

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Eaton v. Gross No. COPP 2018-CFP-021	DISMISSAL OF COMPLAINT BASED ON APPLICATION OF PRINCIPLE OF EXCUSABLE NEGLECT
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On June 15, 2018, Jake Eaton of Billings, Montana filed a complaint against Senator Jennifer Gross of Billings, Montana for failing to sufficiently detail expenditures on her 2016 campaign finance reports.

**SUBSTANTIVE ISSUES ADDRESSED**

This decision addresses the sufficiency of expense detail when reporting campaign expenditures and services. This Complaint will be dismissed for the same reasoning and analysis set forth in *Eaton v. Dunwell*, COPP-2018-018.

**FINDINGS OF FACT**

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Montana's 2016 general election was held on Tuesday, November 8, 2016. (Montana Secretary of State.)

Finding of Fact No. 2: Jennifer Gross filed a C-1 Statement of Candidate as a Democratic candidate for State Senator, Senate District 26 with the COPP on August 24, 2016. (Commissioner's Records.)

Finding of Fact No. 3: Jennifer Gross timely filed the required C-5 campaign finance reports throughout the 2016 election cycle. (Commissioner's Records.)

## DISCUSSION

The Complaint asserts that a number of expenditures reported by candidate Gross failed to include sufficient detail. The Commissioner thus examines candidate Gross's campaign finance reports. Of the allegations of expenditures and debts that lacked sufficient detail, the Commissioner dismisses the following allegations (see Table A) as *de minimis*, as information excluded does not substantially affect disclosure. The allegations in Table A are further dismissed as frivolous:

Table A: *De minimus* allegations regarding a failure to provide all required quantity/description detail for expenditures made by candidate Gross as provided in this complaint

<b>Allegation #</b>	<b>Entity</b>	<b>Purpose</b>	<b>Amount</b>
1	FedEx Office	Photo Copies	\$0.48
2	FedEx Office	Photo Copy	\$0.12
3	FedEx Office	Photo Copies	\$1.20
4	FedEx Office	Photo Copies	\$3.36
5	FedEx Office	Photo Copies	\$19.43
8	FedEx Office	Photo Copies	\$0.72
9	FedEx Office	Photo Copies	\$6.84
10	FedEx Office	Photo Copies	\$1.32
11	FedEx Office	Copies	\$1.32
12	FedEx Office	Copies	\$3.96
13	FedEx Office	Copies	\$2.40
14	FedEx Office	Photo Copies	\$2.64
15	FedEx Office	Copies	\$1.80
16	FedEx Office	Photo Copies	\$2.64
17	FedEx Office	Copies	\$1.20
18	FedEx Office	Copies	\$2.40
19	FedEx Office	Copies	\$2.88
20	FedEx Office	Copies	\$2.16
21	FedEx Office	Copies	\$7.32
22	FedEx Office	Copies	\$2.52
24	FedEx Office	GOTV Flyers	\$15.93
25	FedEx Office	Copies	\$0.24
26	FedEx Office	Photocopies	\$0.72
27	FedEx Office	Photocopies	\$1.20
28	FedEx Office	Photo Copies	\$6.48
29	FedEx Office	Photo Copies	\$2.40
30	FedEx Office	Photocopies	\$0.24
31	FedEx Office	Photocopies	\$2.52
32	FedEx Office	Photo Copies	\$1.44
33	FedEx Office	Copies	\$0.12
34	FedEx Office	Copies	\$1.20
35	FedEx Office	Copies	\$2.52

36	FedEx Office	Photocopies	\$8.64
37	FedEx Office	Copies	\$1.92
38	FedEx Office	Copies	\$9.00
39	FedEx Office	Copies	\$0.96
40	FedEx Office	Copies	\$0.24
41	FedEx Office	Copies	\$1.68
42	FedEx Office	Copies	\$0.24
43	FedEx Office	Copies	\$0.72
44	FedEx Office	Copies	\$2.07
51	Google Adwords	Promote	\$9.95
52	Google Adwords	Promote	\$2.19
53	Google Adwords	Promote	\$1.33
55	Google Adwords	Promote	\$24.72
57	Google Adwords	Promote	\$4.06

The complaint alleges Senator Gross failed to report debts and subsequent payments on those debts. Senator Gross listed debts and loans (see Table B) and subsequent payments (Table C) for those amounts on her 2016 campaign finance reports. While all debts, loans, and payments were timely reported, candidate Gross did improperly label a loan as a debt and a payment as an expenditure. The allegation is hereby dismissed.

Table B: Loans and debts as reported by candidate Gross on her 2016 campaign finance reports that contain the required level of reporting detail.

<b>Entity</b>	<b>Date</b>	<b>Purpose</b>	<b>Amount</b>
Gross, Jennifer M	08/24/2016	Postage for Mailing (Stamps)	\$10.34
Gross, Jennifer M	08/24/2016	Copies for canvassing*	\$59.00
Gross, Jennifer M	08/22/2016	Post Office Box Rental	\$51.00
Gross, Jen	09/29/2016	Campaign mileage- 390 miles X .54 per mile (state rate)	\$210.60
Gross, Jen	10/22/2016	Campaign mileage- 230 miles X .54 per mile (state rate)	\$124.20
Gross, Jen	11/08/2016	Campaign mileage- 170 miles X .54 per mile (state rate)	\$91.80

\*quantity and detail required<sup>1</sup>

Table C: Debt & loan payments as reported by candidate Gross on her 2016 campaign finance reports.

