

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

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| Luckey v. Advanced Micro Targeting<br>No. COPP 2020-CFP-004 | FINDING OF SUFFICIENCY FACTS<br>TO SUPPORT A CAMPAIGN<br>PRACTICE VIOLATION AS TO THE<br>MONTANA REPUBLICAN PARTY;<br>MONTANANS FOR CONSERVATION;<br>AND CLUB FOR GROWTH ACTION.<br>DISMISSAL AS TO ADVANCED<br>MICRO TARGETING |
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On March 16, 2020, Sandi Luckey of East Helena, MT filed a campaign practices complaint against Advanced Micro Targeting (AMT), a political consulting firm based in Dallas, TX. The complaint alleged that the firm engaged in signature collection efforts meant to help the Montana Green Party qualify to appear on Montana ballots but did not properly file as a Minor Party Qualification Committee with the COPP and report all contribution and expenditure activities associated with this ballot qualification effort as required.

**SUBSTANTIVE ISSUES ADDRESSED**

Minor Party Qualification Committee (MPQC) reporting requirements.

**FINDINGS OF FACT**

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: On finance reports filed with the Federal Election Commission (FEC), the MTGOP reported making one 2020

expenditure of \$50,000.00, dated January 21, to AMT for “in-kind: petitioning” in its January 2020 filing.<sup>1</sup> (Commissioner’s Records.)

Finding of Fact No. 2: On January 24, 2020, a group called Montanans for Conservation filed a C-2 Statement of Organization as an Independent Political Committee with the COPP using CERS<sup>2</sup>. On February 3, 2020, Montanans for Conservation filed an amended C-2 organizational report, adding that the committee “would serve as the minor party qualification committee to qualify the Montana Green Party to hold primary elections in Montana”. Katie Wenetta was listed as the committee’s Treasurer. The committee did not request a committee status change from an ‘Independent’ committee to a ‘Minor Party Qualification’ committee on February 3. (Commissioner’s Records.)

Finding of Fact No. 3: On February 6, 2020, a group named Club for Growth Action filed a hard copy C-2 Statement of Organization with the COPP as a Minor Party Qualification Committee. The committee’s organizational statement noted that it was organized “in furtherance of an effort to qualify a minor political party for primary elections using a minor party petition”. (Commissioner’s Records.)

Finding of Fact No. 4: On February 14, 2020, Club for Growth Action emailed the COPP to identify the Green Party as the minor party referenced in the group’s organizational statement. (Commissioner’s Records.)

Finding of Fact No. 5: On February 20, 2020, Club for Growth Action emailed the COPP, stating that “As discussed this morning, Club Action is no longer gathering signatures to help the Green Party qualify for the ballot in Montana. Our vendor acknowledged our request to cease gathering signatures on our behalf on February 5 and stopped work for us on that same date”. The email also stated that Club for Growth Action had determined not to submit any signatures they had collected. (Commissioner’s Records.)

Finding of Fact No. 6: On March 6, 2020, the Montana Secretary of State’s office announced that the Montana Green Party had

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<sup>1</sup>

[https://www.fec.gov/data/disbursements/?committee\\_id=C00008086&two\\_year\\_transaction\\_period=2020&data\\_type=processed](https://www.fec.gov/data/disbursements/?committee_id=C00008086&two_year_transaction_period=2020&data_type=processed)

<sup>2</sup> CERS is an acronym for Campaign Electronic Reporting System, the e-filing system used by candidates and political committees to submit campaign finance reports and other required forms to COPP.

qualified as a political party for Montana's 2020 Primary election and could run candidates on Primary election ballots.<sup>3</sup>

Finding of Fact No. 7: The Montana Green Party denied any involvement in the signature gathering required to appear on the ballot, having posted a message on March 3, 2020<sup>4</sup> to its Facebook page that "As of now the Montana Green Party is running no candidates for US House and Senate...Let it be known that unless potential candidates have conferred with us in the Montana Green Party to seek our endorsements...we will disavow any candidates running for US House & Senate as a GREEN". (Montana Green Party Facebook page.)

Finding of Fact No. 8: On March 23, 2020, Montanans for Conservation filed an amended C-2 organizational report changing their committee type from Independent Political Committee to Minor Party Qualification Committee. (Commissioner's Records.)

