

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Luckey v. Gianforte and Montana First Action No. COPP 2020-CFP-032A, 032B	DISMISSAL
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On July 22, 2020, Montana Democratic Party Executive Director Sandi Luckey filed a campaign practices complaint against Greg Gianforte, a candidate for the office of Montana Governor and Montana First Action, a registered Montana political committee. On August 3 Complainant Luckey filed a Supplemental Complaint with the COPP. Both the original Complaint and the Supplement allege that candidate Gianforte coordinated campaign activities with Montana First Action, in violation of campaign finance law. They also allege that candidate Gianforte, through Montana First Action, accepted prohibited corporate contributions and campaign contributions that exceeded Montana's contribution limits.

SUBSTANTIVE ISSUES ADDRESSED

Coordination of campaign activity.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Greg Gianforte filed a C-1 Statement of Candidate as a candidate for Governor of Montana with the COPP

on June 7, 2019. Lorna Kuney is listed as the campaign Treasurer. Jake Eaton serves as the Campaign Manager. The Gianforte campaign has not filed any firewall policies with the COPP for election year 2020. (Commissioner's Records.)

Finding of Fact No. 1A: Candidate Gianforte utilizes and maintains a campaign website, gregformontana.com. The website includes an attribution statement indicating it was paid for by the Gianforte campaign. (Commissioner's Records.)

Finding of Fact No. 1B: The website montanabusinessplan.com appears to be utilized by the Gianforte campaign as a secondary campaign website. The website includes an attribution statement indicating it was paid for by the Gianforte campaign. The site was launched in or around October of 2019 and has been described by the campaign as a "statewide effort to enlist the help of every Montanan to enlist a business plan for every Montanan".¹ (Commissioner's Records.)

Finding of Fact No. 1C: The website mikecooney1976.com appears to be utilized by the Gianforte campaign as another secondary campaign website. The website includes an attribution statement indicating it was paid for by the Gianforte campaign. The website directly opposes Mike Cooney, a Democratic candidate for the position of Governor of Montana. (Commissioner's Records.)

Finding of Fact No. 2: On July 5, 2019, candidate Gianforte timely filed his initial C-5 campaign finance report, dated June 1, 2019 through June 30, 2019. This report did not disclose any contributions received, either cash or in-kind, from Montana First Action. (Commissioner's Records.)

Finding of Fact No. 3: On October 7, 2019, candidate Gianforte timely filed a periodic C-5 campaign finance report, dated July 1, 2019 through September 30, 2019. This report did not disclose any contributions received, either cash or in-kind, from Montana First Action. (Commissioner's Records.)

Finding of Fact No. 4: On January 6, 2020, candidate Gianforte timely filed a periodic C-5 campaign finance report, dated October 1, 2019 through December 31, 2019. This report did not disclose any contributions received, either cash or in-kind, from Montana First Action. (Commissioner's Records.)

¹ <https://www.ypradio.org/government-politics/2019-10-11/gianforte-launches-state-business-plan-at-billings-campaign-event>

Finding of Fact No. 5: On March 23, 2020, candidate Gianforte filed a periodic C-5 campaign finance report, dated January 1, 2020 through March 15, 2020. This report did not disclose any contributions received, either cash or in-kind, from Montana First Action. (Commissioner's Records.)

Finding of Fact No. 6: On April 19, 2020, candidate Gianforte timely filed a periodic C-5 campaign finance report, dated March 16, 2020 through April 15, 2020. This report did not disclose any contributions received, either cash or in-kind, from Montana First Action. (Commissioner's Records.)

Finding of Fact No. 7: On May 22, 2020, candidate Gianforte timely filed a periodic C-5 campaign finance report, dated April 16, 2020 through May 14, 2020. This report did not disclose any contributions received, either cash or in-kind, from Montana First Action. (Commissioner's Records.)

Finding of Fact No. 8: On June 22, 2020, candidate Gianforte timely filed a periodic C-5 campaign finance report, dated May 15, 2020 through June 15, 2020. This report did not disclose any contributions received, either cash or in-kind, from Montana First Action. (Commissioner's Records.)

