

Cook, Scott

From: Eli Parker <eli.parker@gmail.com>
Sent: Monday, November 1, 2021 4:41 PM
To: Cook, Scott; Jennifer Streano; Jacob Coolidge
Subject: [EXTERNAL] Complaint Response-jointly filed
Attachments: Complaint Response .docx

Greetings Scott,

Jennifer, Jake, and I have e-signed the attached "Complaint Response," as requested by the COPP complaint notice dated October 25, 2021. We will continue to provide additional documents, as requested in that notice. I have already forwarded the WestRidge invoices from my records. Please let us know what else may be required.

Sincerely,
Eli Parker

COMMISSIONER OF POLITICAL PRACTICES

Rosalie Sheehy Cates, Complainant, v. Jennifer Streano, Eli Parker, and Jacob Coolidge Respondents.	Cause No. 2021-CFP-022A, 2021- CFP-022B, & 2021-CFP-022C Complaint Response
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General Response

On October 25th, 2021, Ms. Rosalie Sheehy Cates (Cates) filed a campaign finance complaint form that alleges violations of Montana’s campaign reporting and disclosure laws. In general, Cates alleges several coordinated expenditures, failures to report in-kind contributions, and donations that violate applicable in-kind contribution limits. Nevertheless, Cates’ allegations fail to provide evidence of any actual and specific coordinated expenditures. Therefore, Cates’ complaint must be dismissed.

While specifically regulating coordinated expenditures, campaign finance laws allow collaboration and/or coordination among campaigns. Montana coordination law largely parallels the Federal Elections Commission (FEC)

interpretation of coordinated expenditures. *See Bonogosky v. Kennedy*, COPP 2013 CFP 0015 (internal citations omitted). The FEC has only found coordination in “particular circumstances” and the six member FEC commission has deadlocked on specific requirements of what constitutes a coordinated expenditure. *Id.* Ex. 2.

Furthermore, the FEC requires *actual evidence* showing coordination between the expenditure and the candidate. Coordinated expenditures require more than common vendors, interrelated individuals, and shared contacts. *Id.* Finally, coordinated expenditures do not exist solely because of a personal or professional relationship between a candidate and other persons (44-11-602(4)(a)).

Jennifer Streano, Eli Parker, and Jacob Coolidge have three distinct and separate campaigns. Each is running for one of three separate judicial departments in the Missoula Municipal Court. Each campaign has its own bank account and receives individual donations from donors. The three candidates have never commingled funds. WestRidge Creative bills each campaign separately and independently.

Cates’ complaint fails to accurately define coordinated expenditures. Furthermore, Cates provides no evidence of unreported coordinated expenditures, failures to report in-kind contributions, or violations of applicable in-kind contribution limits. Instead, Cates’ complaint merely alleges that the candidates have collaborated, which Montana law permits. The complainant relies on

generalizations and assumptions to paint the entire campaign as a coordinated expenditure. However, under Montana Law, the complainant must present actual evidence showing coordination for each individual expenditure, not a generalized complaint that candidates have collaborated.

1. “Coordinated project management expenses from Westridge [sic] Creative”

Cates alleges that meetings with, and contributions to, WestRidge Creative constitute coordinated expenditures. Such expenses do not meet the statutory definitions of an “election communication” or “electioneering communication” as defined in Montana Code Annotated 13-1-101(15) and (17). Employing a vendor for internal communications does not constitute a communication. The recent decisions addressing coordinated expenditures (*Fitzpatrick v. Kantorowicz*, COPP 2016 CFP 0019 & *Bonogosky v. Kennedy*, COPP 2013 CFP 0015) both dealt with election communications. Election and electioneering communications are easier to analyze because the content is memorialized in the distributed material. Here, without knowing the content of private discussions between candidates and vendors, Cates assumes that all conversations equally benefited all candidates without any evidence. Further, the alleged mutual benefit of private meetings and coordination therein cannot be presumed.

Cates alleges that expenditures made from candidates to Westridge Creative are joint expenditures because of the shared platform of candidates and professional relationship with WestRidge Creative. Such a sweeping legal conclusion presupposes that all communication between candidates and WestRidge Creative are beneficial to all campaigns in the same ratio. As stated in *Bonogosky*, there need be evidence showing actual coordination between the expenditure and the candidate. Cates' allegations fail to do so and assume that all interactions with WestRidge Creative are beneficial to all three candidates and rise to the level of a coordinated expenditure. Both are incorrect.

Cates also relies on an inaccurate understanding of the development of the shared platform of "Moving Justice Forward" (MJF). Cates alleges that the MJF candidates "hired Westridge [sic] Creative . . . to create this platform, devise its joint strategies, and produce its coordinated materials." This summation is an oversimplification and does not accurately reflect the role that WestRidge Creative has played in the three campaigns, nor does it reflect how the platform and collaboration across campaigns were developed.

