

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Safe Montana v. Greener Pastures and Lionheart Caregiving  No. COPP 2016-CFP-034	Dismissal of Complaint
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On October 7, 2016, Safe Montana, a 2016 Montana ballot committee, filed a complaint against two medical marijuana providers, Greener Pastures and Lionheart Caregiving.<sup>1</sup> The Complaint alleged a failure to report and disclose the cost of advertising in support of Initiative 182 (I-182), a ballot issue on the 2016 general election ballot.<sup>2</sup>

**Discussion**

The Complaint attached a copy of two advertisements (ads) in a magazine called “Outside Bozeman.” The Complaint alleges that the cost of (and language of) the ads create certain reporting, disclosure, and attribution

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<sup>1</sup> The Complaint also named Montana Citizens for I-182, a 2016 ballot committee and the Montana Cannabis Industry Association, a 2016 incidental political committee.

<sup>2</sup> The Complaint asserts that the publication itself of the ads is prohibited by §50-46-341, MCA. Chapter 46 of Title 50 of the Montana Code is administered by the Montana Department of Public Health and Human Services (§50-1-101(3), MCA). The COPP has no jurisdiction over enforcement of Title 50 of the Montana Code.

obligations that have been violated by Greener Pastures, Lionheart Caregiving, an incidental committee and a ballot committee.

### 1. Greener Pastures and Lionheart Caregiving Are Not Political Committees

Finding of Fact No. 1: Lionheart Caregiving placed a full page ad in the Fall edition of Outside Bozeman. The ad included an image of the State of Montana with the following statement “Vote YES on I-182.” The following facts apply to this ad:

- a. The maximum cost of this full page ad was \$1,575 with discounts.
- b. The full page ad was 100.23 square inches in size, with the majority of ad space devoted to a description of services provided by and location of Lionheart Caregiving.
- c. The portion of the full page ad urging a vote yes on I-182 was 7.42 square inches.
- d. The proportional share of the ad cost assigned to advocacy on I-182 is \$116.60. (COPP records.)

Finding of Fact No. 2: Greener Pastures also placed a full page ad in the Fall edition of Outside Bozeman. The ad included an image of the State of Montana with the following statement “Vote YES on I-182.” The following facts apply to this ad:

- a. The maximum cost of this full page back cover ad was \$2,150.00.
- b. The full page ad was 100.23 square inches in size, with the majority of ad space devoted to a description of services provided by and location of Greener Pastures.
- c. The portion of the full page ad urging a vote yes on I-182 was 9.42 square inches.
- d. The proportional share of the ad cost assigned to advocacy on I-182 is \$202.07. (COPP records.)

Finding of Fact No. 3: Greener Pastures and Lionheart Caregiving are not listed as contributors to I-182 on either the incidental committee or ballot committee reports filed with the COPP prior to the date of the Complaint.<sup>3</sup> (COPP records.)

Greener Pastures and Lionheart Caregiving are business enterprises that

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<sup>3</sup> The Complaint was filed October 7, 2016. The last ballot and incidental committee reports were due October 4, 2016.

automatically become a political committee once they engage in an election related activity. §13-1-101(30)(a), MCA. The ads advocate a vote for I-182 (FOF Nos. 1 and 2) and therefore constitute election communications under Montana law. §13-1-101(30)(a), MCA. Normally, the costs of an election communication made by a political committee must be reported and disclosed (§§13-37-229, 232, MCA), but an exception exists and applies in this Matter such that reporting and disclosure is not required.

The exception states that: “[a] political committee is not formed when [it] makes an election communication ... of \$250 or less.” §13-1-101(30)(d), MCA. In this Matter, each ad was an independent election expenditure that cost less than \$250 (FOF Nos. 1 and 2). Under §13-1-101(30)(d), MCA, a political committee was not created. Because a political committee was not created there is no reporting and disclosure required under §§13-37-229, 232, MCA.

In effect, an amount of less than \$250 spent by a nascent political committee is legally classified as *de minimis* speech that does not, by itself, trigger reporting or disclosure responsibility.<sup>4</sup> The reporting and disclosure allegations against Greener Pastures and Lionheart Caregiving are dismissed.<sup>5</sup>

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<sup>4</sup> This statutory recognition of *de minimis* speech is responsive to decisions by federal courts applying first amendment considerations. The *de minimis* exception for reporting and disclosure by individuals is greater. A single individual (human being) does not need report and disclose independent expenditures at all; reporting and disclosure is only required for candidates, ballot issue committees, political party committees and independent committees (§13-37-229, MCA) as well as for incidental committees (§13-37-232, MCA). However, once two individuals work together to make an independent expenditure a political committee is formed (§13-1-101(30)(a), MCA) and reporting and disclosure is required.

<sup>5</sup> This dismissal applies only to the facts at the time of this Decision. If Greener Pastures or Lionheart Caregiving later spend in excess of \$250 in the aggregate, then reporting is required.

## 2. Attribution

The Complaint alleges that attribution is lacking on the Greener Pastures and Lionheart Caregiving ads. Attribution may be considered because attribution is required for “all election communications” (§13-35-225(1), MCA), without regard to reporting and disclosure laws.

