

Brad Barker

PO Box 1242

Red Lodge, MT 59068

(406) 426-1034

April 21, 2026

Chris J. Gallus

Commissioner of Political Practices

1209 Eighth Avenue

PO Box 202401

Helena, MT 59620-2401

Re: Response to Complaint *Gusler v. Barker*, COPP-2026-CFP-003

Dear Commissioner Gallus:

Pursuant to Mont. Code Ann. § 13-37-132 and your letter of April 21, 2026, I respectfully submit this written response to the complaint filed by Claiten Gusler on April 15, 2026. For the reasons set forth below, the allegations are without merit and rest on (i) a factual misunderstanding about how the graphic at issue was produced, (ii) a search of the wrong CERS database, and (iii) speculation about coordination that is affirmatively untrue. I respectfully request that the complaint be dismissed upon your initial inquiry under 44.11.106 ARM.

Background

The communication at issue is a single digital graphic posted to my public Facebook page commenting on the legislative record of Representative Nelly Nicol (HD 53). The post was paid for by my candidate campaign and carries the attribution: “Paid for by Committee to Elect Brad Barker, R, Box 1242, Red Lodge, MT 59068.” The post was issued in response to public statements made by Representative Nicol on social media concerning me, and was intended to inform voters about matters of public record — specifically, Rep. Nicol’s employment relationship with Victory Insurance and her legislative activity on HB 277 and HB 678.

Response to Allegation 1 — Alleged Violation of MCA § 13-35-802 (Synthetic Media Disclosure)

The complaint alleges that the graphic contains an “AI rendering” of Representative Nicol that was “intended to make her look unappealing,” and therefore required a disclosure under MCA § 13-35-802. Both the factual premise and the legal conclusion are incorrect.

The image of Representative Nicol used in the graphic is her own authentic likeness, drawn from her own publicly distributed campaign photography (attached as Exhibit A, posted to the “Nelly Nicol for Montana” Facebook page). AI-assisted design tools were used in producing the composite — principally to separate the subject from her original background and place her over a new background layer — but her face, expression, eyes, skin tone, jewelry (including the distinctive gold circular pendant), the distinctive leopard-print collared shirt, and the dark blazer all appear in the final graphic exactly as they appear in her own campaign photograph. The graphic at issue is reproduced as Exhibit B. A side-by-side comparison demonstrates:

- The subject’s face and expression are unchanged — she is smiling, as in her own campaign photo;
- Her clothing (the leopard-print collar, dark blazer, and necklace) is unchanged;
- She is not depicted saying anything, whether truthful or false;
- She is not depicted doing anything she did not actually do;
- The only material change is to the background of the image, which has been replaced with a darker stylized background layer.

MCA § 13-35-802 is, by its plain terms, a deepfake statute. It regulates “deepfakes” — defined as AI-generated content or synthetic media that depicts a candidate or political party, produced with the intent to injure the candidate’s reputation or otherwise deceive a voter. The required statutory disclosure itself confirms the statute’s scope: “This [image/audio/video/multimedia] has been significantly edited by artificial intelligence and depicts speech or conduct that falsely appears to be” that of the candidate. In other words, the statute’s triggering harm is the false depiction of a candidate engaged in speech or conduct — the core concern that animated Senate Bill 25 in the 2025 session. The graphic at issue contains no such false depiction. Representative Nicol’s likeness is authentic, and she is not shown uttering any statement or performing any act.

To read § 13-35-802 to require a deepfake disclaimer every time a political graphic is built using modern design software — which, in 2026, near-universally contains AI-assisted features for subject selection, background replacement, upscaling, or color correction — would sweep in virtually every digital political communication in the State, regardless of whether the communication depicts anything false at all. That is not what the Legislature enacted. The statute targets synthetic depictions of candidates saying or doing things they did not in fact say or do. The graphic here uses Representative Nicol’s own likeness, from her own public campaign

materials, over a new background — a practice indistinguishable in kind from combining a candidate’s head-and-shoulders photograph with a layout background in any mailer, newspaper ad, or yard sign design for the past half-century. The fact that the cutout was made with a modern tool rather than with scissors and paste does not convert the graphic into a “deepfake” within the meaning of § 13-35-802.

Nor does the complainant’s editorial characterization that the image was “intended to make her look unappealing” establish a violation. Whether a candidate subjectively prefers one photograph of herself over another is not a legal standard under § 13-35-802. An authentic photograph of a candidate is not a deepfake.

For these reasons, Allegation 1 should be dismissed. The graphic did not trigger the disclosure requirements of § 13-35-802.

Response to Allegation 2 — Alleged Unregistered Political Committee

The complaint alleges that “Committee to Elect Brad Barker” is an unregistered political committee because it did not appear in CERS when the complainant ran a committee search. This allegation results from searching the wrong database.

