

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

GREG GUTHRIE v. MONTANANS FOR FREEDOM AND RESPONSIBILITY	COPP-2024-CFP-048 FINDING OF FACTS SUFFICIENT TO SUPPORT VIOLATIONS
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COMPLAINT

On October 30, 2024, Greg Guthrie of Helena, MT, filed a Campaign Finance and Practices (CFP) complaint against the Montanans for Freedom and Responsibility political committee. The complaint alleged that the committee failed to timely file campaign finance reports disclosing expenditures made by the committee, specifically a mailer opposing Mr. Guthrie’s own candidacy, in the time and manner required by Montana law.

The complaint met the requirements of Admin. R. Mont. (ARM) 44.11.106, the administrative rule governing complaints, and alleged violations which fall under my jurisdiction as Commissioner of Political Practices. Therefore, I accepted it as filed and requested a response from MTGOP. MTGOP provided a timely response including supporting exhibits. The complaint and response are posted on our website, political.practices.mt.gov.

ISSUES

This decision addresses Montana Code Ann. (MCA) § 13-37-226(2), Timely filing of campaign finance reports by political committees, and MCA § 13-37-201, Campaign treasurer requirements.

BACKGROUND

Montanans for Freedom and Responsibility filed a C-2 Statement of Organization with COPP on October 4, 2024, listing Nancy Keenan of Missoula, MT, as the committee treasurer and “[t]o engage with voters across Montana about issues regarding legislative races as well as judicial races” as their

purpose. An initial C-6 political committee finance report was due on or before October 30, 2024. MCA § 13-37-226.

On October 31, 2024, COPP provided email notices to all political committees that had failed to file their October 30, 2024, report, including Montanans for Freedom and Responsibility. This notification is part of the normal practice of COPP compliance specialists. Also on October 31, 2024, COPP notified Montanans for Freedom and Responsibility of initial acceptance of this complaint.

A C-6 political committee finance report was subsequently filed on November 1, 2024.

This report dated October 4, 2024 through October 24, 2024, disclosed two (2) monetary contributions received by the committee totaling \$615,000.00, and two (2) independent expenditures financed by the committee, one dated October 22, 2024 described as a “mail piece” opposing various candidates at a cost of \$49,924.40 and one dated October 11, 2024 described as “Individual Mail pieces” supporting Montana Supreme Court Chief Justice candidate Jeremiah Lynch at a cost of \$252,544.76. Two additional expenditures, each described as “Bank Wire Fee” and together totaling \$40.00, were also disclosed.

DISCUSSION

The complainant alleges the Montanans for Freedom and Responsibility political committee failed to file committee finance reports with COPP as required by law. This contention was supported via inclusion with the submitted complaint of a campaign mailer opposing Mr. Guthrie’s candidacy that included an attribution statement identifying Montanans for Freedom and Responsibility as the responsible party. After receipt of this complaint, COPP reviewed all filings made by Montanans for Freedom and Responsibility and determined this allegation to be factual. While the committee filed a C-2 Statement of Organization as an independent political committee on October 4, 2024, it did not file any C-6 political committee finance reports on or before the

required October 30, 2024, filing deadline established in MCA § 13-37-226(2)(b). As stated above, Montanans for Freedom and Responsibility was immediately notified of COPP's receipt and initial acceptance of this matter via email on October 31, 2024. The committee was also provided email notice from COPP Compliance Specialists earlier that day that it had not yet filed the October 30 monthly C-6 report and needed to do so as soon as possible. COPP did not receive an immediate response to either message. On November 1, 2024, the Montanans for Freedom and Responsibility political committee filed its initial C-6 committee finance report described above.

Montana's mandatory campaign finance report filing requirements are enumerated in MCA § 13-37-226. Reports are due quarterly in the year preceding an election, monthly during an election, and semiannually in the year following an election until a closing report is filed. MCA § 13-37-226.