Finding of Fact No. 9: Included with the Complaint was a copy of a campaign fundraiser invitation for a July 17 campaign fundraiser sent via email. The invite included an attribution message indicating it had been paid for by the Gianforte campaign. The invite told donors/potential donors that "If maxed, contributions can be made to Montana First Action PAC (Directly benefits Greg's Governor campaign)". The material included an attribution message of "Paid for by: Greg for Montana PO Box 877, Helena, MT, 59624 (R)". (Commissioner's Records.)

Finding of Fact No. 9A: The Supplemental Complaint included a copy of a campaign fundraiser invitation for an August 9 campaign fundraiser sent via mail. The invite included an attribution message indicating it had been paid for by the Gianforte campaign. The invite told donors/potential donors that "If maxed, contributions can be made to Montana First Action PAC (Directly benefits Greg's Governor campaign)". The material included an attribution message of "Paid for by: Greg for Montana" with the candidate's partisan affiliation and complete mailing address available directly below. (Commissioner's Records.)

Finding of Fact No. 10: Montana First Action filed a C-2 Statement of Candidate as an Independent political committee with the COPP on June 5, 2019. The C-2 was most recently amended on July 27, 2020 and states under the Purpose of Committee that the committee supports both “To Support Conservative Candidates and Causes” and “Montana Republican State Central Committee”. Katie Wenetta is listed as the committee Treasurer. (Commissioner’s Records.)

The committee operates and maintains a website, montanafirstaction.com. The website includes an attribution statement indicating it was paid for by the committee but does not reference any candidate or candidates running for elected office in Montana or indicate its support for or opposition to any such candidates. The website includes a short statement that says “As a registered Montana political committee, there are no limitations on the maximum contribution amount to Montana First Action. Contributions from individuals, political action committees, political party committees and corporations are allowed under Montana law. Corporate contributions may require additional reporting with the Montana Commissioner of Political Practices”. Montana First Action reported an expenditure of \$1,950.00 to an entity named TJS Strategic LLC that included “Website development, hosting” on campaign finance reports filed with the COPP. (Commissioner’s Records.)

Finding of Fact No. 10A: Montana First Action’s official response to this matter stated that the committee did not pay to produce or distribute the Gianforte fundraiser invitations mentioned either by the original complaint or the August 3 Supplement to Complaint, and that “Montana Action was not consulted by the Gianforte for Governor campaign about the content of the flyer”. The response also stated that Montana First Action “hired TJS Strategic to create” its website and “find a host for the same”. (Commissioner’s Records.)

Finding of Fact No. 10B: Montana First Action’s official response to this matter included a sworn declaration Katie Wenetta, Committee Treasurer. (Wenetta Declaration.)

Finding of Fact No. 11: Montana First Action has not reported making any contributions, either cash or in-kind, to candidate Gianforte during his 2020 campaign. Montana First Action has not reported making any expenditures meant to support candidate Gianforte or oppose candidate Cooney. The committee disclosed owing one debt in the amount of \$1,950.00 to TJS Strategic that

included “website development, hosting” on C-6 committee finance reports filed with the COPP. (Commissioner’s Records.)

Finding of Fact No. 12: Ultra Graphics, LLC is registered as Domestic Limited Liability Company in Active Good Standing with Montana’s Secretary of State. Jake Eaton is the company’s owner. (Montana Secretary of State.)

Finding of Fact No. 12A: The Political Company, LLC is registered as Domestic Limited Liability Company in Active Good Standing with Montana’s Secretary of State. Emily Jones of Billings, MT is listed as the company’s registered agent. The company’s Facebook page says it is “lead by Jake Eaton”.² (Montana Secretary of State.)

Finding of Fact No. 13: On July 31, Campaign Manager Jake Eaton emailed the COPP candidate Gianforte’s official response to this Complaint. On August 17, Mr. Eaton emailed the COPP a supplemental response. In each, candidate Gianforte argues that the campaign is not “controlled” by Montana First Action, nor vice versa, and that the campaign has not received any contributions from Montana First Action. Each entity exists as on its own, the responses argue. The line on the fundraiser invitations stating “If maxed, contributions can be made to Montana First Action PAC (Directly benefits Greg’s Governor campaign)” was explained as “a factual statement” because Montana First Action’s publicly stated purpose as a committee is to elect Republicans to office. The response goes on to state that the statement was included on the invitations to inform “potential donors of how much they could lawfully contribute” to the campaign and that “they could make a lawful contribution to another entity”. “This is not a violation of state law”.