“Committee to Elect Brad Barker” is the common-usage name of my candidate campaign. It is not a separate political committee or PAC. My candidate campaign is fully registered with the Commissioner of Political Practices under MCA § 13-37-201. The complainant’s own exhibit — the CERS Candidate Registration View for “Barker, Brad” (attached to the complaint) — confirms this. That exhibit shows:

- Candidate: Brad Barker, House District No. 55, 2026 election year;
- Mailing Address: PO Box 1242, Red Lodge, MT 59068;
- Campaign Treasurer: Jeremy Osborn;
- C-1/C-1A filed February 17, 2026; amendment received February 18, 2026;
- Current Status: Amended (active and in good standing).

The mailing address in the disclaimer on the graphic (PO Box 1242, Red Lodge, MT 59068) is identical to the address on file for my candidate campaign. The attribution therefore complies with MCA § 13-35-225(1)(a), which requires that election communications financed by a candidate’s campaign identify “the name and the address of the candidate or the candidate’s campaign.”

Because “Committee to Elect Brad Barker” is the candidate campaign — not an independent political committee — no separate Form C-2 Statement of Organization is required, and no separate committee treasurer designation beyond my registered campaign treasurer is required. The complaint’s reliance on MCA § 13-37-201, § 13-37-226, and § 13-37-228 is therefore

misplaced; those provisions concern political committees, not candidate campaigns that are already registered as such.

The complainant's CERS screenshots reflect that the search producing "no records" was conducted under the "Committee Search" tab. The correct tab for a candidate campaign is "Candidate Search," which — as the complainant's own next exhibit shows — returns my registered campaign.

Response to Allegation 3 — Alleged Coordination with an Unregistered Committee

Allegation 3 is entirely derivative of Allegation 2. The complainant asserts that "due to Violation 2 above, the illegally unregistered Committee is in coordination with Representative Barker." Because the premise of Allegation 2 is incorrect — there is no separate unregistered committee; "Committee to Elect Brad Barker" is my registered candidate campaign — there is nothing for the candidate to "coordinate" with. The shared PO Box is the campaign's address of record with this Office, as reflected on the complainant's own exhibit. Allegation 3 should be dismissed as legally and factually unsupported.

Response to Allegation 4 — Alleged Unreported In-Kind Contribution to Troy Charbonneau

The complaint alleges that the graphic constitutes an unreported in-kind contribution to Troy Charbonneau's campaign for HD 53. It does not.

A communication is an in-kind contribution to another candidate only if it is made in coordination with that candidate or that candidate's campaign. See MCA § 13-1-101 and ARM 44.11.404 (coordinated expenditures). The graphic at issue was conceived, produced, paid for, and published entirely by my candidate campaign. There was no coordination, consultation, cooperation, request, suggestion, or prior approval of any kind with Mr. Charbonneau, his campaign, his staff, his family, or any agent acting on his behalf. Mr. Charbonneau had no knowledge that the post would be published, did not review it before or after publication, did not approve it, did not request it, and was not informed of its contents in advance.

Because the communication was produced independently of the Charbonneau campaign, it cannot be an in-kind contribution to that campaign, and Mr. Charbonneau had no reporting obligation with respect to it on his C-5 or any other filing. The complaint provides no evidence of coordination — only the complainant's own stated "assumption" that coordination must have occurred. That speculation does not meet the evidentiary threshold for a COPP investigation under 44.11.106 ARM.

Any reporting obligation on my side with respect to the expenditure is, and will continue to be, reflected on my candidate campaign's regular campaign finance reports filed with this Office.

Conclusion

The complaint rests on: (1) a factual and legal misunderstanding about whether a composite graphic built around a candidate's authentic campaign photograph constitutes an undisclosed deepfake under MCA § 13-35-802; (2) a search of the wrong CERS database; (3) a derivative allegation that fails when the underlying allegation fails; and (4) an admitted speculative "assumption" of coordination that is affirmatively untrue. The graphic was a lawful, properly attributed political communication, funded by my registered candidate campaign and issued in response to public statements made about me. I respectfully request that the complaint be dismissed under 44.11.106 ARM without further proceedings.

I have preserved, and will continue to preserve, all records relevant to this matter as requested in your April 21, 2026 letter. I am happy to provide any additional information or documentation the Office may find useful in its review.

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brad Barker", is written over a horizontal line.