<sup>1</sup> The sufficiency detail required is addressed in Table 1 as the payment on this loan was reported as an expenditure

Entity	Type	Date of Payment	Amount of Payment
Gross, Jennifer	Loan	9/11/2016	\$120.32*
Gross, Jen	Debt	11/23/2016	\$210.60
Gross, Jen	Debt	11/23/2016	\$124.20
Gross, Jen	Debt	11/23/2016	\$91.80

\*reported as an expenditure

The Commissioner further examines expenditures as reported on the Gross campaign 2016 campaign finance reports:

Finding of Fact No. 4: Candidate Gross's 2016 campaign finance reports show 6 expenditures that lack sufficient detail (see Tables Nos. 1-3). (Commissioner's Records.)

Table 1: Expenditures & loans as reported by candidate Gross on her June 23, 2016 through September 29, 2016 Initial campaign finance report that did not contain the required level of reporting detail. From original version of report filed on October 4, 2016.

Entity	Date	Purpose	Amount
Gross, Jennifer M	08/24/2016	Copies for canvassing	\$59.00
Gross, Jennifer	09/11/2016	LOAN REPAYMENT to Self <sup>2</sup>	\$120.32
MTS	09/19/2016	MAILING AND SHIPPING OF MAILERS AND PALMCARDS	\$1,307.23

Table 2: Table 6: Expenditures as reported by candidate Gross on her October 23, 2016 through November 23, 2016 Periodic campaign finance report that did not contain the required level of reporting detail. From most recent Amended version of report, filed June 26, 2017.

Entity	Date	Purpose	Amount
Office Depot	10/27/2016	Thank you cards and card stock	\$36.98

Table 3: Expenditures as reported by candidate Gross on her November 24, 2016 through June 30, 2017 Closing campaign finance report that did not contain the required level of reporting detail. From original version of report, filed June 26, 2017.

Entity	Date	Purpose	Amount
Google Adwords	03/28/2017	Promote	\$50.00
Google Adwords	04/27/2017	Promote	\$57.19

The expenses described in the foregoing Tables required additional detail. Such generic expenditure descriptions are more akin to a list or category than a description and do not provide the "purpose, quantity, subject matter" of the expense which are the details required to be reported by 44.11.502(7), ARM.

<sup>2</sup> This expenditure was payment for three loans reported on 8/22 and 8/24.

Nor, do the listings meet Montana’s statutory requirement of detail required for expenditures to consultants, or other persons who perform services for or on behalf of a candidate; the law requires that such expenditures “must be itemized and described in sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was made.”

§ 13-37-229(2)(b), MCA.

Sufficiency Finding No. 1: There are sufficient facts to show that Gross 2016 campaign finance reports failed to disclose sufficient detail describing campaign expenditures (FOF No. 4).

Similar problems of insufficient detail in expenditure reporting under the current rules and statutes was first substantively addressed on October 3, 2016 in *MDP v. MRLCC*, COPP-2016-CFP-029, by then-Commissioner Jonathan Motl. While MRLCC’s lack of expenditure reporting detail was a violation, such a finding was, at the time (2016 election cycle) a further application of the rule and statute at issue. Thus, the violation was dismissed under the “excusable neglect” principle:

[G]iven the first time nature of this determination and the likelihood that there are other candidates and committees in a similarly deficient reporting status.

*Id.*, at 7.

The Commissioner incorporates herein by reference the in-depth review of the *MDP v. MRLCC* decision recently set out in *Eaton v. Dunwell*, 2018-CFP-018. This Complaint against Sen. Gross will be dismissed for the same reasons and pursuant to the same two safeguards.

First, no later than November 15, 2018, Senator Gross is directed to file amended campaign finance reports providing the required “sufficient detail” for the specific expenditures noted in this decision. Second, contingent on amended campaign finance reports being filed, the Commissioner hereby excuses (dismisses) Senator Gross from a campaign practice violation for the deficiencies identified above based on the principle of excusable neglect.<sup>3</sup>

### **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. §13-37-111(2)(a), MCA. The mandate to investigate is followed by a mandate to take action; if there is “sufficient evidence” of a violation the Commissioner must (“shall notify,” see §13-37-124, MCA) 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, as set out in this Decision, to show that Gross’s 2016 campaign practices 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

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<sup>3</sup> The Commissioner notes that Senator Gross has provided the expenditure detail as required as part of her complaint response and has agreed to amend the campaign’s 2016 finance reports to fulfill the requirements set out by the Commissioner for dismissal.

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 discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006, 009. In this Matter, however, application of excusable neglect is appropriate for the reasons set out above and is therefore applied to dismiss Sufficiency Finding No. 1.

Because the findings of violation are excused by application of excusable neglect principles, this Matter is dismissed in its entirety.

DATED this 5<sup>th</sup> day of August 2018.



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