The August 17 supplemental response does not seem to deny that Ultra Graphics is the domain registrant for the montanafirstaction.com, mikecooney1976.com, and montanabusinessplan.com websites, but argues that Mr. Eaton’s ownership of the company does not prove that he is “closely connected” to or otherwise involved with Montana First Action in his role as candidate Gianforte’s Campaign Manager.

Each response affirms that each of the July 17 fundraiser invitation, August 9 fundraiser invitation, gregformontana.com website, montanabusinessplan.com website, and

² https://www.facebook.com/thePoliticalCompany/about/?ref=page_internal

mikecooney1976.com website represented an expenditure activity made by the Gianforte campaign. (Commissioner's Records.)

Finding of Fact No. 14: On August 20, 2020, candidate Gianforte timely filed a periodic C-5 campaign finance report, dated June 16, 2020 through August 15, 2020. This report did not disclose any contributions received, either cash or in-kind, from Montana First Action. (Commissioner's Records.)

Finding of Fact No. 15: On August 31, 2020, COPP Investigator requested additional information from the Gianforte campaign, specifically a reporting of contributions received at the July 17 and August 9 fundraiser events, campaign expenditures associated with those events, and campaign expenditures associated with the gregformontana.com, montanabusinesplan.com, and mikecooney1976.com websites. On September 17, 2020, campaign manager Jake Eaton emailed the COPP the campaign's response to that request, providing the following information:

July 17 fundraiser- a contributor list for this event showed the campaign received an estimated \$7,700.00 in contributions directly connected to this event from 34 individual contributors. No contributions over the \$710.00 contribution limit were received by candidate Gianforte from individuals in connection with this event. The campaign incurred expenditures of \$584.10 to Chili O'Brien's for catering the event and \$624.15 to The Political Company for the printing of invitations to this fundraiser.

August 9 fundraiser- a contributor list for this event showed the campaign received an estimated \$9,010.00 in contributions directly connected to this event from 28 individual contributors. No contributions over the \$710.00 contribution limit were received by candidate Gianforte from individuals in connection with this event. The campaign incurred expenditures of \$442.50 (paid out of pocket by candidate Gianforte and reported as an in-kind contribution made to his campaign) for catering the event and \$270.75 to The Political Company for the printing of invitations to this fundraiser.

Gregformontana.com- "This was a pre-existing website that was an in-kind contribution from the candidate. GFM has incurred no additional costs".

Montanabusinessplan.com- the campaign incurred expenditures of \$500.00 to The Political Company for website development and \$315.00 to The Political Company for web maintenance and web hosting

Mikecooney1976.com- the campaign incurred expenditures of \$750.00 to The Political Company for website development and \$210.00 to The Political Company for web maintenance and web hosting.

(Commissioner's Records.)

Finding of Fact No. 16: On September 20, 2020, candidate Gianforte timely filed a periodic C-5 campaign finance report, dated August 16, 2020 through September 15, 2020. This report did not disclose any contributions received, either cash or in-kind, from Montana First Action. (Commissioner's Records.)

Finding of Fact No. 17: On a C-6 committee finance report dated June 26, 2020 through August 25, 2020, Montana First Action reported receiving \$143,250.00 in contributions received from forty six individual contributors. (Commissioner's Records.)

DISCUSSION

Part One: Coordination

The main allegation raised by complainant Luckey in both the original Complaint and the Supplemental Complaint concerns what she describes as impermissible coordination. Specifically, complainant Luckey alleges that candidate Gianforte coordinated several campaign activities with Montana First Action in an effort to circumvent campaign finance law.

§13-1-101(10), MCA defines the term coordinated:

"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

Coordination is examined in more detail by 44.11.602, ARM. Subsection

(1) states that:

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.

It is important to note that coordination itself is NOT a violation of Montana campaign finance law³. In the event an activity is coordinated between a candidate for election and a political committee, each entity would be required to disclose the activity on the relevant finance report filed with the COPP. All coordinated activity "shall be treated and reported as an in-kind contribution from and expenditure by the person funding, facilitating, or engaging in" the activity, 44.11.602(5), ARM. Coordinated activities would be subject to Montana's contribution limits but are not by themselves a violation of any Montana campaign finance rule or law.

