

THE STATE OF MONTANA

Commissioner of Political Practices 1209 Eighth Avenue Post Office Box 202401 Helena, MT 59620-2401 Phone: 406-444-2942 Fax: 406-444-1643 www.politicalpractices.mt.gov

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Campaign Finance and Practices

Complaint Form (08/17)

Type or print in ink all information on this form except for verification signature

Person bringing complaint (Complainant):

Complete Name: Katie Reynolds; Counsel for Republican Attorneys General Association; Complete Mailing Address: 1825 I Street NW Suite 900 Washington, DC 20006; Phone Numbers: Work 202-659-6944

Home

Person or organization against whom complaint is brought (Respondent):

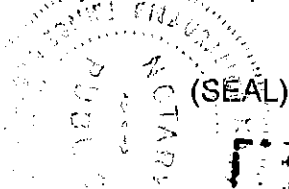
Complete Name: Democratic Attorneys General Association (DAGA); Friends of Raph Graybill; Complete Mailing Address: DAGA: 1350 I Street NW; STE 300; Washington DC 20005 Graybill: PO Box 2728 Great Falls, MT 59403; Phone Numbers: Work DAGA: 202-470-3165 Home Graybill: N/A

Please complete the second page of this form and describe in detail the facts of the alleged violation.

Verification by oath or affirmation

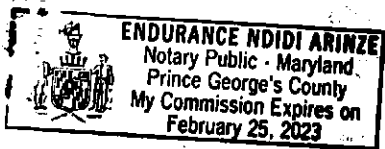
State of Montana, County of PRINCE GEORGES MARYLAND

I, Katie Reynolds, being duly sworn, state that the information in this Complaint is complete, true, and correct, to the best of my knowledge and belief.



Signature of Complainant

Subscribed and sworn to before me this 23rd day of February, 2021.



Notary Public

My Commission Expires:

Statement of facts:

Describe in detail the alleged violation(s) and cite the statute or statutes you believe have been violated. Please attach copies of documentary evidence to support the facts alleged in your statement.

If the space provided below is insufficient, you may attach additional pages as necessary.

According to publicly-available facts, the following violations of Montana law have occurred: (1) Friends of Raph Graybill accepted in-kind contributions from a prohibited source will in excess of the state contribution limits; (2) DAGA failed to disclose its spending to the State; and (3) DAGA failed to follow Montana's disclaimer rules on its advertising. We request an immediate investigation into these violations.

Continued on the attached.

Complaints must be:

- signed
- notarized
- delivered in person or by mail.



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February 19, 2021

Jeffrey A. Mangan
Commissioner of Political Practices
P.O. Box 202401
1209 8th Avenue
Helena, MT 59620

Commissioner Mangan,

Pursuant to Rule 44.11.106 of the Montana Administrative Rules, this letter and the accompanying Campaign Finance and Practices Complaint Form serves as a written complaint against the Democrat Attorneys General Association (“DAGA”); Raph Graybill; and Friends of Raph Graybill and its Treasurer, Weber Jane. First, according to DAGA’s own legal theories applied to publicly-available facts, Raph Graybill accepted in-kind contributions from a prohibited source well in excess of state contribution limits. Second, DAGA failed to place the required disclaimers on its digital advertising in the State of Montana. Third, DAGA has failed to disclose any of its spending in Montana. We request that these activities be immediately investigated.

Factual Background

DAGA is a tax-exempt organization under Section 527 of the U.S. Internal Revenue Code. According to DAGA’s website, it is the “only committee solely dedicated to electing and supporting Democratic state Attorneys General.”¹ It does not appear that DAGA is registered as a political committee in Montana.²

Raph Graybill ran for election as a Democratic candidate for Attorney General in 2020.³ His candidate committee is Friends of Raph Graybill.⁴

DAGA was actively involved in Montana’s Attorney General race starting on June 3, 2020, when DAGA endorsed Graybill on its Facebook page shortly after Graybill’s primary victory.⁵ On the same day Graybill won the Democratic primary, DAGA released a statement that claimed that Montana’s Attorney General race “[was] a major pickup opportunity for DAGA” in the 2020 election cycle.⁶

¹ Democratic Attorneys General Association, About DAGA, <https://dems.ag/about/>

² Mont. Campaign Electronic Reporting System, <https://cers-ext.mt.gov/CampaignTracker/public/searchResults/searchCommittees>.

³ Mont. Campaign Electronic Reporting System, Statement of Candidate: Raph Graybill, <https://cers-ext.mt.gov/CampaignTracker/public/viewCandidate/retrieveCandidate>

⁴ Friends of Raph Graybill, <https://www.raphgraybill.com/>.

