

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

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| Kratina v. Gianforte<br><br>No. COPP 2016-CFP-038 | Dismissal of Complaint |
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On October 24, 2016, Suzin Kratina, a resident of Missoula, MT filed a complaint against Greg Gianforte, a 2016 candidate for Governor of Montana. Ms. Kratina alleged that Mr. Gianforte violated campaign practice laws.

**SUMMARY OF RELEVANT FACTS:**

The facts necessary for a determination in this matter are as follows:

Finding of Fact No. 1: Candidate Gianforte’s campaign website uses the slogan “gregformontana”:  
(<http://www.gregformontana.com/posts/video/bold>)

Finding of Fact No. 2: The Complainant is a full time public employee located in Missoula, Montana. The Complainant’s work phone number is 406-444-0301. (Commissioner’s records).

Finding of Fact No. 3: A “444” prefix is commonly understood to indicate a phone number assigned to State of Montana public employees. (Google search, State of Montana phone numbers.)

Finding of Fact No. 4: The Complaint states as follows:

“I have received 4 calls to my office phone [number 444-0301] from the Gianforte campaign. After the second call (message) I called the campaign headquarters and

told them it was inappropriate to call a state employee's office to campaign and I wanted it to cease. Since then, I received another call and told the caller that I did not want to receive any more calls. Today, Monday October 24, 2016, I had a message on my work phone, again, from the Gianforte campaign. I don't know when the call was made but I received it today. This is annoying, disturbing and inappropriate." (Commissioner's records).

Finding of Fact No. 5: The Complainant forwarded to the Commissioner's investigator a copy of the voice message left on her work voice mail. The Commissioner's Investigator transcribed the voice message as follows:

Hello, I am so sorry I missed you; I'm calling because our state is at a critical turning point. Coal production is at its lowest levels in 30 years. Colstrip jobs are at serious risk. Steve Bullock even took campaign cash from the environmentalist that sued to shut down Colstrip, it's hard to believe but Bullock ran up 800 million dollars in new spending and made over 1 billion dollars in accounting errors. Not to mention his taxpayer funded airplane trip to a Paul McCartney rock concert that cost \$15,000. We need new leadership; Greg Gianforte is running for governor to bring high wage jobs back to Montana, to restore accountability to state government and to protect Montana's way of life. On Election Day please vote for Greg Gianforte. This call was paid for by Greg for Montana 406-595-0629. (Commissioner's records.)

Finding of Fact No. 6: A phone call placed to 406-595-0629 was answered by a recorded message from the Gianforte campaign. The mail box for the recorded message was "full." (Investigator's notes.)

## **DISCUSSION**

The facts show that the 2016 Gianforte campaign made multiple phone

calls to a public employee on the public employee's work phone number (FOF Nos. 1 through 6). The public employee objected twice to the phone calls saying that it "was inappropriate to call a state employee's office to campaign." (FOF no. 4.) After objections the Gianforte campaign persisted and on October 24, 2016 the public employee listened on her work voicemail to the "vote for Gianforte" message transcribed at Finding of Fact No. 5.<sup>1</sup>

This Commissioner has previously dealt with and decided a comparable issue (emails sent to a public employee's work address) involving the 2016 Gianforte campaign in *Thomas v. Gianforte*, COPP-2016-CFP-001 (hereafter *Thomas*). The *Thomas* Decision, applying the rules and reasoning from *Mackin v. Mazurek*, June 10, 2000 (Commissioner Vaughey), noted that there was "no use of public resources or public time because the campaign email was created and mailed by the Gianforte campaign using non-governmental campaign funds." The same reasoning applies in this Matter, no governmental funds were involved so there is no use of public resources inherent in the Gianforte Campaign phone calls to the complainant's work phone number.

As noted in *Thomas* there was a factual difference between the *Mackin* and Gianforte Campaign's engagement of state employee contact, whether by email or phone. Candidate Mazurek (the candidate in *Mackin*) was a state employee running for governor, giving heightened focus on his campaign's use of state mail addresses. Nevertheless, the Mazurek campaign's use of State addresses for political purposes was excused as infrequent and accidental because the

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<sup>1</sup> The Complainant checked the date log on her work phone and determined that the phone message was left on October 17, 2016.

Mazurek campaign stated it “voluntarily restrict[ed] the practice” of mailing to governmental addresses and that it sought to purge governmental addresses from its campaign mailing lists.

*Thomas* determined that the Gianforte Campaign’s contact with public employees was “markedly different than the accidental and infrequent use involved in *Mackin*. The Gianforte campaign purchased and used an email address list maintained by a governmental entity and sent campaign emails to the entire list.” Accordingly, *Thomas* posed the issue of whether the Gianforte campaign’s mailing to a list of public employee work email addresses constituted coercion under §13-35-226(3) MCA.<sup>2</sup> At the time of the *Thomas* Decision the COPP had considered this coercion issue once before, finding that a letter to the editor published in support of a candidate by a director of a state agency was not coercion directed at employees of his agency. *Seher v. Galt*, July 26, 2004, (Commissioner Vaughney).<sup>3</sup> The *Thomas* Decision determined that there was coercion in the deliberate mailing effort to state employee addresses but, noting a first time interpretation, excused the finding on the basis of excusable neglect.