Finding of Fact No. 9: On March 24, 2020, Montanans for Conservation Treasurer Wenetta emailed the COPP a message stating that "Advanced Micro Targeting did not contract with Montanans for Conservation; its contract was with the Montana Republican Party". The email went on to explain that, on its required finance report due to the COPP on or before April 15, Montanans for Conservation would report receiving "An in-kind contribution totaling \$100,000 from the Montana Republican Party on February 20th related to payments made to Advanced Micro Targeting for signature gathering efforts from January to February". (Commissioner's Records.)

Finding of Fact No. 10: A March 24, 2020 article published in MTN News included statements from Montana Republican Party (MTGOP) Executive Director Spenser Merwin and affiliated political consultant Chuck Denowh confirming that the MTGOP had been the entity financing all Montana Green Party signature collection, having paid \$100,000.00 to AMT for these efforts.<sup>5</sup> The MTGOP stated that the first \$50,000.00 payment was made in January to AMT so that AMT could hire signature-gatherers, and that this expense was reported on a financial report filed with the Federal Election Commission (FEC). (Commissioner's Records.)

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<sup>3</sup> <https://www.ktvh.com/news/montana-news/green-party-qualifies-for-2020-mt-ballot>

<sup>4</sup> <https://www.facebook.com/MontanaGreenParty/posts/2813138032066437>

<sup>5</sup> <https://www.ktvq.com/news/montana-news/mt-gop-financed-green-party-ballot-qualification-in-montana>

Finding of Fact No. 11: On March 30, 2020, the MTGOP timely filed a C-6 committee finance report, dated January 1, 2020 through March 25, 2020. On this report, the MTGOP reported making one (1) expenditure of \$100,000.00, dated February 20, 2020, to AMT for “In-Kind Expenditure: Montanans for Conservation. Green Party Ballot Qualification Voter Contact January-February”.

Finding of Fact No. 12: Minor Party Qualification Committee (MPQC) finance report/s were due to the COPP on April 15, 2020. (Commissioner’s Records.)

Finding of Fact No. 13: On April 15, 2020, Montanans for Conservation timely filed its initial C-4 MPQC finance report, dated January 24, 2020 through April 10, 2020. This report disclosed the committee as receiving two contributions from the MTGOP: one cash contribution of \$800.00 dated March 24, 2020, and one In-Kind contribution valued at \$100,000.00 for “Green Party Ballot Qualification Voter Contact, Payment to Advanced Micro Targeting” dated February 20, 2020. Montanans for Conservation also disclosed making one expenditure at \$800.00, dated March 25, to Burnt Timber Consulting for “Committee setup, bookkeeping and compliance January 24 - April 10, 2020”. The report was filed as a Closing report with a \$0 cash in bank balance, indicating Montanans for Conservation would have no additional contribution or expenditure activity to report. (Commissioner’s Records.)

Finding of Fact No. 14: The political consulting firm Advanced Micro Targeting (AMT) provides ballot qualification services to clients, including in Montana. Other Montana ballot issue committees have used AMT as a signature collection services provider—for example, AMT was previously utilized for signature collection efforts meant to qualify the Montana Green Party on Montana ballots in 2018.<sup>6</sup> AMT did not file a C-2 Statement of Organization as either an Independent Political Committee or Minor Party Qualification Committee (MPQC) for election year 2020 with the COPP. (Commissioner’s Records.)

Finding of Fact No. 15: The MTGOP is a registered Political Party committee in the state of Montana. The MTGOP did not register with the COPP as an MPQC for 2020. (Commissioner’s Records.)

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<sup>6</sup> See *Montana Democratic Party v. AMT, COPP-2018-CFP-004*, specifically Finding of Fact No. 6  
[http://politicalpractices.mt.gov/Portals/144/2018decisions/MDC%20v.%20AMT%20Suff%20Dec\\_Final.pdf?ver=2018-07-20-150151-903](http://politicalpractices.mt.gov/Portals/144/2018decisions/MDC%20v.%20AMT%20Suff%20Dec_Final.pdf?ver=2018-07-20-150151-903)

Finding of Fact No. 16: Club for Growth Action, a MPQC, filed its initial committee finance report<sup>7</sup> on May 29, 2020, 44 days after it was due on April 15, 2020. (Commissioner's Records.)

Finding of Fact No. 17: Club for Growth Action, a MPQC, reported one expenditure in the amount of \$117,500.00 to Stampede Consulting, LLC on January 21, 2020 to "obtain and submit signatures to qualify minor party" and a refund in the amount of \$102,000 from Stampeded Consulting, LLC on March 3, 2020. (Commissioner's Records.)

