the individual does not have personal contact involving lobbying with a public official or the legislature on behalf of the lobbyist's principal; or

(iii) an individual who receives payments from one or more persons that total less than the amount specified under 5-7-112 in a calendar year.

(c) Nothing in this chapter deprives an individual who is not a lobbyist of the constitutional right to communicate with public officials or the legislature.

The term principal is defined as “a person who employs a lobbyist or a person required to report pursuant to Mont. Code Ann. §§ 5-7-208”, 5-7-102(15). Principles are required to register and file L-5 lobbying financial reports with the COPP “only if the principal makes total payments for the purposes of lobbying” that exceed the payment threshold in a calendar year, Mont. Code Ann. §5-7-208(1). For the 2021-2022 biennium, that threshold was set at \$2,650.00, 44.12.204, ARM.

While the complainant includes evidence of individuals affiliated with JBS supporting and/or opposing proposed legislation in front of legislator/s in states other than Montana, those activities would not be relevant towards JBS' potential Montana registration and reporting requirements. Montana lobbying law is clear that a legislator is “an individual holding public office as a representative or a senator in the Montana legislature” §5-7-102(10), Mont. Code Ann. (emphasis added). In this matter, only JBS's promotion or opposition of proposed legislation or other official action to the Montana legislature would apply towards the \$2,650.00 reporting threshold.

Had JBS compensated individual lobbyist/s and/or made other payments for the purposes of lobbying in the State of Montana in 2021 equal to or exceeding \$2,650.00, the organization would be required to register with the COPP and file L-5 lobbying financial reports disclosing those payments.

January 21, 2021 Hearing on SJ 2

The first alleged instance of unreported lobbying activity conducted by JBS raised in this complaint concerns a January 22, 2021 hearing held by the Senate Judiciary Committee on SJ 2, short title “Resolution for Article V of US Constitution convention of states”. At this hearing, three (3) individuals with identifiable connections to JBS- Leah Southwell, Caleb Collier, and Robert Brown- testified as opponents to SJ 2 (FOF Nos. 2, 2A). In introducing themselves to the committee, both Southwell and Collier directly referenced their positions with JBS. Brown did not mention JBS in his introduction or during his testimony. Included with the committee’s minutes for this hearing posted on the Montana Legislature’s website, Collier and Brown both provided the committee with exhibits; the exhibits did not identify any specific organization the individual was representing (FOF No. 2). The complainant provides no evidence nor makes any reference that Southwell, Collier, or Brown engaged in any Montana lobbying activity beyond testifying at this specific Senate Judiciary Committee hearing (FOF No. 2B).

In its response to this complaint, JBS CEO William Hahn argued that JBS engaged in no reportable Montana lobbying activity in 2021. Each of Southwell, Collier, and Brown, he states, “lobbied the committee as

individuals” (FOF No. 3). The response goes on to assert that “neither Brown, Collier, or Southwell appeared before the Committee in any representative capacity of JBS. Each individual appeared in his/her individual capacity as citizens participating in self-government”. In a follow up response to a COPP inquiry specific to any compensation of Robert Brown, Caleb Collier, or Leah Southwell in connection to SJ2, JBS indicated it did not compensate any of Southwell, Collier, or Brown for their testimony in opposition to SJ 2 (FOF No. 3A).

To be considered a principal, JBS would need to employ “a lobbyist” or otherwise be “required to report pursuant to Mont. Code Ann. §§5-7-208”, 5-7-102(15), and, not all principals are required to file finance reports. Only those principals who made payments for the purposes of lobbying totaling \$2,650.00 or more in calendar year 2021 in Montana were required to file financial reports disclosing those payments, Mont. Code Ann. §5-7-208. The COPP could find no evidence of either.

JBS argued that Southwell, Collier, and Brown all appeared before the Senate Judiciary Committee to oppose SJ 2 in their personal capacity. Exhibits provided by Collier and Brown to the Senate Judiciary Committee, and included with the committee’s minutes, would indicate that neither individual was representing JBS when testifying against SJ 2 (FOF No. 2). Because each individual lobbied the committee “acting solely on the individual’s behalf”, they would not meet the statutory definition for a lobbyist provided under Mont. Code Ann. §5-7-102(12). Southwell, Collier, or Brown in this matter would not

qualify as a lobbyist under Montana lobbying law. JBS does not qualify as a principal solely through its association with these individuals because none would be considered a lobbyist.

Second, no evidence exists that JBS made payments for lobbying activity in Montana connected with SJ 2. In its responses, JBS definitively states that the organization made no payments to Southwell, Collier, or Brown to attend this hearing or to testify in opposition to SJ 2. The complaint provided no evidence or made reference to actions that would contradict JBS's claim that it did not engage in Montana lobbying activities in 2021.

Like any other individual or organization meeting the definition of a principal, JBS would only be required to register with the COPP and file L-5 lobbying financial reports disclosing payments made for the purposes of lobbying once those payments met or exceeded \$2,650.00. COPP has no evidence that JBS would be required to register and report by meeting or exceeding Montana's \$2,650.00 payment threshold due to involvement with the Senate Judiciary Committee's January 22, 2021 hearing on SJ 2.

JBS website

The second and final allegation of unreported Montana lobbying activity conducted by JBS concerns content posted to the organization's website. Specifically, the complaint references content posted to the site encouraging viewers to oppose Montana HJ 13 and providing options for viewers to contact their legislator/s to express their opposition (FOF No. 4).

Lobbying is defined as “the practice of promoting or opposing the introduction or enactment of legislation before the legislature or legislators”, Mont. Code Ann. §5-7-102(11)(a)(i), (emphasis added). The website post in question was not directly provided to or exclusively distributed to the legislature as a whole or individual legislators in Montana. Instead, the post was made publicly available on the JBS website. Any individual, whether it be a Montana legislator, a Montana citizen not serving in the Montana legislature, or individuals living or working outside of Montana, had the same direct access to this message from JBS.

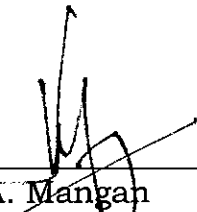
This individual post cannot be considered lobbying because it was not presented “before the legislature or legislators”. Because it would not be considered lobbying, any costs associated with the creation or distribution of this post would not count towards the \$2,650.00 registration and reporting threshold. Any associated costs also would not need to be disclosed by JBS on an L-5 lobbying financial report because they were not made “for the purposes of lobbying”, §5-7-208, Mont. Code Ann.

DECISION

Based on the facts presented in this case, the Commissioner finds JBS would not qualify as a principal and would not be required to register with the COPP or file financial reports disclosing lobbying payments. Available evidence in this matter does not support the complainant’s contention that JBS compensated individuals or employed lobbyists to testify in opposition to SJ 2, nor that JBS met or exceeded \$2,650.00 in payments made to lobby in the

State of Montana in calendar year 2021. Similarly, the Commissioner finds JBS did not engage in lobbying as that term is defined by posting content to their website opposing HJ 13 because the activity was not conducted before legislator/s. The complaint is hereby dismissed.

DATED this 13th day of August 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