Background

Greg Gianforte is running as a Republican candidate for election to the office of Governor in Montana's 2020 General election, with Lorna Kuney serving as campaign Treasurer and Jake Eaton as campaign manager (FOF No. 1). Montana First Action is a registered Independent Political Committee in the

³ Excluding coordination with corporations, Mont. Code Ann. §13-35-227.

State of Montana; Katie Wenetta is listed as the committee Treasurer (FOF No. 10). The Gianforte campaign and Montana First Action do not share list any shared officers on registration forms filed with the COPP.

An examination of the terms contribution and expenditure before considering each alleged instance of coordination is also warranted. §13-1-101(9), MCA defines a contribution:

(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;

(iii) the receipt by a political committee of funds transferred from another political committee; or

(iv) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) The term does not mean services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual.

(c) This definition does not apply to Title 13, chapter 37, part 6.

Conversely, expenditure is defined by §13-1-101(18) as:

(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.

(b) The term does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (9);

(ii) payments by a candidate for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(c) This definition does not apply to Title 13, chapter 37, part 6.

July 17 and August 9 fundraiser invites

The first specific instance where the complainant alleges coordination between candidate Gianforte and the Montana First Action committee is an invitation to a July 17 Gianforte campaign fundraiser. The invitation was sent via email, contained an attribution message indicating it was paid for by the Gianforte campaign, and included a statement that says “If maxed, contributions can be made to Montana First Action PAC (Directly benefits Greg’s Governor campaign)” (FOF No. 9).

The second specific instance of alleged coordination between candidate Gianforte and Montana First Action alleged by complainant Luckey is an invitation to an August 9 Gianforte campaign fundraiser. This invitation is similar to the July 17 version in that it included an attribution message indicating it was paid for by the Gianforte campaign and a statement that reads “If maxed, contributions can be made to Montana First Action PAC (Directly benefits Greg’s Governor campaign)” (FOF No. 9A). The copy of the invitation to the August 9 event included with the Supplement to Complaint was distributed via traditional mail.

In correspondence with the COPP responding to this complaint, the Gianforte campaign took direct responsibility for both the July 17 and August 9 fundraiser invitations. The campaign stated it spent \$624.15 to print the July 17 event invites and \$270.75 to print the August 9 event invites (FOF No. 15). For its part, Montana First Action denied financing either the creation or distribution of the invitations and claimed the Gianforte campaign did not consult them regarding their content (FOF No. 10A).

Based on this information, both the July 17 and August 9 fundraiser invites would qualify as expenditures of the Gianforte campaign. Each would qualify as a “purchase” made by the campaign (using campaign funds) to “support” candidate Gianforte, conforming with the definition of an expenditure provided under §13-1-101(18), MCA. Additionally, the invitations all included an attribution message indicating the Gianforte campaign had financed the material.

The inclusion of the statement “If maxed, contributions can be made to Montana First Action PAC (Directly benefits Greg’s Governor campaign)” on the invitations may indicate coordination should the facts presented in the matter show that the campaign activity occurred in cooperation with, in consultation with, at the request of, or with the express prior consent between the candidate and a political committee which ultimately led to contribution or expenditure activity, in this case, a contribution to the Gianforte campaign or an independent expenditure supporting candidate Gianforte by the Montana First Action political committee.

As expenditures of the Gianforte campaign itself, neither the July 17 nor August 9 fundraiser invitation expenditures alone can be considered coordinated. In his Decision in the matter of *Montana Democratic Party v. Chase Reynolds, Montana Republican Legislative Committee, and The Political Company*, COPP-2018-054A, 054B, 054C, Commissioner Mangan wrote of similar allegations that:

Because the mailers in question cannot be classified as an expenditure activity of a third party working “in cooperation with, in consultation with, at the request of, or with the express prior consent” of candidate Reynolds, they cannot be considered coordinated activity under either Mont. Code Ann. §13-1-101(10), or 44.11.602(1), ARM.

Because candidate Gianforte, not Montana First Action, financed both the July 17 and August 9 fundraiser invitations, the invitation expenditures alone would not be considered coordinated expenditure activities under relevant campaign finance rules or laws.

There were no reported or discovered expenditures for the July 17 and August 9 fundraisers by Montana First Action (FOF Nos. 10A, 11). There are no reported or discovered contributions from Montana First Action to candidate Gianforte (FOF No. 11). There are no reported or discovered expenditures supporting candidate Gianforte by Montana First Action (FOF No. 11). There is a lack of sufficient facts to support a determination the Gianforte campaign and Montana First Action coordinated reportable election activity.

