

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Brekke v. Hi-Line Women’s Coalition No. COPP 2022-CFP-025	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On October 21, 2022, Andrew Brekke of Havre, MT filed a campaign practices complaint against the Hi-Line Women’s Coalition. The complaint alleged that the Hi-Line Women’s Coalition failed to timely and properly register as a political committee in Montana and file committee finance reports as required.

**SUBSTANTIVE ISSUES ADDRESSED**

The timely filing of a committee Statement of Organization and committee finance reports.

**FINDINGS OF FACT**

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: According to its Facebook page, the Hi-Line Women’s Coalition is a non-profit group that is “committed to educating Montanans about Women’s Reproductive Rights and working towards ensuring that our 2023 Montana Legislature is made of individuals who also are dedicated to protecting Women’s Reproductive Rights”.<sup>1</sup> (Commissioner’s Records.)

Finding of Fact No. 1A: Included with this Complaint was a copy of an Issue (Non-candidate) Advertisement Agreement Form dated

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<sup>1</sup> <https://www.facebook.com/HLWCoalition>

October 12, 2022, detailing the Hi-Line Women's Coalition's agreement for advertising on radio station KOJM-KPQX. With this request the Hi-Line Women's Coalition included what appeared to be a list of members and their title, including: Morgaine Lomayesva- Co-Chairwoman/Treasurer; Julea Robbins- Co-Chairwoman; Andrea Damiel- Secretary; Pam Veis- Board of Directors; Krystal Steinmetz- Board of Directors; Sara Strissel- Board of Directors; Lindsay Ratliff- Board of Directors.

The Complaint also included a copy of a Sales Order from New Media Broadcasters, Inc. Dated October 12, 2022, the order lists the advertiser as the Hi-Line Women's Coalition, denotes Paul Tuss as the candidate/issue mentioned in the ads, and shows the total cost as \$410.40. (Commissioner's Records.)

Finding of Fact No. 1B: Paul Tuss filed a C-1 Statement of Candidate as a candidate for election to House District 28 in Hill County with COPP on February 16, 2022. (Commissioner's Records.)

Finding of Fact No. 2: On October 24, 2022, the Hi-Line Women's Coalition filed a C-2 Statement of Organization registering in Montana as an incidental political committee. Lindsey Ratliff of Havre, MT is listed as the committee's Treasurer, with no other officers listed. (Commissioner's Records.)

Finding of Fact No. 3: On October 26, 2022, the Hi-Line Women's Coalition provided COPP with a formal response to this Complaint via email. The response indicated that these radio ad/s were the "only expenditure made for the purpose of supporting or opposing 2022 non-federal Montana candidate/s or ballot issue/s", and that the committee had only received one (1) contribution, in the amount of \$500.00, specifically intended to finance political advertisement/s. The response goes on to state that "Although our organization's sole purpose and mission is not one of political endorsement or campaigning- as evidenced that it represents at this time less than 10% of our overall budget and less than 25% of our organization's focus- we do recognize the importance of financial accountability when engaged in the political process". (Commissioner's Records.)

Finding of Fact No. 4: On November 3, 2022, the Hi-Line Women's Coalition filed an Initial C-4 incidental finance report, dated October 1, 2022 through October 25, 2022. This report disclosed the committee as receiving one (1) earmarked contribution of \$500.00 from contributor Renelle Braaten. The report also

disclosed the committee as making one (1) independent expenditure to entity New Media Broadcasters, dated October 12, in the amount of \$410.40 for purpose "One-time political radio ad purchase- Pro-Privacy ad supporting Paul Tuss". (Commissioner's Records.)

### **DISCUSSION**

The complainant in this matter alleges that the Hi-Line Women's Coalition failed to both timely and properly register as a political committee and file committee finance reports with COPP. The Commissioner examines each allegation.

#### *Political committee- registration requirements*

The term political committee is specifically defined under Mont. Code Ann. § 13-1-101(32) as:

(32) (a) "Political committee" means a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

(i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination;

(ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.