Finding of Fact No. 18: The MTGOP did not report any further expenditures made to AMT on Federal finance reports filed with the FEC for the months of February, March or April 2020. (Commissioner's Records)

## **DISCUSSION**

Club for Growth Action filed as a Minor Party Qualification Committee on February 6, 2020 to place the Green party on Montana's ballot (FOF Nos. 3, 4) and subsequently informed the COPP on February 20, 2020, that they would no longer be engaging in an effort to gather signatures to qualify the Green party for Montana's ballot (FOF No. 5).

Paid signature gatherers continued to actively gather signatures to place the Green Party on the ballot, and on March 6, the Montana Secretary of State announced the Green Party had obtained the signatures necessary to qualify for Montana's 2020 Primary election (FOF No. 6). The Montana Green Party publicly declared they were not involved in any paid effort to qualify for the ballot (FOF No. 7).

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<sup>7</sup> Also filed as the committee's closing report

On March 23, 2020, Montanans for Conservation, who originally filed as an Independent Political Committee (FOF No. 2), requested the COPP change its status from an Independent Committee to a Minor Party Qualification Committee (FOF No. 8). On March 24, 2020, the Montana Republican Party announced it had funded the Green Party signature gathering qualification effort through the Montanans for Conservation political committee (FOF No. 10). The Montana Republican Party reported a February 20, 2020, \$100,000.00 in-kind expenditure to Advanced Micro Targeting on its March 30, 2020 finance report (FOF No. 11). Subsequently, Montanans for Conservation reported the Montana GOP \$100,000.00 expenditure to Advanced Micro Targeting as an in-kind contribution received on February 20, 2020 (FOF No. 13).

The Commissioner finds Advanced Micro Targeting was not required to file as a Minor Party Qualification Committee, as it was a vendor hired by the Montana Republican Party who later made an in-kind contribution to Montanans for Conservation for the costs of gathering signatures to qualify the Montana Green party for the ballot in the primary election. The allegation against Advanced Micro Targeting is dismissed.

Once a complaint is filed the Commissioner “shall investigate any other alleged violation ...” §13-37-111(2)(a), MCA. This investigative authority includes authority to investigate “all statements” and examine “each statement or report” filed with the COPP. §13-37-111, 123 MCA. The Commissioner is

afforded discretion in exercising this authority. *Powell v. Motl*, OP-07111, Supreme Court of Montana, November 6, 2014 Order.

The 66th Legislature passed SB 363<sup>8</sup>, which added Minor Party Qualification reporting and disclosure to Montana's Campaign Finance laws. This included registering as a Minor Party Qualification committee upon a reporting entity, Mont. Code Ann. § 13-37-602, that receives at least \$500 in aggregate contributions or \$500 in aggregated expenditures in a calendar year.

(7) (a) "Reporting entity" means the following entities that receive at least \$500 in aggregate contributions in a calendar year or make at least \$500 in aggregate expenditures in a calendar year

MPQC are also required to file periodic reports of contributions and expenditures, Mont. Code Ann. 13-37-603:

13-37-603. Reporting entity -- reports required -- exception. (1) A reporting entity shall keep detailed records of all contributions received and expenditures made by or on behalf of the reporting entity. If the reporting entity is a minor party qualification committee, the treasurer appointed pursuant to 13-37-602 shall keep the records on behalf of the minor party qualification committee.

(2) A reporting entity may not knowingly report a contribution in the name of any person other than the person by whom it was actually furnished.

(3) A reporting entity shall file periodic reports containing the information required by 13-37-605 pursuant to the dates required by 13-37-604.

(4) Records kept pursuant to this section must be preserved by the reporting entity for 4 years from the date prescribed in 13-10-601(2)(c) on which the signatures were presented or otherwise would have been presented to the election administrator.

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<sup>8</sup> Montana Legislative Services <https://leg.mt.gov/bills/2019/billpdf/SB0363.pdf>

(5) The commissioner may inspect records or accounts that must be kept pursuant to this part, as long as the inspection is made during reasonable office hours.

(6) If a reporting entity is otherwise required to file a report under Title 13, chapter 37, part 2, concerning the same matters required to be reported under this part, the reporting entity may not be required to file a duplicate report or duplicate information but shall file the information in one report.

