

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Cooper v. MTCOWGIRL No. COPP 2016-CFP-031	DISMISSAL OF COMPLAINT
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On September 28, 2016, Livingston resident Ruth Caron Cooper filed a complaint with the Office of the Commissioner of Political Practices (COPP) against MTCOWGIRL, a Montana website with public access and exposure, and a blog published on the MTCOWGIRL website.

SUBSTANTIVE ISSUES ADDRESSED

The substantive area of campaign finance reporting and disclosure law addressed by this Decision is whether information in a blog can be found to be subject to the Montana campaign practice act.

DISCUSSION

The Complaint identifies a particular Montana website (MTCOWGIRL) that publishes blogs, most offering political commentary. The following findings of fact are necessary for this Decision.

Finding of Fact 1: MTCOWGIRL is a website accessible to the public upon entrance of its name into a browser. The website states that MTCOWGIRL offers “political gossip, satire and analysis from Montana’s capital city of Helena. (MTCOWGIRL Website.)

Finding of Fact 2: MTCOWGIRL offers blogs as guest articles under an author’s name and “COWGIRL” articles, listed only under the Blog COWGIRL name, without identification of the actual author. The article addressed in this Complaint is a COWGIRL blog published on August 18, 2016. (MTCOWGIRL Website.)

The Complaint alleges that the COWGIRL blog is an election material that must be attributed, as required by §13-35-225, MCA. The Commissioner disagrees, instead determining that the COWGIRL blog is excepted as an election material by Montana law.

In way of explanation, §13-35-225, MCA requires attribution of “election communications, electioneering communications and independent expenditures.” A blog communication is, however, excepted from an electioneering communication if distributed through an “internet website.” (§13-1-101(15)(b)(i), MCA.) A blog is also excepted from an election communication if distributed through an “internet website.” (§13-1-101(14)(b)(iii), MCA.) An independent expenditure consists of election communication or electioneering communication made independent of the candidate and therefore incorporates the same two exceptions. (§13-1-101(24), MCA.) A blog , being excepted from consideration as an election

communication, electioneering communication or independent expenditure does not fall under the attribution requirements of §13-35-225, MCA. This portion of the Complaint is dismissed as the article complained of is a blog appearing on the MTCOWGIRL website.

The Complaint further claims that §13-35-225, MCA prevents anonymity with regard to election related communication. That allegation is not reasoned or accurate. The COPP has long held that enforcement of §13-35-225, MCA is limited by the measure of the first amendment speech principles applicable to anonymous leaflets, as defined in the case of *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 347 (1995): “[u]nder our Constitution, anonymous pamphleteering is not a pernicious fraudulent practice, but an honorable tradition of advocacy and dissent.”

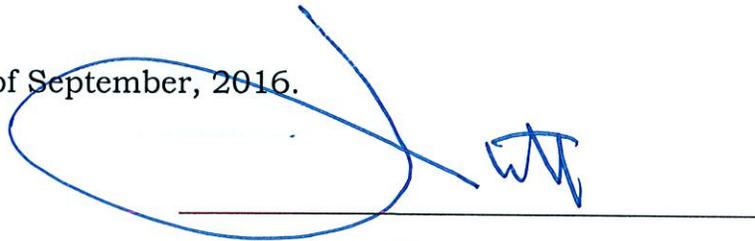
Commissioners have examined and measured §13-35-225, MCA against the *McIntyre* principles. First, there is an examination as to whether anonymity was surrendered by other information in the publication. See, *Bixler v. Suprock*, COPP-2013-CFP-013 (Commissioner Motl) and *Olsen v. Valance*, November 17, 2009 (Commissioner Unsworth). This Commissioner determines that there is and has been no surrender of anonymity by COWGIRL in years of publication.

There being no surrender of anonymity, the *McIntyre* principles must be applied to measure whether attribution is required under §13-35-225, MCA because, whenever possible, statutes should be construed narrowly to avoid constitutional difficulties. (*State v. Nye*, 283 Mont. 505, 510, 943 P.2d 96, 99

(1997); *State v. Lilburn*, 265 Mont. 258, 266, 875 P.2d 1036, 1041 (1994), *cert. denied*, 513 U.S. 1078 (1995).)

Past Montana Commissioners, citing *McIntyre*, have determined that the 1st Amendment protects written displays (leaflets, pamphlets, signs) of anonymous speech: *Vanmeter v. asksheriffluckylarson*, November 10, 2011 (Commissioner Gallik), *Wittich v. Campbell*, November 17, 2009 (Commissioner Unsworth), *McAllister v Gardiner School District*, April 2003 (Commissioner Vaughey), *Harmon v. Sweet*, December 31, 1997 (Commissioner Argenbright) and *Toyne v. Real Bird*, COPP-2014-CFP-038 (Commissioner Motl). Consistent with past Decisions this Commissioner applies the *McIntyre* principles to the blog at issue in this Matter. The third party writing the blog in this Matter did so anonymously, the *McIntyre* principles apply and no attribution is required. *Id.*

DATED this 29th day of September, 2016.



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