

**BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA**

Eaton v. Gene Jarussi No. COPP 2018-CFP-010	ORDER DISMISSING COMPLAINT
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On November 30, 2017, Jake Eaton of Billings, Montana, filed a complaint with the Office of the Commissioner of Political Practices (COPP) against Gene Jarussi, Karen Jarussi, legislative candidate Jessica Karjala, and political committee Neighbors for Responsible Legislators (NFRL), alleging all had engaged in violations of Montana’s campaign finance laws during the 2016 general election.

RECUSAL AND DEPUTY COMMISSIONER ASSIGNMENT

Mr. Eaton claimed that because Mr. Jarussi was acting as COPP’s legal counsel in ongoing litigation,¹ Commissioner Jeff Mangan and his legal staff should recuse themselves from consideration of Mr. Eaton’s complaint. In response to this alleged conflict of interest, on January 4, 2018, the Commissioner voluntarily recused himself from consideration of the allegations against Gene Jarussi pursuant to the provisions of the discretionary recusal statute, § 13-37-111(3), MCA. *See e.g. Maxwell v. York*, 2015-CFP-019 (declining request for recusal and discussing recusal statutes; citing *Powell v. Motl*, OP 14-0711 and OP 14-0664 (Mont.)).

¹ Although the Complaint does not identify the litigation, during the times in question Mr. Jarussi represented COPP in the matter of *COPP v. Montana Growth Network*, Montana First Judicial District Court, Cause No. CDV-2016-395. Mr. Jarussi represents COPP *pro bono*; he is not compensated for his legal work.

COPP then appointed Kirsten Madsen of Agency Legal Services Bureau, the undersigned, as the Deputy Commissioner of Political Practices to make a decision regarding the allegations against Mr. Jarussi pursuant to § 13-37-111(6), MCA. The Commissioner retained jurisdiction over the remaining allegations in the Complaint—*i.e.*, those against Karen Jarussi, candidate Karjala, and NFRL.

ISSUES ADDRESSED

The undersigned's appointment is limited to addressing campaign practice violations allegedly made by Gene Jarussi, *i.e.*, only the portions of the Complaint which concern Mr. Jarussi's individual conduct.² Those are found in ¶ 8 of the Complaint, titled "Violation ARM 44.11.602," which alleges two violations by Mr. Jarussi, both based on so-called "opposition research" he allegedly conducted for candidate Karjala, a 2016 legislative candidate, about her opponent candidate Robert Saunders:

- (1) That the portion of Mr. Jarussi's travel expenses to meet with potential witnesses in Texas were a contribution to the Karjala campaign that should have been reported by him.
- (2) That Mr. Jarussi was acting as an agent of the Karjala campaign when he met with witnesses in Texas which demonstrates a clear violation of the prohibition on coordination.

BACKGROUND

The undersigned has reviewed and inspected the Complaint and associated attachments, the records of COPP, including periodic campaign finance reports and other COPP filings, Mr. Jarussi's response to the Complaint (and those of the other

² Other allegations mentioning Mr. Jarussi, but which do not concern his conduct, are presumably addressed in the companion decisions being rendered by Commissioner Mangan. For example, the allegation as to how Mr. Jarussi's occupation was reported on campaign finance forms disclosing contributors to NFRL is not considered here because those disclosure requirements fall to the committee, not the contributor. § 13-37-229(1)(b), MCA. However, other allegations about Mr. Jarussi may be discussed or referenced herein where it is necessary for context.

Respondents), and other publicly available records. From that review and investigation, the following background Findings of Fact are made:

1. Jessica Karjala was the 2016 Democratic party candidate for the Montana House of Representatives seat for House District 48 in Yellowstone County. Robert Saunders was the 2016 Republican party candidate for HD 48. Candidate Karjala was the incumbent legislator.

2. Gene Jarussi's residence was within the boundaries of HD 48. Mr. Jarussi had previously run for public office. He has not been a candidate since his last race in 2006 and was not running in 2016.

3. Candidate Karjala reported receiving one contribution from Mr. Jarussi in the 2016 election—\$170.00 on June 2, 2016.

4. On October 22, 2016, the Billings Gazette published a newspaper article titled, "*Billings candidate accused of racist remarks*," detailing allegations by Saunders' former college classmates about statements they claim he made when they were all students. According to the article, one classmate (Stewart Lundy) reached out to the Karjala campaign with the tip to look into Saunders' alleged racist statements, Karjala turned the tip over to Mr. Jarussi who then called the classmate, and a second one (Erin Eskew) who Mr. Jarussi later met in person and videotaped their conversation. The Gazette noted that the allegations, including the video, had been posted to the Montana Cowgirl blog. In the article, candidate Saunders denied making the alleged statements and denied he was, or ever had been, racist.

5. On October 20, 2016, at 8:42 p.m., the Montana Cowgirl Blog made a post titled, "*Former Classmates Shed Light on Robert Saunders' Racist Statements*." The post was published anonymously. The allegations attributed to Mr. Lundy in the post include not only those he made in his Facebook message to the Karjala campaign (*infra*, at FOF Nos. 16-17), but also allegations contained in a separate email dated September 24, 2016 to an unknown addressee, with the subject line "Re: Your Sept 12th post on [blocked]." The blog also includes the video allegations of Ms. Eskew. Mr. Jarussi is not mentioned anywhere in the blog post.