The gregformontana.com, montanabusinessplan.com, and mikecooney1976.com websites

The next materials complainant Luckey referenced as evidence of coordination between candidate Gianforte and Montana First Action were the gregformontana.com, montanabusinessplan.com, and mikecooney1976.com websites.

Candidate Gianforte appears to be directly utilizing each of these three separate websites to support his candidacy- gregformontana.com as his main campaign website; montanabusinessplan.com touts his economic and job creation ideas; and mikecooney1976.com is dedicated to opposing his Democratic gubernatorial opponent, Mike Cooney (FOF No.s 1A-1C). Each website contains an attribution message indicating it was paid for by the Gianforte campaign. Additional correspondence with the campaign clarified that while the gregformontana.com website “was a pre-existing website” that candidate Gianforte contributed in-kind to this campaign, the campaign paid The Political Company for website development and web maintenance and hosting for both montanabusinessplan.com and mikecooney1976.com (FOF No. 15). Each represents an expenditure of the Gianforte campaign, not a third-party entity.

While the gregformontana.com website does represent a contribution received by the Gianforte campaign, it was provided by the candidate himself, not the Montana First Action committee.

There is a lack of sufficient facts to support a determination that any of these three sites were paid for by a third party working “in cooperation with, in

consultation with, at the request of, or with the express prior consent” of the Gianforte campaign.

Montana First Action’s website

Montana First Action currently utilizes a committee website of its own, montanafirstaction.com (FOF No. 10). The Supplemental Complaint states that this website shares an IP address with each of candidate Gianforte’s three campaign websites. The Supplement to Complaint asserts that each IP Address is registered with Ultra Graphics. Ultra Graphics is a company owned by Jake Eaton, candidate Gianforte’s campaign manager (FOF Nos. 1, 12). Ultra Graphics services include website design and managed web hosting.

Montana First Action’s website includes an attribution message indicating it was paid for by the committee, and it does not name, describe, picture, directly support, directly oppose, or otherwise reference any candidates for elected office, including candidate Gianforte (FOF No. 10). The website’s only function is a contribution portal, where individuals who access the website may make direct monetary contributions to Montana First Action. Montana First Action hired and directly compensated a third-party vendor, TJS Strategic LLC, to create and administer this website (FOF No. 10). TJS Strategic, LLC was not utilized by the Gianforte campaign to create or distribute any of the July 17 fundraiser event invitations, August 9 fundraiser event invitations, montanabusinessplan.com website, or mikecooney1976.com website.

In evaluating and investigating this portion of the Complaint, there is a lack of sufficient facts to support a determination of coordinated expenditure activity between the committee and the Gianforte campaign. While the site may share an IP Address through registration with those of candidate Gianforte's three campaign websites, the committee and campaign did not utilize a shared vendor for website creation or administration. Domain registration or hosting and/or shared hosting through a common vendor is itself not extraordinary. Montana First Action maintains they had no knowledge of what vendor or vendors the Gianforte campaign utilized for any such expenditures. The allegation that Montana First Action's website is a coordinated expenditure activity made "in cooperation with, in consultation with, at the request of, or with the express prior consent" of the Gianforte campaign is not supported by the facts in this matter.

Part Two: Contribution Limits

A secondary allegation raised by Complainant Luckey in this matter is that candidate Gianforte utilized Montana First Action to circumvent Montana's campaign contribution limits. The Complaint argues that "By directing contributors to donate to Montana First Action if they are "maxed" to Greg for Montana, so that money can benefit his campaign, the campaign is intentionally circumventing Montana's contribution limit".

As noted in *Part One*, the term contribution is defined in campaign finance law under §13-1-101(9), MCA. 44.11.227(1)(a), ARM, states that individual donors and political committees (excluding political party

committees) can contribute a maximum of \$710.00 to a Montana gubernatorial candidate per election (election being a contested Primary and/or the General election). This would mean that the Gianforte campaign could accept a maximum of \$710.00 from any individual donor or political committee (political party committees excluded) for the Primary election, and another \$710.00 for the General. By contrast, Montana campaign finance law does not provide any sort of limit for what a donor can contribute to a political committee such as Montana First Action.

