

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Wendt v. Brozell No. COPP 2022-CFP-016	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On August 1, 2022, David Wendt of Lima, Montana filed a campaign practices complaint against Chris Brozell, also of Lima. The complaint alleged that candidate Brozell failed to timely file campaign finance reports as required.

SUBSTANTIVE ISSUES ADDRESSED

Proper and timely filing of required Montana campaign finance records.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Chris Brozell filed a C-1A Statement of Candidate as a candidate for election to the office of County Sheriff in Beaverhead County with the COPP on February 14, 2022. On the Statement of Candidate, candidate Brozell indicated that campaign activity would not meet or exceed \$500.00. The Statement of Candidate was filed electronically, using the Campaign Electronic Reporting System (CERS). (Commissioner's Records)

Finding of Fact No. 2: On July 6, 2022, COPP received a letter from candidate Brozell requesting that COPP "Please accept this fax and additional mail copy of my C-5 sent July 5, 2022". Included with the letter was a hard copy (paper) C-5 campaign finance report,

with no 'From' or 'To' date provided¹, detailing two (2) expenditures made by candidate Brozell, dated simply as "May 2022", totaling \$1,041.00: one to Womack's Printing Place in the amount of \$500.00, and one to the Dillon Tribune in the amount of \$541.00. (Commissioner's Records)

Finding of Fact No. 3: On July 12, 2022, COPP sent a letter to candidate Brozell confirming receipt of his letter dated July 5 and the included hard copy (paper) C-5 campaign finance report. COPP's letter informed candidate Brozell that while he had originally filed as a 'B' box candidate whose activity would not meet or exceed \$500.00, "your campaign has now moved to a "C" status where \$500.00 or more has been received/spent" and that "COPP will accept the paper C-5 as you, the candidate, reporting contributions and expenditures for your campaign, but this is not granting you a waiver from filing electronically. All candidate and committee campaigns are required to file electronically". COPP also sent a copy of the C-5 back to candidate Brozell requesting that all required information, including dates for the reporting period, be included. (Commissioner's Records)

Finding of Fact No. 3A: On July 12, 2022, candidate Brozell filed an amended version of the C-1A Statement of Candidate to indicate that campaign activity would exceed \$500.00. The Statement of Candidate was amended by candidate Brozell electronically, using CERS. (Commissioner's Records)

Finding of Fact No. 4: On July 21, 2022, COPP received a hard copy (paper) C-5 campaign finance report from candidate Brozell, dated February 14, 2022 through March 31, 2022. The report disclosed one (1) monetary contribution made personally by candidate Brozell to his campaign in the amount of \$275.00 (no date provided), and one (1) expenditure made by the campaign in the amount of \$275.00. (Commissioner's Records)

Finding of Fact No. 5: Also on July 21, 2022, COPP received a hard copy (paper) C-5 campaign finance report from candidate Brozell, dated April 1, 2022 through June 30, 2022. The report disclosed one (1) monetary contribution made personally by candidate Brozell to his campaign in the amount of \$1,289.00 (no date

¹ In other words, COPP is unable to determine which specific reporting period this report was meant to cover, as candidate Brozell did not indicate the beginning ('From') date or end ('To') date on the paper form

provided), and two (2) expenditures made by the campaign in the amount of \$1,041.00². (Commissioner's Records)

Finding of Fact No. 6: On August 18, 2022, candidate Brozell provided COPP with a formal response to this complaint, delivered via U.S. Mail. The response stated that "I would like to take this opportunity to...request a waiver from the electronic filing requirements. As... I have no phone or internet currently".

Included with the response was an amended hard copy (paper) version of candidate Brozell's April 1, 2022 through June 30, 2022 C-5 campaign finance report. The report disclosed one (1) monetary contribution made by candidate Brozell to his campaign in the amount of \$1,500.00 dated April 1, 2022, and two (2) expenditures made by the campaign in the amount of \$966.80.

