

August 26, 2022

**VIA CERTIFIED MAIL –
RETURN RECEIPT REQUESTED
& EMAIL: jeff.mangan@mt.gov**

Jeff Mangan
Commissioner of Political Practices
1209 Eighth Avenue
P.O. Box 202401
Helena, MT 59620-2401

*Center for Media and Democracy v. Convention of States
Political Fund, COPP-2022-CFP-017A*

Dear Mr. Mangan:

We are in receipt of your August 10, 2022, correspondence and the copy of the complaint filed by the Center for Media and Democracy (the “Complainant”) against Richard A. Johnson, Conservative Action for America and the Convention of States Political Fund. I am responding on behalf of Mr. Johnson and both entities.

Contrary to the unsupported allegations in the complaint, there has been no violation of M.C.A. § 13-37-217 as the Convention of States Political Fund has not received a contribution “in connection with an election in any other name than that of the person who in truth supplie[d] the money.” Moreover, neither Mr. Johnson nor Conservative Action for America made a contribution in the name of another.

CONSERVATIVE ACTION FOR AMERICA

Conservative Action for America, Inc. (“CAA”) is a national independent advocacy organization with a primary purpose of influencing public policy. Established earlier this year, CAA is an Arizona nonprofit corporation and operates as a section 501(c)(4) advocacy organization. As it is allowed to do under Arizona law, CAA is governed by a one-member board of directors. Currently, that board member is Mr. Johnson.

In its fundraising efforts, CAA sought out unrestricted, general support grants. It did not seek nor would it accept earmarked or targeted support for any specific program activity. Instead, CAA’s board member determines how the funds will be used to advance the organization’s exempt purpose and support its program activities, which may include making grants in support of other organizations. Any decision to make subsequent grants is made solely by CAA, without any earmarking or direction from a donor.

While it is possible that a portion of a donation may be used for political purposes at a later date, donors to CAA are not donating specifically for the purpose of furthering any independent expenditures. Donors to CAA are not providing a donation made for an independent expenditure

and, accordingly, are not listed as an itemized receipt in support of any independent expenditure communication that may or may not occur.

As a section 501(c)(4) organization, CAA is permitted to engage in political activity provided that such activity is not its primary purpose. Like most section 501(c)(4) organizations, CAA does not engage in any political activity directly. Instead, to the extent and limits permissible under the Internal Revenue Code, CAA provides financial support to section 527 organizations that engage in a range of political activities, including sponsoring independent expenditures.

CONVENTION OF STATES POLITICAL FUND

Convention of States Political Fund (“CSPF”) is a section 527 political organization with a primary purpose of influencing elections. CSPF has filed a form 8871 with the Internal Revenue Service (“IRS”), providing notice of its existence and intent to operate as a political organization. Mr. Johnson is the administrator and treasurer of CSPF.

As you are well aware, CSPF is also registered as a Michigan political action committee (“PAC”). As an out-of-state PAC operating in Montana, CSPF has filed periodic disclosure reports with the Office of the Commissioner of Political Practices. Like many section 527 organizations operating in multiple states, CSPF did not indicate to the IRS that it was exempt from federal reporting or that it would adhere itself to a single state’s campaign finance disclosure laws. Instead, depending on the scope and extent of its activities, CSPF subjects itself to periodic campaign finance disclosure reports in the jurisdictions where it is engaged in political activities.

In Montana, CSPF has filed copies of its Michigan campaign finance reports. On those reports, CSPF has listed each of its contributors. These same contributors have also been publicly disclosed on CSPF’s periodic reports filed with the IRS.

COMPLAINANT’S UNSUPPORTED ALLEGATIONS

The Complainant has provided you with information about the activities of CAA, CSPF and Mr. Johnson. The Complainant has not provided any information about any person who has received a contribution in the name of another. The Complainant also has not provided any information about any earmarking, targeting or other direction by a donor to CAA or CSPF. Instead, the Complainant has provided you with a summary of public information available from the reports filed by CSPF as well as other public disclosure filings.

There are no facts alleged by the Complainant that any donor to CAA gave to CAA based on an agreement between the parties that the donor’s funds would be donated to CSPF for independent expenditures in Montana. Instead, the only analysis by the Complainant shows that: CAA donations went to multiple entities, not just CSFP; CSPF received donations from multiple entities, not just CAA; and, CSPF gave to other political committees engaged in independent expenditures in a variety of jurisdictions. (See the flow chart in Complainant’s complaint at page 50.)

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Given the complete lack of facts supporting any of the elements of the alleged violation, the complaint should be dismissed as frivolous. Under the five “indicia” set forth in *Lansgaard v. Peterson and Wilks*, No. COPP 2014-CFP-008, the Complainant’s argument is facially deficient.

First, the activity being attacked is a contribution to an independent expenditure group. Independent expenditures (which by definition are not coordinated with candidates) should be deemed “base level participation” in political speech and elections.

Second, the Complainant’s arguments can be read as an attempt to impose disclosure obligations on donors disconnected from any independent spending in Montana — donors that are not alleged to have had any knowledge that Montana spending would occur or to have had any connection to Montana at all. Accordingly, to the extent the Complainant alleges that CAA and CSPF being controlled by the same individual should subject CAA, CSPF and any donors to CAA to an intrusive investigation and possible disclosure obligations, it implicates the second indicia.

The third indicia — a complaint directed at a corrected violation — does not apply.

The fourth indicia — a technical or de minimis violation — may or may not apply, as the Complainant’s precise theory is unclear. To the extent the Complainant alleges that the mere establishment and control of a section 501(c)(4) advocacy organization and a section 527 political organization by the same individual is evidence of an earmarking scheme, it has no basis in law and does not rise to the level of a technical or de minimis violation.

The fifth indicia is reserved for additional considerations. With this complaint, such additional considerations may include the extent to which your agency and the Complainant communicated about conceiving, preparing or filing a complaint.

Regardless of whether the complaint is frivolous under your agency’s announced standards, it lacks any factual or legal support. No information has been provided by the Complainant that demonstrates a campaign finance violation occurred. Accordingly, the complaint should be dismissed.

GODFREY & KAHN, S.C.



Mike B. Wittenwyler