On campaign finance reports filed with the COPP, candidate Gianforte did not report receiving any contributions, either monetary or in-kind, from Montana First Action (FOF Nos. 2-8, 14, 16). Montana First Action did not report making any such contributions to candidate Gianforte on their committee finance reports (FOF No. 11). In his response to this matter, candidate Gianforte categorically denied the allegation that the campaign utilized or enlisted Montana First Action to help it circumvent Montana's campaign finance limits, stating that the campaign did not received a single contribution from the committee (FOF No. 13).

There is a lack of sufficient facts to support a determination that the Gianforte campaign accepted contributions that exceed Montana's established limits from Montana First Action, or any individual or committee. Neither the original Complaint nor the Supplemental Complaint provide any evidence suggesting the campaign accepted contributions over the \$710.00 limit directly from individual contributors. Similarly, neither the Complaint nor

Supplemental Complaint provides evidence that the Gianforte campaign accepted over-limits contributions from a single political committee, including Montana First Action.

As discussed in *Part One*, each of the July 17 fundraiser invitation, August 9 fundraiser invitation, montanabusinessplan.com website, and mikecooney1976.com website represents an expenditure made by the Gianforte campaign. As expenditures made by the Gianforte campaign, none of these activities would qualify as contributions received from Montana First Action as defined by §13-1-101(9), MCA. The value or cost of each would not count toward the committee's \$710.00 contribution limit, as none qualified as a contribution made to the Gianforte campaign by Montana First Action. The gregformontana.com website was, according to the campaign, purchased directly by candidate Gianforte and then provided in-kind to the campaign. While qualifying it as a contribution, that website would be reported as being received from candidate Gianforte (the original purchaser), not Montana First Action, and again would not count towards Montana First Action's \$710.00 contribution limit.

Montana First Action's website also would not qualify as a contribution made to the Gianforte campaign. The site only provides those who access it a platform to provide monetary contributions to the Montana First Action committee. Not a single candidate, including candidate Gianforte, is referenced in name, image, or likeness on the site, nor does the site say it supports or opposes any specific candidate or candidates for elected office in Montana. The

site clearly states that any funds contributed directly through it would be provided to the Montana First Action committee, not candidate Gianforte or any other candidate's campaign. There is no interpretation where Montana First Action's website can be considered a contribution made to candidate Gianforte as defined under §13-1-101(9), MCA, meaning the value of the site would not count towards the committee's \$710.00 contribution limit.

There is a lack of sufficient facts to support a determination that the Gianforte campaign accepted in-kind contribution/s from Montana First Action that exceed Montana's established limits.

Part Three: Corporate Contributions

Another secondary allegation raised by the complainant in this matter concerns potential acceptance of corporate contributions by candidate Gianforte. The Complaint argues that due to candidate Gianforte's coordination of expenditure activities with Montana First Action, "Greg for Montana is potentially benefitting from prohibited corporate contributions".

Mont. Code Ann. §13-35-227 specifically prohibits corporate entities from making campaign contributions to Montana candidates, either directly or indirectly. However, neither the original Complaint nor the Supplement to Complaint provides evidence to back up the assertion that candidate Gianforte violated this statute. While Montana First Action did report receiving monetary contributions from corporate entities, it also reported receiving monetary contributions from individual non-corporate contributors. Even assuming Montana First Action engaged in coordinated expenditure activity with the

Gianforte campaign, the campaign would only be found in violation of Mont. Code Ann. §13-35-227 ONLY IF the committee used funds received from corporate sources to finance coordinated activity with Gianforte. The statute would not be violated if Montana First Action used funds received from individuals or non-corporate entities to finance expenditure activity coordinated with the Gianforte campaign within contribution limits.

As previously discussed, none of the July 17 fundraiser invitation, August 9 fundraiser invitation, gregformontana.com website, montanabusinessplan.com website, or mikecooney1976.com website represent a contribution received by the Gianforte campaign from Montana First Action. When considering these activities, the source of Montana First Action's funds is irrelevant. There is no evidence Montana First Action's funds were used to finance any of these activities.

Similarly, Montana First Action's website cannot be considered a contribution received by the Gianforte campaign. As the committee's website does not constitute a contribution received by the Gianforte campaign, the sourcing of the committee funds used to create and maintain the site (corporate or non-corporate) is also irrelevant in this matter.