The response also included a hard copy (paper) C-5 campaign finance report, with no 'From' or 'To' date provided, detailing one expenditure made by candidate Brozell, dated "7-5 + 19/2022" and described as "Fox charges + Postage" totaling \$35.24.³ (Commissioner's Records)

Finding of Fact No. 7: Candidates for election in Montana's 2022 elections had a required C-5 campaign finance report due on or before August 20, 2022. This report was to cover campaign contribution and expenditure activity occurring between June 16, 2022 and August 15, 2022. Candidate Brozell did not file a C-5 campaign finance report specifically noted as covering the period of June 16-August 15 on or before August 20, 2022. (Commissioner's Records)

DISCUSSION

Timely filing of campaign statements and reports

The complainant in this matter asserts that candidate Brozell failed to timely file campaign finance reports disclosing contributions received and expenditures made by his campaign.

² These expenditures had previously been disclosed by candidate Brozell on the C-5 report received by COPP on July 6, 2022- see Finding of Fact No. 2

³ COPP is unable to determine which specific reporting period/s this report was meant to cover, as candidate Brozell did not indicate the beginning ('From') date or end ('To') date on the paper form

On February 14, 2022, candidate Brozell filed a Statement of Candidate with the COPP certifying that campaign contribution and expenditure activity would total less than \$500.00 (FOF No. 1). 44.11.304(1), ARM, states that:

If a local candidate or a political committee which is specifically organized to support or oppose a particular local candidate or local issue anticipates 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, the candidate or an officer of the political committee shall file an affidavit of such intent at the same time the statement of candidate or statement of organization is filed as required by 13-37-201 and 13-37-205, MCA.

Running for election to the office of County Sheriff in Beaverhead County, candidate Brozell would be considered a local candidate (FOF No. 1). As a local candidate who certified to the COPP that campaign activity would not meet or exceed \$500.00, candidate Brozell was not initially required to file campaign finance reports.

Applicable Administrative Rules do hold that local candidates must begin filing campaign finance reports if campaign activity meets or exceeds \$500.00. Specifically, under 44.11.304(2), ARM:

If a local candidate or an officer of a local political committee files an affidavit pursuant to this rule and subsequently receives contributions in a total amount or makes expenditures in a total amount in excess of \$500 for all elections in a campaign, such candidate or officer shall, within five business days of the date when such expenditures or contributions exceed \$500, file an initial report disclosing all contributions and expenditures to that date and shall file all future reports required by 13-37-226, MCA.

In this case, campaign contributions received by candidate Brozell exceeded \$500.00 on April 1, 2022, when he personally contributed \$1,500.00 to his campaign (FOF No. 5). Under the requirements of 44.11.304(2), ARM,

candidate Brozell was required to file an initial campaign finance report on or before April 8, 2022, 5 business days after total contributions exceeded \$500.00.

Candidate Brozell did not file any C-5 campaign finance report/s on or before April 8, 2022. Candidate Brozell first provided COPP a hard copy (paper) campaign finance report via mail on July 6, 2022 (FOF No. 2).⁴ By providing COPP with an initial C-5 campaign finance report on July 6 instead of by April 8, Candidate Brozell late-filed the initial C-5 campaign finance report by no fewer than eighty-eight (88) days.

Candidate Brozell next had a required campaign finance report due on or before April 20, 2022, with subsequent pre-primary election reports due monthly on or before May 20 and June 20, Mont. Code Ann. §13-37-226(1)(b). A monthly pre-general election report was also due on or before August 20, 2022.

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."

⁴ Candidate Brozell did not indicate the reporting period/s this report was meant to cover, so COPP returned a copy to candidate Brozell requesting he re-file the in a manner that provided this information (FOF No. 3). On July 21, 2022, COPP, via mail, received from candidate Brozell a hard-copy C-5 report dated February 14, 2022 through March 31, 2022 (FOF No. 4).