The actions in this Matter are now measured with the *Thomas* and *Mackin* discussion and standards in mind.

Finding of Fact No. 7: The phone calls in this Matter were made by a “live telephone vendor” contracted to the

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<sup>2</sup> “[A] person may not coerce, command, or require a public employee to support or oppose...the election of any person to public office.” §13-35-226(3), MCA.

<sup>3</sup> The *Seher* Decision notes that “coerce” involves a forceful action: “dominate, restrain or control.”

Gianforte campaign. (Gianforte Campaign response to Complaint.)

Finding of Fact No. 8: The Gianforte campaign produced records showing that on February 16, 2016 it included phone number 406-444-0301 on the campaign “Do Not Call” list. (Commissioner’s records.)

Finding of Fact No. 9: The Gianforte campaign states that it was using a voter data base showing that the phone number 406-444-0301 applied to “a different voter” than the complainant. (Commissioner’s records.)

Finding of Fact No. 10: In January of 2015 the complainant was assigned her work phone number 406-444-0301 and she has used it continuously since. (Commissioner’s records.)

First, the Commissioner notes that there is a basis for determination of coercion. The basis for coercion lies in the deliberate phone calls made by the Gianforte campaign to a “444” phone number obviously assigned to a state employee. (FOF Nos. 1 and 3.) The “444” prefix indicates a number assigned for use by an employee or officer of the state of Montana. (FOF No. 2.) The calls to the state employee phone number included two phone calls made after the state employee expressly told that Gianforte campaign that the campaign call was being wrongly made to a state employee phone.

The Commissioner next considers whether there is an exception to a determination of coercion under the *Mackin/Thomas* tests of “an infrequent and accidental mailing or under ... a public employee affirmatively consenting and directing a campaign to use his or her workplace address for campaign mailings.” In that regard, the Gianforte campaign asserts that 406-444-0301 number was placed in its campaign voter file during the 2014 election cycle by

a state employee other than Ms. Katrina. Ms. Katrina was assigned the 406-444-0301 state work phone number in January of 2015 (FOF No. 10) and the hidden prior consent for campaign contact at the public employee work-place phone number apparently came along with the number like a parasite.<sup>4</sup>

The prior work-place phone number consent does not excuse the entirety of phone call actions by the Gianforte campaign, but it does explain how the Gianforte campaign could in February of 2016 issue a “Do Not Call” directive for 406-444-0301 and still renew calling the number in the last month of the campaign. The latter calls came about when professional campaign callers went back to voter file lists for numbers that were omitted from the main campaign call list.

Based on this discussion the Commissioner applies a combination of “affirmatively consenting” to excuse coercion in the two early Gianforte campaign calls to 406-444-0301 and “infrequent and accident” to excuse coercion in the latter two calls to the same number. The Gianforte campaign, and all other candidate or ballot issue campaigns, should note that campaign activity extending to work place contact of public employees will be subjected to such examination.

The Commissioner thanks the complainant for her vigilance in bringing

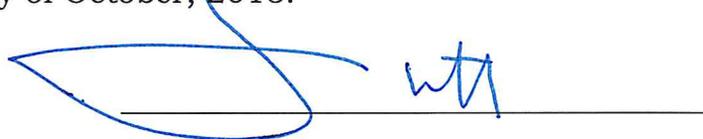
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<sup>4</sup> As this Decision explains, Montana’s laws generally protect public employees from work-place contact by political campaigns. Montana’s laws also prohibit public employees from using public time or resources to support or oppose political campaigns ( §2-2-121(3)(a), MCA). A public employee, however, retains his or her right to “express personal political views” (§2-2-121(3)(c), MCA), including use for campaign purposes of unpaid, personal time during a work day. *Montforton v. Lindeen*, COPP-2016-CFP-002-B (Commissioner Motl). Accordingly, a public employee can consent to receive campaign information through his or her public employee work-place phone number so long as any time spent on a campaign issue is unpaid, personal time.

this Complaint. Campaigns for public office in Montana now routinely set new funding records each election cycle. The increased use of campaign funds means that Montanans encounter campaign activity in many forms, including phone calls placed to tens of thousands of Montanans by the 2016 Gianforte campaign. That increased campaign contact with voters is good, when it supplies information to voters. That increased contact is not good when it is made to prohibited venues such as the work-place mailboxes and phones of Montana's public employees. Montana has laws and culture mandating and protecting its public employees from political activity/contact to insure that public employees serve the public good, without pressure to serve the will of a political leader or party (*see* Note 4, this Decision).

This Decision is simultaneously released to the press, public and the parties. Because Montanans are already voting on the Initiative addressed in this Decision a full release at the earliest possible date is required.

DATED this 27<sup>th</sup> day of October, 2016.



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