

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

BUSSE FOR MONTANA (VIA EMILY HARRIS)	COPP-2024-CFP-037
v.	
GREG GIANFORTE/GREG FOR MONTANA CAMPAIGN	DISMISSAL

COMPLAINT

On September 18, 2024, Emily Harris, on behalf of the Busse for Montana gubernatorial campaign, Busse for Montana, filed a Campaign Finance and Practices (CFP) complaint against the Greg for Montana gubernatorial campaign. The complaint alleged the Gianforte campaign failed to report contributions received and/or expenditures made in connection with Governor Gianforte’s attendance at a campaign event held in Bozeman, MT, failed to properly attribute an online fundraising communication, and failed to disclose certain campaign advertising expenditures in compliance with Montana law.

The complaint conforms to the requirements of Admin. R. Mont. 44.11.106 and alleges violation of statutes which fall under my jurisdiction as Commissioner of Political Practices. Therefore, I accepted it as filed, and in accordance with COPP procedures, requested a response from the Gianforte campaign. The Gianforte campaign timely filed a response with COPP on September 24, 2024. The complaint and response are posted on COPP’s website, www.politicalpractices.mt.gov.

ISSUES

Candidate campaign finance reporting, MCA §§ 13-37-226, 229; “paid for by” attribution requirements, MCA § 13-35-225; and reporting expenditure details, MCA § 13-37-226.

BACKGROUND

Ryan Busse is the Democratic candidate for election to the position of

Governor of the State of Montana. Greg Gianforte is the Republican candidate for election to the position of Governor of the State of Montana and currently serves as Montana's Governor.

On August 9, 2024, the Donald Trump/J.D. Vance campaign for the U.S. Presidency held a campaign rally in Bozeman, MT. Governor Gianforte accepted an invitation to speak at this event. The Greg for Montana campaign's C-5 periodic finance report for the applicable reporting period, June 16 through August 15, 2024, does not clearly disclose any expenditures or contributions related to the event.

During this same reporting period, the Gianforte campaign ran a series of ads on Facebook. A photo provided by the complainant displays an attribution statement which reads in its entirety, "Paid for by Greg for Montana, Republican." The initial C-5 report for this reporting period was timely filed by the Gianforte campaign on August 20, 2024, and included two payments to "Anchor City Strategies" for \$10228.16 and \$9884.26, each labeled "Digital Display Ads."

COPP staff reviews all submitted finance reports in accordance with MCA § 13-37-121. Upon routine inspection of the August 20, 2024, report, a COPP compliance specialist, via email, requested the Gianforte campaign add expenditure details – specifically, "number of ads placed/dates span" to the payments to Anchor City Strategies. On September 5, 2024, the Gianforte campaign amended the report to add the following details: 10 ads run July 18 through August 15, 2024, and 6 ads run June 11 through July 8, 2024.

The above-named complaint was received by COPP on September 18, 2024, following amendment of the implicated C-5 report.

DISCUSSION

Campaign Event

The complaint first asserts that "'Greg" for Montana has either a) failed to report campaign expenses as required by law b) failed to report campaign debts as required by law or c) accepted illegal in-kind contributions in excess of the contribution limit." (Complaint, 4.)

Montana law specifies that all expenditures made or contributions received by a candidate to support their candidacy, or to oppose another candidate, must be disclosed. MCA § 13-37-229. These activities, including debts and in-kind contributions, are reported on C-5 periodic campaign finance reports, filed with COPP according to a statutorily mandated reporting calendar. MCA §§13-37-226, 228.

Any activity, including production of, and attendance at, campaign rallies, require the disclosure of related expenditures or contributions if the activities were intended to “support or oppose” a candidate.¹

Here, there is no evidence provided that indicates the Bozeman rally was held to support Governor Gianforte’s candidacy. Similar allegations were recently leveled against the Busse for Montana campaign by the Montana Republican Party (MTGOP). In that decision, I was unable to find sufficient evidence of any violations because no reportable contributions or expenditures went unreported. *MTGOP v. Busse*, COPP-2024-CFP-034 and 036. Mr. Busse’s expenses associated with attending the rally were properly and timely reported by the Busse campaign, and no evidence was provided to indicate the event was coordinated with the Busse campaign to support his candidacy or oppose that of candidate Gianforte. All evidence provided and verified by COPP found the Montana Freedom Rally at issue in *MTGOP v. Busse*, was held in support of reproductive rights.

The same analysis applies here. In their response, the Gianforte campaign stated that the event was organized and hosted by Presidential candidate Donald

¹ "Support or oppose", including any variations of the term, means: (a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to voters in an election; or (b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the passage or defeat of the ballot issue or other question submitted to the voters in an election. MCA § 13-1-101(34).

