

Cook, Scott

From: Wendy Smith <wendy@wdrpmanagement.com>
Sent: Monday, June 10, 2024 12:50 PM
To: Cook, Scott
Cc: Gallus, Chris J.; Hendricksen-Scott, Shelley
Subject: [EXTERNAL] Re: New Complaint Received by COPP- Gaub v MT United PAC, Montanans for Fair Taxation, Kyle McMurray, Scott Sales. Randyn Gregg, and Michelle Binkley, COPP-2024-CFP-025

Scott,

I am in receipt of the complaint filed by Darin Gaub against Montanans for Fair Taxation and MT United PAC. I am the Treasurer of both committees. Please consider this the committees' response to Mr. Gaub's complaint.

As a preliminary matter the Commissioner should dismiss the complaint for failing to meet the requirements of ARM 44.11.106(2)(B)(iii). While Mr. Gaub has listed some vague allegations, he has failed to cite any statutes or allege any specific violations. As such, the Commissioner should dismiss this complaint.

Additionally, Mr. Gaub appears to be confusing "Montana United PAC" with "MT United PAC." These are two different, unrelated political committees. According to CoPP records, Montana United PAC registered in June 2019 and filed its closing report in March 2021. MT United PAC registered with the CoPP in April 2024 and filed its most recent finance report on May 30, 2024. MT United PAC is in compliance with all CoPP rules, regulations, and campaign finance laws. Regarding the "facts" listed in Mr. Gaub's complaint, please note the following substantive responses:

1) Mr. Gaub asserts "there were mailers that arrived in voter's [sic] mailboxes on or before 4/20/2024". MT United PAC did not produce any mailers on or before 4/20/2024. Mr. Gaub offers no evidence to support his unsubstantiated assertion. Mr. Gaub further asserts, that "the photos appear to be professional photos." Given that MT United PAC did not produce any of the mailers that Mr. Gaub claims arrived on or before 4/20/2024, the PAC cannot speak to the photos in those mailers. However, the PAC can speak to the mailers that it did produce and distribute in May 2024, none of which utilized any "professional photos."

2) As stated above, Mr. Gaub is conflating "Montana United PAC" with "MT United PAC." These are two different, unrelated political committees.

3) Mr. Gaub asserts his opinion that it takes "at minimum two weeks (10 business days)" to "process" campaign mailers "from the time the creative layout is submitted to the printing company to the time the mailer arrives in mail boxes." Again, Mr. Gaub provides no evidence to support his opinion. Mr. Gaub's opinion of how long this process takes does not match the reality of the PAC's experience sending political direct mail.

4) Mr. Gaub asserts that "the date of that the professional photos were first made public (social media) range from May 8 th [sic] to May 10 th [sic]." As stated above, the PAC did not utilize

any professional photos in its independent expenditures, nor has it attempted to find any of these photos on the internet so it cannot speak to the veracity of this claim.

5) The incoherent assertions and Mr. Gaub's failure to follow the requirements of ARM 44.11.106(2)(B)(iii) make it difficult to meaningfully respond to this claim. To the best that I understand, Mr. Gaub seems to be claiming that because MT United PAC (which he mislabels as Montana United PAC) used a similar picture as a particular candidate and based on his own faulty opinion of how long campaign mail takes to produce, that somehow equals "coordination" between MT United PAC and candidate McMurray. This opinion, once again, lacks any evidence.

ARM 44.11.602 defines "coordination" as "any election communication, electioneering communication, or reportable election activity that is made by a person in cooperation with, in consultation with, under the control of, or at the direction of, in concert with, at the request or suggestion of, or with the express prior consent of a candidate or an agent of the candidate." Here, Mr. Gaub's has not demonstrated that any of these criteria have been met. MT United PAC states unequivocally that it did not coordinate its independent expenditure activities with Candidate McMurray or any other candidate.

6) Mr. Gaub has labeled two items as 6. This is a response to the first item 6 in the complaint. Similar to item 5, the incoherent assertions and Mr. Gaub's failure to follow the requirements of ARM 44.11.106(2)(B)(iii) make it difficult to meaningfully respond to this claim. To the best that I can understand, Mr. Gaub seems to be claiming that because he could not find some photos on the internet, MT United PAC (which he again mislabels as Montana United PAC) must have coordinated with candidate McMurray.