Montana's campaign finance report filing requirements are mandatory: "shall file" MCA § 13-37-226. The filing date requirements are date certain. In *Bradshaw v. Bahr*, the Commissioner found that "*any* failure to meet a mandatory, date-certain filing date is a violation of § 13-37-226 MCA." COPP-2018-CFP-008, *emphasis added*. Political committees participating in Montana's 2024 primary and general elections are required to file campaign finance reports monthly, on "the 30th day of March, April, May, June, August, September, October, and November", MCA § 13-37-226(2)(b). By filing an initial committee report on November 1 instead of October 30, the committee filed two (2) days late, a violation of MCA § 13-37-226(2)(b).

The complainant also states that the return address on the mailers is incorrect. MCA § 13-35-225 requires that all election materials "include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication." In the case of election materials financed by a committee, MCA § 13-35-225(1)(b) provides for the use of "the address of the committee" or "the named committee officer."

Montanans for Freedom and Responsibility now lists the same address

on their C-2 as is included on the mailer in question. While it may be a technical violation to include a different return mailing address than the address the committee lists on their C-2, the Commissioner has the authority to dismiss as de minimis any “failure to comply with the attribution requirements of 13-35-225, MCA, that is determined to nevertheless provide sufficient disclosure regarding who made or financed the communication.” ARM 44.11.601(20(f)).

There are several possibilities as to why an address may not be identical to the one provided on the C-2. It is possible there was a change in PO Boxes between the filing of the C-2 and printing of the mailer or that the address included was that of an officer of the committee. As long as the address provided allows a citizen to contact the committee the requirements of MCA § 13-35-225 have been satisfied.

Any suggestion that Montanans for Freedom and Responsibility violated Montana election law by using a return address different from that on their C-2 Statement of Organization is hereby dismissed.

ENFORCEMENT

The duty of the commissioner to investigate alleged violations of election law is statutorily mandated. MCA § 13-37-111. Upon a determination that sufficient evidence of election violations exists, the commissioner next determines if there are circumstances or explanations that may affect whether prosecution is justified. *Rose v. Glines*, COPP-2022-CFP-030. “The determination of whether a prosecution is justified must take into account the law and the particular factual circumstance of each case, and the prosecutor can decide not to prosecute when they in good faith believe that a prosecution is not in the best interests of the state.” *Montana Freedom Caucus v. Rep. Zephyr*, COPP-2023-CFP-010, at 26.

MCA § 13-37-124(1) requires that I refer a matter to the appropriate county attorney when I find sufficient evidence “to justify a civil or criminal

prosecution.” The county attorney may then choose to prosecute the matter or refer it back to me for appropriate civil or criminal action. *Id.* While I do not have discretion to pursue a civil action without first referring the matter to the affected county attorney, I do have discretion to determine if enforcement action and therefore referral to the county attorney is justified. *Rep. Zephyr*, 23, *Doty v. Montana Commissioner of Political Practices*, 2007 MT 341, 340 Mont. 276, 173 P.3d 700.

Recently, in *MTGOP v. Mullen*, *MTGOP v. Alke*, and *O’Neill v. Wilson*, I discussed in detail the objective factors I apply in determining when prosecution is justified. COPP-2024-CFP-30, 18, 22. These primarily consist of proximity to the election, a campaign’s pattern of compliance, the size of unlawful contributions or expenditures, and finally, responsiveness of the campaign. The above factors are listed in order of relevance, with proximity to the election being the most determinative factor.