Brad Barker

Representative, Montana House District 55

Enclosures:

Exhibit A — Representative Nelly Nicol's own campaign photograph ("Nelly Nicol for Montana at Billings, Mt" Facebook post, Mar. 8)

Exhibit B — The digital graphic at issue (Facebook post, "Representative Brad Barker" page)

EXHIBIT A

Representative Nelly Nicol's Own Campaign Photograph

Source: "Nelly Nicol for Montana at Billings, Mt" Facebook page, post dated March 8

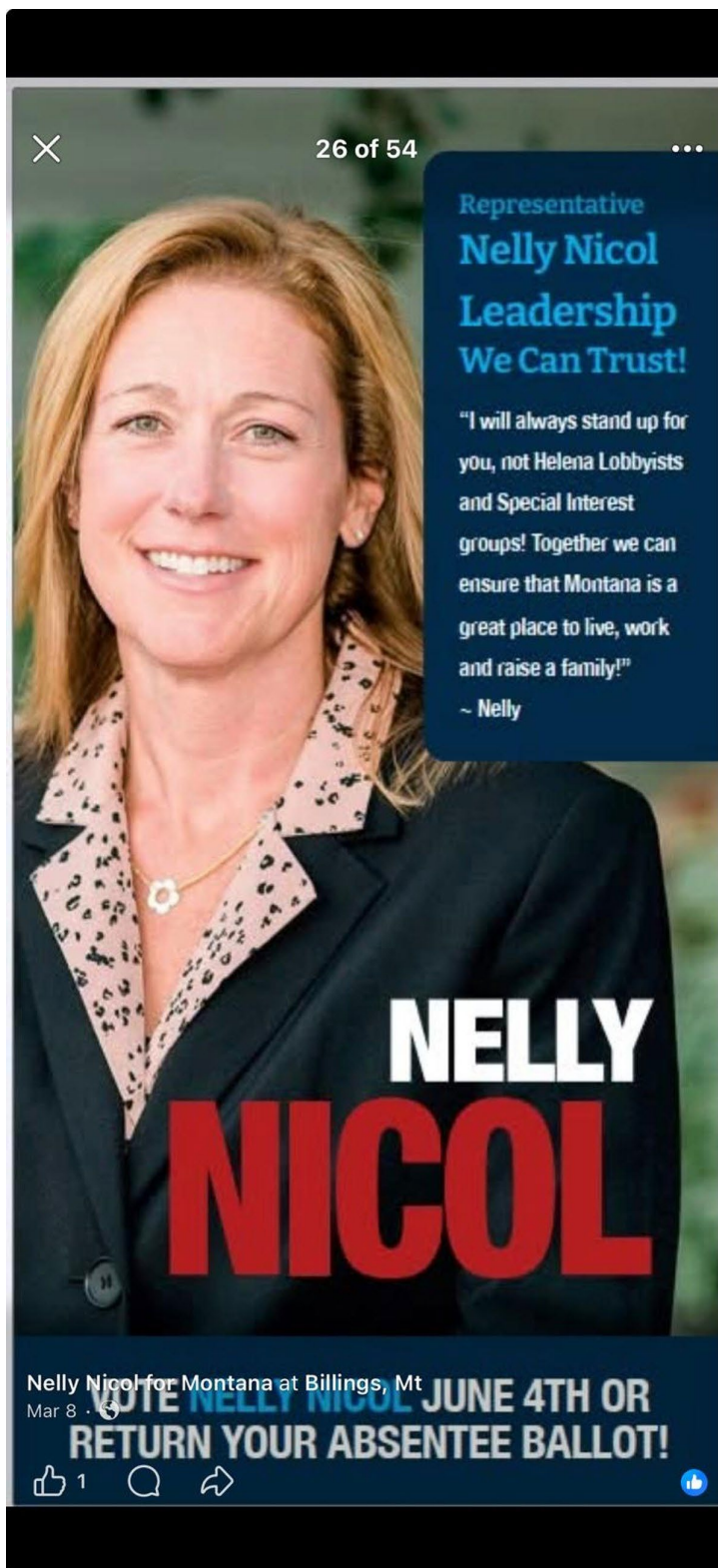


EXHIBIT B

The Digital Graphic at Issue

Source: "Representative Brad Barker" Facebook page

MONTANA FREEDOM CAUCUS

Your tax dollars ... her family business

Rep. Nelly Nicol • HD 53 • BILLINGS

 **THE FAMILY BUSINESS**

Nicol works for her father's company, **Victory Insurance**—a workers' comp insurer.

She's **communications director** & sits on their **board of directors**.

What Nelly's been doing in the legislature:

 **HB 277: DEFUNDING HER FATHER'S REGULATOR**

\$2.7 MILLION fine proposed against Victory Insurance.

Introduced bill to **DEFUND** the regulator to **protect her father's company**

 **HB 678: REWRITING LAW TO ERASE COURT LOSS**

HER FAMILY'S COMPANY LOST IN COURT.

 **WROTE LAW** to **OVERTURN** the ruling.

PUBLIC OFFICE HOLDERS SHOULD SERVE YOU.

**FIRE THE SELF-SERVING FREEDOM CAUCUS,
AND VOTE FOR REAL REPUBLICANS LIKE TROY
CHARBONNEAU FOR HD 53 ON JUNE 2nd**

Paid for by Committee to Elect Brad Barker, R, Box 1242, Red Lodge, MT 59068