

Commissioner of Political Practices 1209 Eighth Avenue Post Office Box 202401 Helena, MT 59620-2401 Phone: 406-444-2942 Fax : 406-444-1643 www.politicalpractices.mt.gov

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HAND DELIVERED COMMISSIONER OF POLITICAL PRACTICES

SIGNED/NOTARIZED

Campaign Finance and Practices

Complaint Form (08/17)

Type or print in ink all information on this form except for verification signature

Person bringing complaint (Complainant):

Complete Name: Spencer Merwin, Executive Director, MT GOP
Complete Mailing Address: PO Box 935, Helena, MT 59624
Phone Numbers: Work (406) 442-6469 Home

Person or organization against whom complaint is brought (Respondent):

Complete Name: Mike Cooney for Governor / Cooney for Montana
Complete Mailing Address: PO Box 1825, Helena, MT 59624
Phone Numbers: Work Home

Please complete the second page of this form and describe in detail the facts of the alleged violation.

Verification by oath or affirmation

State of Montana, County of Missoula

I, Spencer Merwin, being duly sworn, state that the information in this Complaint is complete, true, and correct, to the best of my knowledge and belief.



Signature of Complainant

Subscribed and sworn to before me this 20th day of August, 2020.

Notary Public

My Commission Expires:

Statement of facts:

Describe in detail the alleged violation(s) and cite the statute or statutes you believe have been violated. Please attach copies of documentary evidence to support the facts alleged in your statement.

If the space provided below is insufficient, you may attach additional pages as necessary.

Please see attached

Complaints must be:

- signed
- notarized
- delivered in person or by mail.

Mr. Jeff Mangan
Commissioner of Political Practices
1209 8th Ave
Helena, MT 59620-2401

Commissioner Mangan,

I write to file this formal complaint against the Mike Cooney for Governor campaign alleging violations of § 13-1-10, MCA and § 13-1-9(a) MCA, following a series of in-kind contributions in the form of coordinated expenditures with the Democrat Governors Association (DGA).

Overview

§ 13-1-101, MCA:

(9)(a) "Contribution" means:

- (i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support or oppose a candidate or a ballot issue;
- (ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;

(10) "Coordinated", including any variations of the term, means made in cooperation with, in consultation with, at the request of, or with the express prior consent of a candidate or political committee or an agent of a candidate or political committee.

(18) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

- (i) made by a candidate or political committee to support or oppose a candidate or a ballot issue; or
- (ii) used or intended for use in making independent expenditures or in producing electioneering communications.

ARM 44.11.103(31) "Reportable Election Activity" includes but is not limited to accepting a contribution, a contribution in response to an appeal, or a designated contribution, **or making an expenditure**, a contribution, **a coordinated expenditure**, an independent expenditure, **or an in-kind contribution or expenditure**, or making an election communication or electioneering communication.

ARM 44.11.501(4) The term "coordinated expenditure" is an expenditure that is "coordinated" as defined in 13-1-101, MCA, or involves "coordination" as defined in ARM 44.11.602.

ARM 44.11.602(1)A “coordinated expenditure” means any election communication, electioneering communication, or reportable election activity that is made by a person in cooperation with, in consultation with, under the control of, or at the direction of, in concert with, at the request or suggestion of, or with the express prior consent of a candidate or an agent of the candidate. The coordination of an expenditure need not require agreement, cooperation, consultation, request, or consent on every term necessary for the particular coordinated expenditure, but only requires proof of one element, such as content, price, or timing, to be met as a fact of a coordinated expenditure.

(2) When determining whether a communication or reportable election activity is coordinated the following may be considered, whether:

- (a) it is based on information that is provided by the candidate or agent of the candidate directly or indirectly to the person funding or facilitating the communication or activity, or any person involved in creating, producing, or disseminating it.
- (b) it was made by or through any candidate’s agent in the course of the agent’s involvement in the current campaign.
- (c) the person funding or facilitating the communication or reportable election activity retains the paid services of a person or individual who: (i) currently, or during the six months immediately preceding the election in which the candidate’s name will appear on the ballot, received compensation from the candidate or the candidate’s agent; and (ii) the person or individual is involved in creating, producing, or disseminating the communication or reportable election activity.
- (d) the communication or reportable election activity replicates, reproduces, republishes or disseminates, in whole or in substantial part, any material designed, produced and paid for, or distributed by the candidate, except as set forth in (3)(e).
- (e) the candidate or the candidate’s agent has made or participated in any discussion or in making any decision regarding the content, timing, location, media, intended audience, volume of distribution, or frequency of placement of the communication or activity.
- (f) the person funding or facilitating the communication or reportable election activity has:
 - (i) established a written firewall policy designed to prevent the flow of information about the candidate’s campaign plans, projects, activities, or needs from the persons providing services to the candidate to persons involved in the creation, production, or dissemination of the communication or activity; and (ii) prior to the preparation or distribution of any communication or reportable election activity has distributed the firewall policy to all relevant employees, consultants, and clients affected by the policy; and (iii) filed the firewall policy with the COPP.

Complaint Summary

The Mike Cooney for Governor campaign knowingly and intentionally violated the provisions of Montana law referenced above in a recent digital campaign aimed at Mr. Cooney's opponent, Mr. Gianforte.