Enforcement factors applied to Montanans for Freedom and Responsibility

- *Proximity to an election:* The C-6 political committee finance report due on or before October 30, 2024, was the final regular monthly report due by political committees prior to Montana’s November 5, 2024, general election. By failing to timely file this report, Montanans for Freedom and Responsibility deprived Montana voters and other interested parties - most notably Mr. Guthrie, a direct target of opposition advertising - of relevant information pertaining to its contributions received and expenditures made in the immediate lead-up to election day. Montana voters are entitled to this information under MCA Title 13, chapter 37, part 2, including the reporting calendar established in MCA § 13-37-226. In this matter, Montanans for Freedom and Responsibility committee’s independent expenditure opposing Mr. Guthrie occurred on October 22, 2024, *after* ballots had already been mailed to and were available for

qualified absentee voters.¹ The material financed by Montanans for Freedom and Responsibility political committee and that they failed to timely disclose was received by many Montana voters at or near the same time as they completed or returned their own absentee ballots, making the violation particularly egregious.

- *Pattern of compliance:* Montanans for Freedom and Responsibility was only active for 1 reporting cycle. Consequently, no pattern of compliance exists and this factor does not affect enforcement either way.
- *The size of misreported contributions or expenditures:* In the initial C-6 report filed with COPP, the Montanans for Freedom and Responsibility political committee disclosed receipt of \$615,000.00 in monetary contributions and financing two independent expenditures totaling \$302,468.76. Clearly, a failure to timely disclose contributions received and expenditures made in these amounts cannot be excused as de minimis.
- *Responsiveness of the campaign:* Finally, although the committee responded quickly by filing the appropriate reports, they nevertheless failed to do so until following the receipt of the complaint. This factor weighs somewhat in favor of prosecution.

On its own, a singular failure to timely file a required campaign finance report- as occurred here - might be determined to be unworthy of enforcement. However, Montanans for Freedom and Responsibility's failed to report significant contributions and expenditures until just before election day and well after absentee voting began. Prosecution of this matter is determined to be justified.

¹ Absentee ballots were mailed to qualified absentee voters on October 11, 2024, pursuant to MCA §§ 13-13-205 and 214: file:///C:/Users/CTA030/Downloads/2024-Primary-General-Election-Calendar%20(1).pdf.

CONCLUSION

When the commissioner finds sufficient evidence to justify prosecution, the Commissioner contacts the affected county attorney and transfers all relevant information, allowing the county attorney the opportunity to prosecute the offending party. MCA § 13-37-124(1). The county attorney has 30 days in which to initiate a civil or criminal action, at which time, if action is not taken the matter is waived back to the commissioner. *Id.* If the matter is waived back, the commissioner “may then initiate” legal action, but may exercise his discretion as to whether the matter is best solved by a civil action or the payment of a negotiated fine. MCA § 13-37-124(1), See also, *Bradshaw v. Bahr*, COPP-2018-CFP-008, at 4. In negotiating a fine, the commissioner may exercise his discretion and consider any and all mitigating factors. *Id.* If the matter is not resolved through the aforementioned negotiation, the commissioner retains statutory authority to bring a claim in district court against any person “who intentionally or negligently violates any requirement of campaign practice law.” *Id.*, 5.


The district court will consider the matter de novo, providing full due process to the alleged violator. The court, not the commissioner, determines the amount of liability when civil actions are filed under MCA § 13-37-128, and the court may take into account the seriousness of the violation(s) and the degree of a defendant’s culpability. MCA § 13-37-129.

Based on the above discussion, I find there is sufficient evidence to determine Montanans for Freedom and Responsibility violated MCA 13-37-229 by failing to timely file a campaign finance report due October 30, 2024.

Having determined that prosecution is justified, this matter will now be referred to the Missoula County Attorney in accordance with the provisions of MCA § 13-37-124. The County Attorney’s office is free to conduct their own investigation under MCA § 13-37-125, request additional material from COPP, or refer the matter back to this office for potential prosecution. Most matters are returned to COPP and are concluded with a negotiated settlement where

mitigating factors are considered, and a civil penalty is determined pursuant to MCA § 13-37-128. If a negotiated settlement is unsuccessful, the Commissioner will pursue the matter in Missoula County District Court.

Dated this 13th day of June, 2025,



Chris J. Gallus
Commissioner of Political Practices
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