⁵ DAGA Facebook Page (June 3, 2020), <https://m.facebook.com/DemocraticAGs/posts/2783635478524017>.

⁶ DAGA, MT AG RACE UPDATE: DAGA Statement on Raph Graybill’s Primary Victory in Montana (June 3, 2020), <https://dems.ag/mt-ag-race-update-daga-statement-raph-graybill-primary-victory/>.

DAGA then began disseminating press releases, memorandums, and digital advertising attacking Graybill's opponent, Attorney General Austin Knudsen. On June 22, DAGA released a memorandum, titled "Austin Knudsen Does Not Care About Montanans" to "Interested Parties,"⁷ which went into extensive detail on Attorney General Knudsen's record on many issues such as women's rights and public lands. There is no doubt that payments were made, either to staff or independent contractors, to research and compile this information. There is also no doubt that this information provided a great benefit to Graybill, as it was certainly used by Graybill supporters in advertising across Montana (hence it being addressed to "interested parties"). On August 5, 2020, DAGA released a digital advertisement attacking Attorney General Knudsen, titled "Austin Knudsen's Attack on MT Public Lands,"⁸ which dishonestly attacked Attorney General Knudsen's record on public lands, and asked Montanans to vote for Graybill. This advertisement lacked the required sponsorship identification under Montana law. On September 29, 2020, DAGA linked to an advertisement by DAGA People's Lawyers Project Montana, an "independent organization backed by [DAGA]," titled "Can't Trust."⁹ The video advertisement is no longer available for viewing, so it is unclear whether the advertisement had the correct sponsorship identification.

DAGA is not registered as a political committee in Montana, nor has it filed any financial statements in Montana or otherwise disclosed any expenditures to the Montana Commission of Political Practices.¹⁰

Legal Analysis

DAGA's own legal analysis¹¹ applied to these facts indicate the following: (1) DAGA's expenditures were coordinated with Mr. Graybill, which his campaign committee did not disclose as contributions, and which are prohibited under Montana's source restrictions and contribution limits; (2) DAGA failed to register and file reports disclosing its expenditures, as required under Montana law; and (3) DAGA failed to place the required sponsorship identification on its advertising in Montana.

I. *Coordinated Expenditures*

Montana permits candidate committees to accept contributions only from individuals, state political committees, and federal political committees.¹² Candidates for attorney general may only accept \$360 per primary or general election from each of the foregoing permissible sources.¹³ For these purposes, "contributions" include coordinated expenditures, which Montana defines to include paid internet communications that "support or oppose" a candidate, and which were 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."¹⁴ "Support or oppose" includes terms of express advocacy such as "elect" or "defeat," or references to a candidate that

⁷ DAGA, MEMO: Austin Knudsen Does Not Care About Montanans (June 22, 2020), <https://dems.ag/memo-austin-knudsen-does-not-care-about-montanans/>.

⁸ DAGA, Austin Knudsen's Attack on MT Public Lands, YOUTUBE (Aug. 5, 2020), <https://www.youtube.com/watch?v=OSXOGHhpAhA&feature=youtu.be>.

⁹ DAGA, DAGA-Backed Group Releases New Ad in Montana AG Race (September 29, 2020), <https://dems.ag/mt-ag-race-update-daga-ie-ad-september/>.

¹⁰ Mont. Campaign Electronic Reporting System, <https://cers-ext.mt.gov/CampaignTracker/public/searchResults/searchCommittees>.

¹¹ See Complaint, Rankin v. Republican Attorneys General Association (COPP-2020-CFP-057A) (using identical facts to come to an identical legal conclusion).

¹² Mont. Code Ann. § 13-37-216(1); Mont. Admin. R 44.11.305.

¹³ Mont. COPP, Montana Political Campaign Contribution Limits (updated Sept. 23, 2019), <https://politicalpractices.mt.gov/contributionlimits>.

¹⁴ Mont. Admin. R 44.11.602(1); Mont. Code Ann. § 13-1-101(14)(a).

are susceptible of no reasonable interpretation other than as a call for the election or defeat of the candidate in an election.¹⁵

Further, an entity that contributes to a Montana candidate is required to register as a political committee with the COPP within five days of making its first expenditure, and file campaign finance reports disclosing its spending.¹⁶

In DAGA's own words, Graybill's race "[was] a major pickup opportunity for DAGA" in the 2020 election cycle.¹⁷ Additionally, DAGA released at least two advertisements in support of Mr. Graybill, and assisted several other organizations supporting Mr. Graybill by releasing memorandums to "Interested Parties" with attacks on Mr. Graybill's opponent, Attorney General Knudsen. Additionally, given the close relationship between DAGA and Mr. Graybill, DAGA likely qualifies as his agent.¹⁸ And if DAGA qualifies as an agent, any of the expenditures DAGA made would classify as coordinated expenditures and thus contributions to Friends of Raph Graybill. Notably, however, such contributions would be prohibited under Montana law because (i) DAGA is not an individual, state political committee, or federal political committee; and (ii) the value of DAGA's contribution is likely well over the state's contribution limits. Accordingly, if DAGA's expenditures in Montana constitute coordinated expenditures, then Friends of Raph Graybill violated Montana law by accepting excessive in-kind contributions from a prohibited source.