The digital campaign, titled "GianforTAX", was unveiled on August 4th by the Mike Cooney for Governor campaign. On August 6th, the DGA then shared a press release highlighting its (ie. DGA) launch of the "GianforTAX" website (www.greggianfortax.com), however, the website domain for this coordinated expenditure was registered nearly a month earlier by an internet proxy on July 8th and the website is paid for by the DGA . The coordinated expenditures and costs incurred to both political committees during their effort to establish digital and television advertisements in support of Mr. Cooney's campaign, or in opposition to Mr. Cooney's opponent, must be reported as such and subject to Montana's contribution limits. In both of these particular instances, neither occurred.

The blatant use of shared resources between these two political committees referenced herein further calls into question Mr. Cooney's relationship with the DGA and must be investigated to ensure candidates and the committees supporting these candidates are in compliance with Montana election law .

As a reminder, on July 8th of this year this office imposed the maximum penalty allowable under state law after finding Mr. Cooney violated the state code of ethics for improper use of facilities while participating in a conference call with the Democratic Governors Association – the very entity that is now illegally coordinating with the Mike Cooney for Governor campaign.

As of Monday, August 14th, the DGA has spent over \$8.2 million to support the Mike Cooney for Governor campaign.

Key Facts and Allegations:

1. A conference call held by the Democratic Governors Association ("DGA") occurred on April 13th, 2020.
2. On May 19th, the Montana Republican Party filed a complaint against Mr. Cooney alleging state ethics laws were violated by Mr. Cooney's participation on the call from his office at the state Capitol.
3. On July 8th, Commissioner of Political Practices Jeff Mangan found that Mr. Cooney violated state ethics laws by participating in a campaign-related conference call with the DGA from his office at the state Capitol on April 13th and imposed a \$1,000 fine, the maximum allowable under statute.
4. On July 8th, a "GianforTAX" website domain was purchased by internet proxy (Exhibit 1)

5. On August 4th, the “GianforTAX” campaign was unveiled by the Cooney campaign (Exhibit 2)
6. On August 6th, the DGA “launched” the “GianforTAX” website (Exhibit 3)
7. The “GianforTAX” website is owned and operated by the DGA and includes the DGA disclaimer (Exhibit 4)
8. The DGA has spent over \$8.2 million in support of the Mike Cooney for Governor campaign despite Mr. Cooney’s pledge to disavow all outside spending in his campaign for Governor. (Exhibit 5)
9. All exhibits were collected by MTGOP staff and readily available to our organization

Actions Requested of the Commissioner to Remedy this Situation

I am requesting the Commissioner of Political Practices take the following actions, in accordance with all relevant laws, rules, and procedures, to investigate and remedy the allegations contained in this complaint:

1. Conduct a thorough investigation into this matter, including identifying whether these actions constitute a pattern or are an isolated incident, given the Cooney campaign’s history of illegally using state resources to coordinate with the DGA.
2. If, at the conclusion of his investigation, the Commissioner finds that Lt. Governor Cooney violated § 13-1-10, MCA and § 13-1-9(a) MCA as alleged, then I submit that the Mike Cooney for Governor campaign be held accountable in an equitable manner for the alleged offense.

Thank you for your time and attention to this matter.

Sincerely,

Spenser Merwin
Executive Director
Montana Republican Party

Exhibit 1

DNS Records		Diagnostics	
Registrar Info			
Name	GoDaddy.com, LLC		
Whois Server	whois.godaddy.com		
Referral URL	http://www.godaddy.com		
Status	client:DeleteProhibited http://www.icann.org/epp#client:DeleteProhibited client:RenewProhibited http://www.icann.org/epp#client:RenewProhibited client:TransferProhibited http://www.icann.org/epp#client:TransferProhibited client:UpdateProhibited http://www.icann.org/epp#client:UpdateProhibited		
Important Dates			
Expires On	2021-07-08		
Registered On	2020-07-08		
Updated On	2020-07-08		

Exhibit 2

 Mike Cooney
2,100 views · 10 days ago

Montanans simply can't afford Greg GianforTAX as governor.

Greg GianforTAX

6.8K views · 10 days ago · 10:40



Exhibit 3



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August 6, 2020 / Latest News, Montana

DGA Launches “Greg GianforTAX” Website

Now Montanans Have a One-Stop Shop to See How Much a Governor's Administration Could Cost Them

Montana Governor Greg Gianforte does not care for the state's current tax system. He thinks “the fairest tax is the one you pay and I don't.” Gianforte even lied to Montanans about his support for a sales tax, despite being on record saying a statewide sales tax is an “ideal solution.”

The DGA Montana Governors Association has launched a new website today highlighting Gianforte's support for a statewide sales tax.

Exhibit 4

Advertiser	Past	This Week	Future	Total
Good Jobs Montana	\$2.44M	\$462K	\$5.26M	\$8.16M
RGA Right Direction PAC	\$1.71M	\$561K	\$4.62M	\$6.89M
Montana Federation of Public Employees	\$1.07M	\$600K	\$595K	\$2.27M
Montana 55+ Action Fund	\$401K	\$0	\$0	\$401K
Montana Conservation Voters Action Fund	\$168K	\$199K	\$0	\$367K
Cooney for MT Governor	\$15K	\$0	\$0	\$15K
Senate Majority PAC	\$4K	\$0	\$0	\$4K
Montana Democratic Party	\$4K	\$0	\$0	\$4K
Gianforte for MT Governor	\$1.69M	\$109K	\$174K	\$1.97M
NRSC	\$32K	\$0	\$0	\$32K
Senate Leadership Fund	\$5K	\$0	\$0	\$5K

source: Advertising Analytics LLC

Exhibit 5

<https://www.greggianfortax.com>

Montana can't afford Greg or
his GianforTAX.

**Protect The Last Best Place.
Gianforte Won't.**



TAX

Paid for by the Democratic Governors Association