(b) Political committees include ballot issue committees, incidental committees, independent committees, and political party committees.

(c) A candidate and the candidate's treasurer do not constitute a political committee.

(d) A political committee is not formed when a combination of two or more individuals or a person other than an individual makes an election communication, an electioneering communication, or an independent expenditure of \$250 or less.

All available facts indicate the Hi-Line Women’s Coalition is “a combination of two or more individuals”, and they financed an independent expenditure supporting a Montana candidate in an amount greater than \$250.00 (FOF Nos. 1, 1A, 4). The Commissioner determines the Hi-Line Women’s Coalition is a political committee under Montana campaign finance law. The Commissioner further determines that the Hi-Line Women’s Coalition would appropriately qualify as an incidental committee<sup>2</sup>, as the organization was “not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues” but became involved in Montana’s elections by making expenditures supporting Montana candidate Paul Tuss, Mont. Code Ann. § 13-1-101(24)(a). In other words, while not originally organized to engage in electoral politics, the Hi-Line Women’s Coalition became a political committee by financing an independent expenditure supporting a Montana candidate seeking election to the state House of Representatives.

Political committees in Montana are required to file a Statement of Organization “within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first”, Mont. Code Ann. § 13-37-201(2)(b). In this case, the Hi-Line Women’s Coalition made an independent expenditure supporting candidate Paul Tuss on October 12, 2022 (FOF Nos. 1A, 4). Under Montana campaign finance law, the Hi-Line Women’s Coalition was required to file a Statement of Organization with COPP on or before

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<sup>2</sup> The Commissioner notes the Hi-Line Women’s Coalition filed as a Montana incidental committee on October 24, 2022.

October 17, 2022, five days later. The committee instead filed the Statement of Organization on October 26, 2022, nine (9) days late.

Sufficiency Finding No. 1: The Hi-Line Women’s Coalition failed to timely file a C-2 Statement of Organization within 5 days of making an expenditure supporting a Montana candidate.

The Commissioner finds sufficient facts to determine the Hi-Line Women’s Coalition filed its committee Statement of Organization nine days late.

*Committee finance reports*

Mont. Code Ann. § 13-37-226(2)(b) requires that political committees file finance reports on “the 30th day of March, April, May, June, August, September, October, and November in the year of an election in which the political committee... participates” (emphasis added). As discussed above, the Hi-Line Women’s Coalition first made a reportable Montana expenditure on October 12, meaning the first required committee finance report for those committees was due on or before October 31.<sup>3</sup> The Hi-Line Women’s Coalition filed its Initial C-4 incidental finance report with COPP on November 3, 2022, three (3) days late (FOF No. 4).

Montana’s campaign finance report filing requirements are mandatory: “shall file” (See §13-37-226 MCA). The filing date requirements are date certain. In Bradshaw v. Bahr, COPP 2018-CFP-008, Commissioner Mangan found candidate Bahr had filed two days late and wrote “any failure to meet a mandatory, date-certain filing date is a violation of §13-37-226, MCA.”

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<sup>3</sup> October 30, 2022 fell on a Sunday, meaning the required committee report was not due until Monday the 31<sup>st</sup>- Mont. Code Ann. § 1-1-216(1)(a).

Sufficiency Finding No. 2: The Hi-Line Women’s Coalition failed to timely file its initial campaign finance report on October 31, 2022.

The Commissioner finds sufficient facts to determine the Hi-Line Women’s Coalition filed its initial committee campaign finance report on November 3, 2022, three days late.

### **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 Hi-Line Women’s Coalition 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).

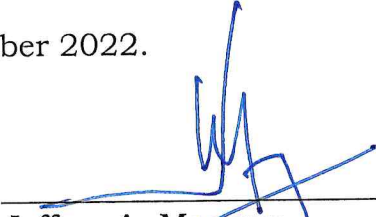
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of Hi-Line Women’s Coalition. 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, 226. *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 7<sup>th</sup> day of November 2022.



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