COPP did not receive pre-primary C-5 campaign finance reports from candidate Brozell on or before April 20, May 20 or June 20, 2022. As discussed above, candidate Brozell filed an initial C-5 campaign finance report with COPP on July 6, 2022. COPP next received a hard copy (paper) C-5 campaign finance report from candidate Brozell on July 21, 2022, this one dated April 1, 2022 through June 30, 2022 (FOF No. 5). Candidate Brozell similarly failed to file a pre-general C-5 campaign finance report on or before August 20, 2022 (FOF Nos. 6, 7)⁵. Candidate Brozell failed to file pre-primary campaign finance reports on or before April 8 (the date his initial report was due), April 20, May 20, and June 20 as required, and failed to file a pre-general report on or before August 20, violations of Mont. Code Ann. § 13-37-226(1)(b).

Sufficiency Finding No. 1: Candidate Brozell failed to properly and timely file campaign finance reports on five occasions as required.

The Commissioner finds sufficient facts to determine candidate Brozell failed to timely file his initial (April 8), April 20, May 20, June 20, and August 20, 2022 campaign finance reports as required by Montana law.

Candidate Brozell also failed to timely file an amended version of his C-1A Statement of Candidate reflecting his change in reporting status. Contributions received by candidate Brozell exceeded \$500.00 on April 1, 2022, requiring him to amend the Statement of Candidate from 'B' to 'C' box status

⁵ While candidate Brozell did include a hard copy (paper) C-5 campaign finance report disclosing expenditure/s dated as occurring in July with his August 18 response, he not provide a reporting period on the reporting form. Because no reporting period was provided on the report by candidate Brozell, COPP was unable to determine if it was submitted by itself as the August monthly report, or was meant to be included as part of the candidate's complaint response

on or before April 8. Candidate Brozell amended his Statement of Candidate to reflect his change from 'B' to 'C' box status on July 12, 2022, more than five business days after exceeding \$500.00 in campaign activity (FOF No. 3A).

Sufficiency Finding No. 2: Candidate Brozell failed to timely file an amended Statement of Candidate report upon exceeding \$500 campaign finance activity.

The Commissioner finds sufficient facts to determine candidate Brozell failed to timely file his Statement of Candidate report upon moving from 'B' box to 'C' box status upon exceeding the \$500 campaign activity threshold for reporting as required by Montana law.

Part Two: electronic filing

Montana campaign finance law requires candidates file all reports electronically, Mont. Code Ann. §13-37-225(1)(a). The commissioner "may" grant a candidate a waiver from this electronic filing requirement and allow filing on hard copy (paper) forms "for good cause shown in a written application by the candidate", Mont. Code Ann. §13-37-225(1)(b).

In this case, all C-5 campaign finance reports filed by candidate Brozell (included the undated report provided with the August 18 response) were hard copy (paper) forms provided to COPP (FOF Nos. 2, 4, 5, 6). Candidate Brozell did not formally request a waiver from Montana's electronic filing requirements until August 18, 2022, as part of his response to this complaint (FOF No. 6). While accepting the hard copy (paper) versions of all reports as provided by candidate Brozell, COPP did not grant him a waiver from electronic filing requirements; this was stated in clear language in COPP's July 12, 2022 letter

to candidate Brozell (by writing “but this is not granting you a waiver from filing electronically. All candidate...campaigns are required to file electronically”) (FOF No. 3). Additionally, the Commissioner notes candidate Brozell was able to file his initial Statement of Candidate form with the COPP electronically, using CERS, and was later able to amend his Statement of Candidate electronically, again using CERS (FOF Nos. 1, 3A).

Candidate Brozell failed to meet the electronic filing requirement of Mont. Code Ann. §13-37-225(1)(a) by filing all C-5 campaign finance reports hard copy and mailing copies to the COPP.

Sufficiency Finding No. 3: Candidate Brozell failed to file campaign finance reports electronically

The Commissioner finds sufficient facts to determine candidate Brozell failed to file campaign finance reports electronically as required by Montana law.

The Commissioner has not issued a waiver to allow non electronic filing in this matter as candidate Brozell has electronically filed his Statement of Candidate, including an amendment to the electronic form. The Commissioner orders candidate Brozell to bring his campaign finance reports up to date using the CERS filing system within 10 days of this decision.

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 Brozell 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 Brozell. 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(1)(b), 13-37-225(1)(a). *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 August 2022.



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