Moreover, if the DAGA's expenditures constitute coordinated expenditures, then DAGA intentionally violated Montana law by failing to register as a political committee within five days of its first coordinated expenditure with (and contribution to) Friends of Raph Graybill, and failing to file reports disclosing its spending.

II. *Independent Expenditures*

Regardless of whether DAGA coordinated its expenditures with Friends of Raph Graybill, DAGA was required to register with the COPP and file reports disclosing its expenses for its expenditures in the State.

An "independent expenditure" includes paid internet communications that "support or oppose" a candidate, and which were not coordinated with a candidate or an agent of the candidate.¹⁹ "Support or oppose" includes terms of express advocacy such as "elect" or "defeat," or references to a candidate that are susceptible of no reasonable interpretation other than as a call for the election or defeat of the candidate in an election.²⁰

Any entity that makes independent expenditures is required to register as a political committee with the Montana COPP within five days of making its first expenditure, and then file periodic reports disclosing its expenditures for Montana activity.²¹

¹⁵ Mont. Code Ann. § 13-1-101(50).

¹⁶ *Id.* §§ 13-1-101(31)(a), (18)(a); 13-37-201(2)(b); 13-37-226(2)(d).

¹⁷ DAGA, MT AG RACE UPDATE: DAGA Statement on Raph Graybill's Primary Victory in Montana (June 3, 2020), <https://dems.ag/mt-ag-race-update-daga-statement-raph-graybill-primary-victory/>.

¹⁸ While we disagree with its analysis, DAGA espoused this analysis in their complaint based upon the same analysis applied to RAGA, so presumably they believes it to be true. If you agree with DAGA, then this is a knowing and willful violation of Montana law by DAGA. Mont. Code Ann. § 13-35-103 ("A person who knowingly violates a provision of the election laws of this state for which no other penalty is specified is guilty of a misdemeanor.")

¹⁹ Mont. Code Ann. § 13-1-101(25).

²⁰ *Id.* § 13-1-101(50).

²¹ *Id.* §§ 13-37-201(2)(b); 13-37-226(2)(d).

Using their own legal analysis, DAGA's advertisements clearly oppose Attorney General Knudsen by telling voters to not let Attorney General Knudsen "destroy Montana's public lands" and support Mr. Graybill by clearly telling voters to "Vote for Graybill."²² DAGA was therefore required to register as a Montana political committee and file reports disclosing all of its spending to the state. Despite what DAGA has espoused (in their complaint against RAGA) as clear requirements, DAGA has failed to disclose any independent expenditures at this point.

III. *Sponsorship Requirements*

Under Montana law, election communications, electioneering communications, and independent expenditures (referred to collectively herein as "election materials") must disclose the person who paid for the election materials.²³ For political committees, the disclaimer must identify the name of the committee, the name of the committee treasurer, and the address of either the committee or its treasurer.²⁴ Independent expenditures include paid internet communications.²⁵

None of DAGA's advertisements, which clearly constitute independent expenditures (as discussed above), have the required disclaimer. This is a clear violation of Montana law, and DAGA should be penalized accordingly.

Conclusion

Montana's source restrictions, contribution limits, and disclosure requirements safeguard the integrity of its elections. Here, DAGA itself believes that violation of law occurred where Friends of Raph Graybill accepted excessive in-kind contributions from a prohibited source, DAGA failed to disclose its spending to the COPP, and DAGA failed to provide the required disclaimers on any of its advertising. As DAGA has filed complaints against others for similar activity, DAGA's violations of Montana law must be considered knowing and willful.²⁶ We request an immediate investigation into these violations.

Respectfully Submitted,



Katie Reynolds

²² DAGA, Austin Knudsen's Attack on MT Public Lands, YOUTUBE (Aug. 5, 2020), <https://www.youtube.com/watch?v=OSXOGHhpAhA&feature=youtu.be>.

²³ Mont. Admin. R. 44.11.601.

²⁴ Mont. Admin. R. 44.11.601(2)(b)(i).

²⁵ Mont. Code Ann. § 13-1-101(25).

²⁶ Mont. Code Ann. § 13-35-103.