The three candidates are responsible for developing their platform, from the "Moving Justice Forward" banner down to specific policy proposals that are incorporated in that umbrella. This distinction is critical because collaboration between candidates is not a coordinated expenditure. The "Moving Justice

Forward” concept was developed by the three candidates across multiple sessions and meetings that did not include WestRidge Creative. As such, there were no expenditures to report in the development of the core tenets of the platform. Ms. Cates assumes that the reported expenditures were the exclusive source of the development of the platform. This assumption informs Cates’ broad overgeneralization that the entire campaign is a coordinated expenditure, which is inaccurate.

In *Bonogosky*, the Commission stated that a coordinated expenditure requires more than common vendors, interrelated individuals and shared contacts. Here, Cates alleges that, because the candidates articulate a shared platform, all expenses accrued through meetings with the three separate campaigns are coordinated. This conclusion is misguided and ignores the high bar of demonstrating a coordinated expenditure outlined in *Bonogosky* and in ARM 44.11.602(4)(a) (“[a] ‘coordinated expenditure’ does not exist solely because of a personal or professional relationships between a candidate and other persons.”).

2. “Coordinated printing and distribution of walk cards and mailers by Westridge [sic] Creative”

Cates alleges the printing and distribution of walk cards and mailers are coordinated expenditures which require in-kind donations to be made by each candidate. All candidates disagree.

First, the candidates reported to COPP all expenses incurred for the production and distribution of these cards along with a full description of the cards. Invoices dated 8/3/21 and 10/14/21 include the following description of the cards:

Message- Candidate picture and quote on front; Description of “*Moving Justice Forward*” platform on back, with pictures and contact info of those candidates.

Initially, each candidate individually purchased \$5,000, followed by a second \$2,500 order of identical cards. Each card purchased by each candidate contains a picture of themselves and an individualized quote. Each candidate chose to have the backs of the cards the same which contained an endorsement of two other candidates. According to Rule 4.2 of the Judicial Code of Conduct states in relevant part;

(B) A candidate for elective judicial office may, unless prohibited by law:

(3) publicly support or oppose candidates for judicial office;

(5) seek, accept, or use endorsements from any person or organization other than a partisan political organization or partisan* or independent* office-holder or candidate for non-judicial public office.

Second, the cards prominently feature one candidate, rather than present each candidate equally. Cates argues the cards constitute a coordinated expense, which amount to in-kind donations among the candidates at 1/3 the total costs. However, any value provided to each candidate is not equivalent with each card. Unlike a previous purchase of magnets, which were all the same, these cards are not. The entire front of each card is unique to each candidate. Each card contains individualized statements from its individual candidate. On the back of the card, campaign information is provided about Missoula's 2021 election, which involves three separate judicial departments. Alongside this campaign information, each candidate provided their endorsement for one of the candidates running in each of the other two departments. The value of these small pictures on the back do not amount to 1/3 the value of the design and distribution of the cards, as required of a coordinate expenditure. Furthermore, each candidate's choice to endorse another judicial candidate did not create a coordinated expenditure.

3. “Miscellaneous coordinated activities by Westridge [sic] Creative.”

Cates persistently overgeneralizes what she describes as “coordinated activities by Westridge Creative” to misattribute all “project management expenses” as coordinated expenditures. Cates repeats this mistake in her third investigation request, “Miscellaneous coordinated activities by Westridge [sic]

Creative.” The “project management expenses” Cates identifies were not coordinated expenditures because those expenses did not include “election communication, electioneering communication, or reportable election activity.” See Mont. Code Ann. § 13-1-101(15)(17).

Coordinated expenditures shall be treated and reported as in-kind contributions. See 44.11.602(5) ARM. Furthermore, coordinated expenditures arise from “election communication, electioneering communication, or reportable election activity.” See *id.*; *Fitzpatrick v. Kantorowicz*, COPP 2016 CFP 0019 & *Bonogosky v. Kennedy*, COPP 2013 CFP 0015.

Montana statute defines “election communication” and “electioneering communication.” Mont. Code Ann. § 13-1-101(15)(17). Both definitions require public communication. See *id.* Cates does not acknowledge this limitation anywhere in her complaint. Also, Cates persistently overgeneralizes any project management expense billed by WestRidge Creative as a coordinated expense. Consequently, Cates fails to distinguish internal project management expenses from public communication expenses resulting in election communication, electioneering communication, or reportable election activity. Therefore, Cates misapprehends the definition of coordinated expenses.

For example, Cates argues Streano failed to report a proper in-kind contribution of \$70 from WestRidge Creative’s \$270 loan to “design Moving

Justice Forward logo, yard sign and letterhead.” But the \$270 Cates identifies is the cost of designing a logo, not the cost of publicizing an election communication, electioneering communication, or reportable election activity. A logo design may or may not be used in any number of public communications. Its design cost is distinct from the publication cost and material production of an election communication, electioneering communication, or reportable election activity.

Once again, Cates identified a “project management expense,” but failed to identify a public communication, such as an “election communication,” that would create a coordinated expenditure and mandate an in-kind contribution to Coolidge and Parker.

Conversely, where Cates correctly identified an “election communication,” she mistakes an individual campaign expenditure as a coordinated expenditure.

Cates claimed:

Westridge Creative loaned Mr. Parker \$892 for “development of Moving Justice Forward campaign materials, yard signs order, voter targeting, yard signs.” The proper in-kind contribution would be \$297 to each of the other two candidates who benefited.