In this matter, two entities ultimately filed and reported as a Minor party Qualification Committee, and utilized separate vendors to pay signature gatherers to qualify the Green Party to Montana's Primary ballot (FOF Nos. 2, 3, 13, 17), without the knowledge of Montana's Green Party (FOF No. 7). The first, Club for Growth Action, filed as a MPQC, then later announced they were suspending their effort. The second, Montanans for Conservation, failed to correctly file as a MPQC until well after they received contributions over \$500, and signatures were collected. Each action added to the confusion surrounding the Green Party qualification effort in February and March of 2020. Ultimately, the Montana Republican Party announced on March 24, 2020 it had funded the signature gathering effort by contracting with Advanced Micro Targeting and reporting that expenditure as an in-kind contribution to the Montanans for Conservation MPQ committee (FOF Nos. 10, 11).

Montana law requires committees disclose "the full name, mailing address, occupation, and principal place of business, if any, of each person to whom expenditures have been made by the committee or candidate during the reporting period, including the amount, **date**, and purpose of **each** expenditure and the total amount of expenditures made to each person", Mont. Code Ann. §

13-37-229(a)(i), (emphasis added). The Montana Republican Party, on its Federal Election Commission (FEC) January 2020 filing, reported a \$50,000.00 expenditure to AMT dated January 21, 2020 (FOF No. 1), which the Montana Republican Party shared with news media in late March (FOF No. 10). The Montana Republican Party reported one \$100,000.00 expenditure to AMT made on February 20, 2020 on its March 30, 2020 committee finance report (FOF No. 11), and also reported an in-kind contribution of \$100,000.00 made to Montanans for Conservation on February 20, 2020 (FOF Nos. 11, 13). The Montana Republican Party did not report any expenditures to AMT on Federal finance reports filed with the FEC for the months of February, March or April, 2020 (FOF No. 18). The Commissioner finds the Montana Republican Party violated Montana campaign finance law.

Sufficiency Finding No. 1: Montana Republican Party failed to accurately report the date and distribution of its \$100,000.00 expenditure to AMT on its March 30, 2020 committee finance report.

Montanans for Conservation filed as an Independent committee with the COPP on January 24, 2020 and subsequently amended its statement or organization on February 3, 2020. Montana law requires a MPQC file an organization statement, Mont Code Ann. § 13-37-602, within five days of becoming a reporting entity. The committee did not request of the COPP to be classified as a MPQC on January 24, on February 3, or on February 20, 2020 when it reported receiving an in-kind contribution from the Montana Republican Party. Montanans for Conservation requested to reclassify as a MPQC on March 23, 2020 (FOF No. 8) and was reclassified as such by the

COPP on that date. The Commissioner finds Montanans for Conservation violated Montana campaign finance law.

Sufficiency Finding No. 2: Montanans for Conservation failed to timely file as a Minor Party Qualification Committee with the COPP.

Montana law requires minor party qualification committees “shall file reports quarterly, due on the 15th day of January, April, July, and October, beginning in the quarter in which the individual or minor party qualification committee becomes a reporting entity” Mont. Code Ann. § 13-37-604. Club for Growth Action filed as a MPQC on February 6, 2020 (FOF No. 3) and filed its initial (and closing) committee finance report on May 29, 2020, 44 days late (FOF No. 16). The Commissioner finds Club for Growth Action violated Montana campaign finance law.

Sufficiency Finding No. 4: Club for Growth Action failed to timely file its Minor Party Qualification Committee finance reports with the COPP.

### **DECISION**

The Commissioner hereby dismisses the allegation against Advanced Micro Targeting. The Commissioner finds the Montana Republican Party, Montanans for Conservation, and Club for Growth Action violated Montana Campaign Finance law.

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 Montana Republican Party, Montanans for Conservation, and Club for Growth Action 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.

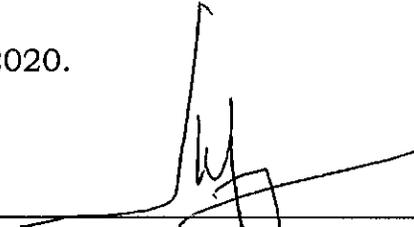
The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of Montana Republican Party, Montanans for Conservation, and Club for Growth Action. Because of the nature of the violation, this matter is referred to the County Attorney of Lewis 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: Montana Republican Party, Mont. Code Ann. § 13-37-229(a)(i); Montanans for Conservation, Mont. Code Ann. § 13-37-602,

and; Club for Growth Action, Mont. Code Ann. § 13-37-604; *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 28<sup>th</sup> day of June 2020.



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