Trump and that “GFM had no part in planning, promoting, paying for or executing the event in question. GFM merely accepted an invitation for the Governor to speak.” (Response) If this event was intended to support any candidates other than former president Trump and vice-presidential candidate J.D. Vance, all evidence points to the senatorial candidate Tim Sheehy.²

While the result is the same, this situation is distinguished from the prior complaint lodged against Mr. Busse in two ways.

First, the Gianforte campaign did not report any expenditures for staff time or travel related to the event, and second, this rally was organized by a Republican candidate rather than a political party committee.

Absent evidence to the contrary, COPP cannot conclude that Governor Gianforte attended this rally as a candidate rather than in his personal capacity. The only potential evidence that Governor Gianforte attended this event as part of his candidacy is that the invitation was extended to Greg for Montana, Governor Gianforte’s gubernatorial campaign. It is common practice for campaigns to invite current officials of the same political party to speak at campaign events, regardless of whether or not they are currently running for office. If COPP were able to conclude, based on the invitation alone, that Governor Gianforte attended this rally as part of his campaign, he would be obligated to report expenditures related to his attendance at the rally. However, Governor Gianforte maintains a house in Bozeman and any expense for travel from his home in Bozeman would be considered de minimis. See, *O’Neill v. Swanson* and *O’Neill v. Wilson* for a contrast between attending events as a candidate vs. a private individual.

While his position as Governor places limits on the time and manner in which Governor Gianforte can campaign, he is not stripped of his First Amendment rights of freedom of association and freedom of speech as an individual. Here, a determination that Governor Gianforte speaking at a federal candidate’s rally

² Blair Miller, *Trump Rallies Thousands in Bozeman in Support of GOP Senate Candidate Sheehy*, DAILY MONTANAN, August 10, 2024.

created reportable contributions, based on any ancillary resulting support of the Gianforte campaign, would clearly infringe on the “unrestricted associational rights of a party” addressed by the commissioner in *Adams* and the First Amendment “freedom to associate with voters for the common advancement of political beliefs and ideas” afforded to all Americans by the First Amendment. U.S. Const., Amend. 1, *Buckley v. Valeo*, at 8, 633. See also, *Montana Freedom Caucus v. Rep. Zephyr*, COPP-2023-CFP-010, at 15.

Governor Gianforte is free to attend campaign rallies organized to support other Republican candidates, in his personal capacity, as long as taxpayer resources are not used to facilitate campaigning for either himself or other candidates. MCA § 2-2-122. COPP has no evidence to suggest that the Bozeman rally was organized to support the Gianforte campaign. Consequently, no related expenditures or contributions were required to be reported. All allegations related to this event are hereby dismissed.

Attribution

Next, this complaint alleges that a digital fundraising communication utilized by the Gianforte campaign failed to include proper attribution.

Montana law requires all election materials include an attribution which includes “the name and the address of the candidate or the candidate’s campaign,” and in a partisan campaign, “must state the candidate’s party affiliation or include the party symbol.” MCA § 13-35-225(1)(a), (2).

Here, the complaint includes a screenshot allegedly of the communication, which includes an attribution of “[p]aid for by Greg for Montana, Republican.” COPP notes that such an attribution fails to conform to the requirements of MCA § 13-35-225(1)(a), specifically by omitting the address of the campaign. After receipt of this complaint and Governor Gianforte’s September 24, 2024, response, COPP directly examined this communication to assess the campaign’s assertion that any attribution issues had been corrected and determined that the communication had

been updated to include an attribution of “Paid for by Greg for Montana, Republican. P.O. Box 877 Helena, MT 59624.”

If COPP determines a violation of MCA § 13-35-225 exists, I am obligated to follow the procedures outlined in MCA § 13-35-225(6). If the campaign complies, they are relieved of a campaign practices violation. Here, the screenshot provided by the complainant shows the required attribution statement is not present. However, at the time COPP investigated the complaint, the attribution statement had been properly amended to include the address of the campaign. Consequently, the attribution is compliant with MCA § 13-35-225 and this allegation is dismissed.

While not specifically alleged in this complaint, failure to include a candidate’s last name is a technical violation of Montana election law. ARM 44.11.602(2)(a)(ii)(A) states “[a]n attribution using the name of the candidate’s campaign must include the first and last name of the candidate if the name of the campaign does not include at least the candidate’s last name.” However, as noted in *Busse for Montana (via Harris) v. Gianforte*, ARM 44.11.603(2)(f) includes 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.” COPP-2024-CFP-039.