Here, Cates misquoted the C5 finance report. The actual 8/15/21 – 9/14/21 C5 financial report language reads as follows:

Proj mgt/field work (\$363.25) - development of Moving Justice Forward campaign materials, yard sign order, voter targeting; yard signs (\$892) 100 18” x 24” signs - “Eli Parker Municipal Court Judge

- Moving Justice Forward” and 10 3’x 2’ [sic] signs with the same message.

When compared with the actual C5 language, Cates’ chart deletes “Proj mgt/field work (\$363.25)” entirely, inserts \$892 where the \$363.25 belongs, and entirely deletes the actual description of the \$892 amount. Cates claims Parker failed to properly report \$892 as \$297 in-kind contributions to Coolidge and Streano. The actual C5 language describes an individual campaign expenditure.¹

Clearly, Parker’s yard sign qualifies as an election communication. *See* Mont. Code Ann. § 13-1-101(15)(a)(iv). But Cates failed to present evidence Parker’s \$892 yard sign purchase qualified as a coordinated expenditure. When the C5 financial report is considered, Cates’ claim is actually contradicted by the evidence. Accordingly, Parker’s \$892 individual campaign expenditure did not require an in-kind contribution to Coolidge and Streano. Cates’ claim arose from an error in her own chart, “Summary of coordinated Westridge [sic] Creative Expenses for Moving Justice Forward candidates.” *See* WestRidge Creative Invoice-Parker, August 16, 2021. Furthermore, Cates’ entire chart should be disregarded as unreliable.

¹ The \$892 amount appears among WestRidge Creative’s invoices to Parker. *See* WestRidge Creative Invoice-Parker, August 16, 2021. That invoice attributes the \$892 as follows: Yard Signs: 100 (18” x 24”); 10 (3’ x 2’); 100 (stakes); shipping. *Id.*

Cates' complaint proceeds to speculate that, "[m]any other expenses may meet the definition of coordination, as there is not even a semblance of an information and coordination firewall between the campaigns of Ms. Streano, Mr. Parker, and Mr. Coolidge, as required in the statute cited above." Cates' complaint misapprehends the definition of coordinated expenses and, therefore, her speculation that "[m]any other expenses may meet the definition of coordination" is ill-founded. P.4 Furthermore, the plain language of 44.11.602(2)(f) ARM contradicts Cates' claim that "an information and coordination firewall" was required. Such a firewall is one among six factors that *may* be considered "[w]hen determining whether a communication or reportable election activity is coordinated..." 44.11.602(2)(f) ARM.

Finally, Cates' complaint concludes that "a contributor giving to any of the candidates was giving, unreported, to all the candidates." P. 4. Cates explains,

[a]s I reviewed all the reports of all three candidates, it appears that money raised by the three individual candidates was essentially pooled for management and coordination by Westridge [sic] Creative, with candidates splitting costs for identical activities and materials "even-Steven." *Id.*

Cates concludes her complaint providing no evidence for this claim.

Contrary to Cate's unfounded claim, the three campaigns are distinct and separate. Each campaign has its own bank account and receives individual donations from donors. The three candidates never commingled funds. WestRidge

billed each candidate separately and independently. Cates' complaint relies on overgeneralizations and false assumptions to paint the entire campaign as a coordinated expenditure. However, under Montana Law, a complainant must present actual evidence showing coordination for each individual expenditure, not a generalized complaint that candidates have collaborated, as alleged. Cates' complaint makes generalized claims of campaign coordination or collaboration. But Cates fails to present specific evidence of unreported coordinated expenses. Therefore, her complaint must be dismissed.

Conclusion

Cates' allegations overgeneralize what she describes as "coordinated activities by Westridge Creative" to misattribute all "project management expenses" as coordinated expenditures. These project management expenses were not coordinated expenditures. Ms. Cates' allegations rely on false assumptions about the development of the "Moving Justice Forward" platform that are not factually accurate. Project management expenses constituted neither elections communications nor electioneering communication. Therefore, the project management expenses Cates identifies are not coordinated expenditures.

The walk cards/mailers are also not coordinated expenditures. All of the candidates were clear in their reporting about the content of the mailers. As stated in the complaint, and again in this response, the Moving Justice Forward magnets

were identified as a coordinated expenditure by COPP. Unlike the magnets, the mailers should be considered individual campaign expenses, which prominently depicted only one candidate each. If each candidate's inclusion of his or her endorsement provided some value to the endorsed candidate, that benefit is difficult to assess, and far less than the 33% alleged by Ms. Cates.

The miscellaneous activities that Ms. Cates alleges to be coordinated expenditures are also not coordinated expenditures. Many of the alleged "miscellaneous" activities are not coordinated, do not benefit other candidates, or are expressly not election communications or electioneering communications.

Jennifer Streano, Eli Parker, and Jacob Coolidge all deny violation of campaign finance rules or misreporting of coordinated expenditures.

/s/ Jennifer Streano

/s/ Eli Parker

/s/ Jacob Coolidge