The Gianforte campaign itself did not report receiving any monetary or in-kind contributions from corporate entities on campaign finance reports filed with the COPP.

The COPP investigation concluded there was no evidence that the Gianforte campaign directly utilized funds collected from corporate sources to

finance the activities in question, or accepted contributions made by Montana First Action that were financed by corporate funds collected by that committee. There is a lack of sufficient facts to support a determination that the Gianforte campaign accepted corporate contributions.

FINDINGS

The Administrative Rules of Montana (ARM) allow the Commissioner to consider several elements in determining whether or not reportable election activity is coordinated, 44.11.602(2), ARM. 44.11.602(4), ARM also provides the Commissioner direction by identifying elements which may exist, yet by themselves are not an indication of coordination. In the matter of the fundraiser invitations, the facts suggest the candidate's campaign (Gianforte) printed on two separate fundraiser invitations a statement encouraging a potential contributor to donate to a political action committee (Montana First Action) upon reaching the candidate's campaign finance limit as it would "directly benefits Greg's Governor campaign". Both the campaign and committee deny knowledge of the others action regarding the fundraiser invitations.

By itself, the addition of a written suggestion of contribution on the July 17, 2020 invitation is not an indication of coordination in determining any reportable election activity prior to and including the July 17, 2020 fundraiser under 44.11.604(4), "facilitating of the communication or reportable election activity is made at the request or suggestion of a candidate or an agent of a candidate for the benefit of another candidate or political committee where the

other potentially benefitted candidate or political committee has no involvement”, 44.11.603(4)(d), (emphasis added).

Upon publication, however, any future reportable election activity with the use of funds contributed to Montana First Action in support of candidate Gianforte after July 17, 2020, such as an independent expenditure or monetary contribution, may be considered coordinated reportable election activity unless truly independent of the campaign. The addition of a second Gianforte fundraiser on August 9, 2020, which also included an invitation with the same wording (“directly benefits Greg’s Governor campaign”) only strengthens any allegation of coordination of reportable election activity after July 17, 2020, such as expenditures in support of the Gianforte campaign by Montana First Action.

As of the September 30, 2020, committee finance report, Montana First Action has not disclosed any contributions to, or expenditures in support of, the Gianforte campaign.

The establishment of a written firewall policy by a campaign or political committee filed with the COPP is another element the COPP can consider in the examination of facts involving allegations of coordination. In this matter, no written firewall policy was established or provided to the COPP. Firewall policy is meant “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”, 44.11.602(2)(f)(i), ARM. Such a document

would provide both a candidate and committee/s clear procedure and processes, particularly when many of the individuals and organizations involved in a campaign have previous or current relationships that may establish additional elements of coordination as a matter of fact.

For example, the current Campaign Manager of the Gianforte campaign, Jake Eaton, is also the owner of both Ultra Graphics and leader of The Political Company (FOF Nos. 12, 12A). Mr. Eaton, The Political Company, and Ultra Graphics have had both political and professional business relationships with the Montana Republican Party (MTGOP) and the Montana Republican Legislative Campaign Committee (MRLCC), who's Deputy Committee Treasurer is Katie Wnetta. Ms. Wnetta is also the Committee Treasurer for Montana First Action. This election cycle, the MRLCC has reported expenditure and independent expenditure activity with The Political Company, the MTGOP has both received a contribution from Montana First Action, and made an independent expenditure utilizing The Political Company and so on. Understanding such relationships exist, developing a firewall policy which clearly delineates processes for all to follow and publicly available will assist in deliberately avoiding coordination between the candidate's campaign and political committees involving reportable election activities.

Filing the firewall with the COPP provides the public as well as the agents and vendors of the campaign with a plan on how the committee and candidate will avoid coordinating information between campaigns. In other words, all activities of each campaign and political committee must be truly

independent of one another. Independent campaign strategy is difficult if not impossible to maintain in a single individual or amongst a small group of individuals who provide advice or services to both candidates and political committees during a campaign. Failure to avoid coordination could lead to a future campaign practice violation.

DECISION

The Complaint is hereby dismissed.

DATED this 16th day of October, 2020.



Jeffrey A. Mangan
Commissioner of Political Practices
Of the State of Montana
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