First, the Complaint alleges that the ads lack identification of the political committee and treasurer, as required by §13-35-225(1)(b), MCA. This Decision, however, has already decided that a political committee was not created here. Thus, determination of this allegation is controlled by the precedent of *Mikkelsen v. Western Water Users Association*, COPP-2013-CFP-015. In *Mikkelsen*, as in this Matter, political committee requirements did not apply. As in *Mikkelsen*, the Commissioner in this Matter reconciles the inconsistent language of two statutes (§§13-35-225(1) and 13-1-101(30)(d), MCA) and determines that political committee and treasurer attribution is not required.<sup>6</sup>

Maintaining the requirement of attribution without the requirements of naming a treasurer or forming a political committee (when a political committee is not formed) reconciles and gives effect to both statutes. Accordingly, the Commissioner determines that §13-35-225(1)(b), MCA does not apply and an attribution in Greener Pastures and Lionheart Caregiving ads need not name a political committee or treasurer. The Complaint allegations of improper

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<sup>6</sup> In making the reconciliation of two statutes “[w]here there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.” § 1-2-101 MCA.

attribution on the failure to list a political committee or treasurer are dismissed.

Second, the Complaint alleges an omission of the words “paid for by,” as required by §13-35-225(1)(a), MCA . In that regard, neither ad contains the words “paid for by” but both do prominently set out the name and address of Greener Pastures and Lionheart Caregiving respectively, the entity paying for the ad. The COPP has routinely excused this sort of technical violation as *de minimis*.

While not always identified as *de minimis*, Commissioners have long used the concept to dismiss prosecution of certain technical violations: no enforcement adjudication for lack of address, *Shannon v. Andrews*, COPP-2012-CFP-035 (Commissioner Murry); no enforcement adjudication for failure to list political party affiliation or funding source on a candidate website display, *Fitzpatrick v. Zook*, COPP-2011-CFP-014 (Commissioner Gallik); and no enforcement adjudication when full name of committee treasurer omitted, *Ellis v. Yes on CI-97*, April 15, 2008 (Commissioner Unsworth).

This Commissioner has also applied *de minimis* to excuse technical violations such as: omitting a ‘paid for by’ attribution, *Ulvestad v. Brown*, COPP-2013-CFP-025; accepting a contribution of \$40 over the allowed amount, *Rodda v. Bennett*, COPP-2014-CFP-013; failing to register/attribute as a political committee, *Royston v. Crosby*, COPP-2012-CFP-041; failure to fully attribute on a candidate letter, *Ponte v. Buttrey*, COPP-2014-CFP-007; failure to properly apportion total allowed amount of contribution between husband and

wife, *Kenat v. Van Dyk*, COPP-2014-CFP-004; failure to list political party, *Strizich v. Loney*, COPP 2014-CFP-034; and failure to fully attribute a radio ad, *Cohenour v. Dooling*, COPP 2014-CFP-043.<sup>7</sup>

The Commissioner applies *de minimis* in this matter and dismisses the remaining attribution allegation.

### 3. Incidental Committee and Ballot Committee

The Complaint alleges that the Montana Cannabis Industry Association (an I-182 incidental committee) or Montana Citizens for I-182 (the I-182 ballot committee) violated Montana law by not reporting the Greener Pastures and Lionheart Caregiving ads as in-kind contributions. The Commissioner disagrees for the reasons set out below.

First, the ads, if in excess of \$250, would have caused the entity paying for the ads to become a separate incidental committee for reporting purposes. This means that Greener Pastures and Lionheart Caregiving would each become an incidental committee that was required to report and disclose its own election expenditures. In contrast, Montana Cannabis Industry Association is a separate incidental committee and would not be required to report and disclose election expenses made by another incidental committee. Stated another way, each incidental committee reports its separate, individual expenses to the principal ballot committee.<sup>8</sup>

Second, this Matter concerns an independent expenditure made by

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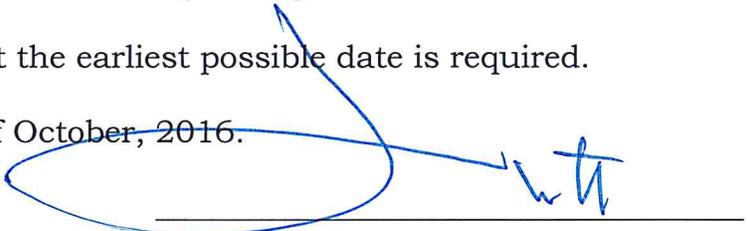
<sup>7</sup> In opposite to these Decisions is *Welch v. Davis*, COPP-2013-CFP-027; wherein an election communication did not qualify as an anonymous communication and did not meet *de minimis* standards and failed to set out a name or address of any sort.

<sup>8</sup> The reporting by multiple incidental committees to the central ballot committee is standard practice in ballot campaigns. See, for example, I-164 ballot committee reporting to the COPP.

Greener Pastures and Lionheart Caregiving. The responsibility for reporting and disclosure of this expenditure must begin with incidental committee responsibility. Because no incidental committee was formed, and thus no reporting and disclosure responsibility triggered, there can be no secondary responsibility by another incidental committee or by the central ballot committee. The Commissioner hereby dismisses this Complaint against Montana Citizens for I-182 and the Montana Cannabis Industry Association.

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 24th day of October, 2016.



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