Here, as with above allegation, engagement with the statutory process for bringing unattributed material into compliance established in MCA § 13-35-225(6)(a)(i) for a technical violation such as this is not justified- the issue is appropriately dismissed as de minimis pursuant to ARM 44.11.603(2)(f), as the communication provides “sufficient disclosure regarding who made or financed the communication.” In this case, the communication itself includes a picture of a “Gianforte-Juras- Governor” campaign logo, and a statement of “Join the team and help re-elect Governor Greg Gianforte for another four years!” The URL for this communication also includes “jointeamgianforte.” Any effect the technical failure to include Governor Gianforte’s last name in this communication’s attribution statement may have on Montana voters is de minimis and unworthy of further

consideration, as voters can easily determine that the communication was financed by his campaign.

Reporting expenditures

Finally, the submitted complaint alleges that the Gianforte campaign failed to report certain campaign expenditures in compliance with MCA § 13-37-229(2)(b). Specifically, it alleges that the campaign financed advertisements on Facebook, but “[t]here are no disclosures of spending directly to Facebook itself. Either “Greg” for Montana failed to report spending directly to Facebook itself, in violation of Montana law, or it used a media buying consultant.” (Complaint, 5.) In their response, the Gianforte campaign readily admits that campaign advertisements on Facebook were purchased through a third-party entity, Anchor City Strategies, but argues that the activity was fully and properly reported.

Candidates are required to report the amount, date, and purpose of each expenditure made to support their candidacy or oppose another candidate. MCA § 13-37-229(2). Additional details are required when reporting expenditures made to an agency or person that performs services for or on behalf of a candidate. Such expenditures “must be itemized and described in sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was made.” *Id.* (b).

Here, upon inspection of the C-5 report filed on August 20, 2024, COPP compliance specialists identified two (2) reported expenditures to Anchor City Strategies that required additional information or description when reviewing the report. As a result, COPP contacted the campaign via email message on August 29, 2024, to request the “[n]umber of ads placed/dates span.” An amended version of the report was filed on September 5, 2024, by the Gianforte campaign, adding the total number of ads purchased (16) and the relevant date range of the ads as requested by COPP. In other words, COPP independently (and prior to submission of this complaint) recognized a potential reporting deficiency related to the Anchor City Strategy expenditures and communicated this to the Gianforte campaign who

promptly addressed the matter to COPP's satisfaction.

Candidate expenditure detail requirements under MCA § 13-37-229(2)(b) have become a topic of great contention in relation to Montana's 2024 gubernatorial race - see the discussion in both *Montana Republican Party (via Bradley) v. Busse*, COPP-2024-CFP-027, at pages 6-11, and *Busse for Montana (via Harris) v. Gianforte*, COPP-2024-CFP-029, at pages 11-13. In those matters, COPP declined to find expenditures itemized and described as "statewide tv broadcast ad buy" (*Busse*) and "February Digital Ad 30 second placement Gianforte for Governor" (*Gianforte*) as violating MCA § 13-37-229(2)(b). As noted in those prior matters, COPP does not interpret MCA § 13-37-229(2)(b) to require that candidates disclose the specific *platform* when reporting expenditures for campaign advertisements - the requirement is to disclose the specific *services* provided. In this case, the Gianforte campaign's use of the phrase "digital advertising," combined with information about the total number and date range of the ads, appears to appropriately itemize and describe the "specific services provided" in a manner that conforms with MCA § 13-37-229(2)(b).

While there may have been an initial violation of MCA § 13-37-229, it was remedied prior to submission of this complaint and therefore, this allegation is dismissed as frivolous. In an effort to improve the ability of COPP to process complaints in an economic and equitable fashion, the Commissioner in *Landsgaard v. Peterson*, enumerated four indicia of frivolous complaints, and states "future complaints identified as frivolous will be dismissed summarily with minimal discussion." COPP-2014-CFP-008, at 4. *Landsgaard* specifically identifies a complaint "directed to a corrected campaign practice" as frivolous. *Id.* at 11.

Here, the Gianforte campaign had remedied any reporting deficiency upon the request of COPP staff, 12 days before this complaint was received. Additionally, "[t]he policy of Montana does not favor "got you" complaints. Instead, where it is possible to do so, Montana law favors correcting campaign errors." *Id.* at 12. Consequently, this particular allegation is dismissed as frivolous. However, if this allegation had not been corrected, and therefore not dismissed, COPP would nevertheless ask the Gianforte campaign to correct this allegation before considering

whether prosecution may be justified.

CONCLUSION

The above-named complaint has been considered as described above and all allegations are hereby dismissed in full.

Dated this 22nd day of October, 2024.



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