ARM 44.11.602 defines "coordination" as "any election communication, electioneering communication, or reportable election activity that is made by a person in cooperation with, in consultation with, under the control of, or at the direction of, in concert with, at the request or suggestion of, or with the express prior consent of a candidate or an agent of the candidate." Here, Mr. Gaub's claims have not demonstrated that any of these criteria have been met. MT United PAC states unequivocally that it did not coordinate its independent expenditure activities with Candidate McMurray or any other candidate.

6) This is a response to the second item 6 in the complaint. As stated above, Mr. Gaub is conflating Montana United PAC with MT United PAC. These are two different, unconnected political committees. According to CoPP records, Montana United PAC registered in June 2019 and filed its closing report in March 2021. MT United PAC registered with the CoPP in April 2024 and filed its most recent finance report on May 30, 2024.

As to Mr. Gaub's assertion that Montanans for Fair Taxation has "never filed with COPP," this claim is demonstrably false. As per CoPP records, the Committee registered in 2014 and has timely filed each of its required campaign finance reports since that time. CoPP records show the Committee has filed 48 campaign finance reports, including the most recent on May 30, 2024.

7) Mr. Gaub's assertion that "Montanans for Fair Taxation have [sic] been disbursing funds to candidates and evidently raising funds, but not reporting to them in COPP" is demonstrably false. As noted above, CoPP records show the Committee has filed 48 campaign finance reports, including the most recent on May 30, 2024.

8) Mr. Gaub's assertion that "the treasurer now for Montana United is now listed at [sic] 'W. Smith'" is again an apparent conflation of MT United PAC and Montana United PAC. As discussed above, these are separate, unrelated committees.

In his summary, Mr. Gaub fails to cite any particular statutes he believes have been violated but he does assert that:

1) "Many candidates colluded with Montanans United PAC for independent expenditures which benefited the candidates in question." As stated above, MT United PAC and Montana United PAC are separate entities. MT United PAC affirmatively states that it did not "collude" or coordinate any of its independent expenditures with any candidate. The only "evidence" Mr. Gaub seems to offer to support his claims is that the committee and a candidate used a similar photo that Mr. Gaub couldn't find on the internet.

2) "PACs Montana United and Montanans for Fair Taxation have been allowed to act illegally by not registering with COPP and not reporting their income and expenses." As stated above, this is demonstrably false. MT United PAC and Montanans for Fair Taxation PAC are both in full compliance with CoPP filing requirements. This claim is simply a result of Mr. Gaub's incompetence in navigating the CoPP records system.

We respectfully request that the Commissioner dismiss this unfounded complaint immediately. It should be dismissed as a matter of course for failing to meet the standards of a complaint and as a matter of substance for failing to articulate any actual violations.

Thank you,
Wendy Smith

On Fri, May 31, 2024 at 4:19 PM Cook, Scott <SCook3@mt.gov> wrote:

Wendy,

Please see the attached copy *Gaub v. MT United PAC, Montanans for Fair Taxation, Kyle McMurray, Scott Sales, Randyn Gregg, and Michelle Binkley*, COPP-2024-CFP-025, a formal Complaint alleging violation of Montana election law under the Commissioner's jurisdiction received by COPP and accepted for initial review by Commissioner Gallus. A letter from Commissioner Gallus outlining the formal Complaint process and requesting a written response be provided by MT United PAC and Montanans for Fair Taxation addressing the specific allegations presented is also included. Hard copy (paper) versions of these documents can be sent to you via U.S. Mail as well upon request. The complaint and letters requesting a written response from each named respondent will be publicly posted to COPP's website before the close of business today (May 31, 2024). Please feel free to contact myself, Commissioner Gallus, or COPP's agency attorney Shelley Hendricksen-Scott with questions about the formal Complaint process. The requested written response in this matter may appropriately be submitted to COPP via email message.

Scott Cook

Compliance Specialist 3/Public Records Officer

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