6. As discussed further, *infra*, Mr. Jarussi acknowledges that while he was visiting Texas with his wife he spoke with both former classmates of candidate Saunders; and, that when he returned home to Montana he provided a copy of his videoed conversation with one of the former classmates to reports with the Billings Gazette and Last Best News.

7. The Gazette article characterized the 2016 race for HD 48 as “a battle.” According to the paper, Karjala was accusing Saunders of misrepresenting her record by “telling constituents she voted to give herself a pay raise[,]” while, the month prior, Saunders’ attorney had written Karjala “a warning letter accusing her of attempting to damage his reputation”

8. The so-called warning letter had been the subject of an article published by the Last Best News, on September 7, 2016, titled “*Billings legislator threatened with defamation suit.*” That article refers to a cease and desist letter candidate Karjala received from attorney Emily Jones³ apparently stemming from remarks Karjala allegedly made claiming Saunders said ““that only people who make 1 million or more per year should be able to vote.””

9. Candidate Karjala won the November 2016 general election contest with 2,551 votes to Saunders’ 2,077 votes.

10. COPP accepted Mr. Eaton’s November 2017 complaint as conforming with the requirements of 44.11.106, ARM on December 5, 2017,⁴ and instructed, *inter alia*, Mr. Jarussi to respond. Mr. Jarussi filed a timely, written response, dated January 3, 2018, addressing the allegations against him individually and providing a variety of supporting documentation.

DISCUSSION

Candidate Karjala is alleged to have engaged Mr. Jarussi to conduct opposition research and to have turned over emails from a Saunders classmate with potentially damaging statements to Jarussi to investigate. Further, when Mr. Jarussi allegedly undertook such an investigation, the Complaint asserts he “was acting at the specific request and direction of candidate Karjala to conduct opposition research.”⁵ The

³ Of note, Ms. Jones was sanctioned by the District Court in *COPP v. Montana Growth Network* for letters she wrote on behalf of “47 North Communications, LLP and Jacob L. Eaton” and sent to nonparty witnesses who had been subpoenaed (or whose records had been subpoenaed) as part of that litigation (neither Eaton nor 47 North were parties). The Court’s July 2017 sanctions order characterized Ms. Jones’ December 2016 letters as having interfered with discovery, finding Ms. Jones’s actions in “contacting witnesses to impact their compliance with subpoenas *duces tecum*[]” was not contemplated anywhere in the rules governing subpoenas and awarded fees. (Ord. Mot. Sanctions (July 12, 2017).) Ms. Jones and Mr. Eaton, the complainant in this COPP decision, are married; they paid the sanction of approximately \$15,000 to Mr. Jarussi personally in late-July 2017.

⁴ The letter inadvertently cites to the old rule (44.10.307(2), ARM) to the same effect.

⁵ The Complaint occasionally refers to Mr. and Mrs. Jarussi separately, and to them as a couple; *e.g.*, “so too must the *Jarussis* report the portion of *their* travel expenses....” Elsewhere, Mrs. Jarussi is alleged to have been acting as an agent of NFRL (as well as of the Karjala campaign) independent of Mr. Jarussi. The undersigned has not been appointed to address any of these other allegations (*see, e.g.*, Cmplt., at ¶7); but, wherever possible, has

Complaint asserts that the portion of Mr. Jarussi’s Texas travel costs which were “associated with the political meetings taken on behalf candidate Karjala ...” constitute the two violations of campaign practices law identified *supra* and analyzed in turn below.

To analyze these claims, and based upon a review and investigation of them, the undersigned makes the following additional findings of fact:

11. Mr. Jarussi opposed candidate Saunders for a variety of reasons and was looking for ways to actively work against his election. According to Mr. Jarussi, among his reasons were Saunders’s campaign website, including a picture Saunders posted on September 9, 2016, “an unpleasant personal interaction on the doors” while campaigning, and candidate Saunders’s statements on a website called Quora about the desirability of a form of government where “only people with a stake in the country’s future could vote.”

12. Candidate Saunders’ statements on Quora were the subject of the September 7, 2016 Last Best News article about Saunders threatening candidate Karjala with a defamation suit for discussing his statements (*supra*, FOF No. 8). The threatened suit was yet another source of Mr. Jarussi’s opposition—that candidate Saunders had retained a law firm to send a “heavy-handed letter” to candidate Karjala with “nothing more than an idle threat” of a lawsuit for talking with voters about Saunders’s statements on Quora.

13. Karen also described having “an instant and almost visceral dislike” of candidate Saunders the first time she met him and knowing “instinctively” she “absolutely did not want him to be my representative.” Karen shared her opinion with candidate Karjala.

14. As the incumbent, candidate Karjala had become acquainted with the Jarussis through their active involvement in politics and community affairs. Karen and candidate Karjala were also acquainted at least through a fundraiser Karen had hosted for the candidate shortly before leaving for Texas.

15. On September 19, 2016, Mr. Jarussi flew with Karen to Texas to visit Karen’s family, who live near San Antonio. Karen’s brother was in failing health and resided at an assisted living facility in the area until his death a short time after their visit. They flew to Austin, where they secured a rental car with unlimited miles and drove to the San Antonio area. The retired couple also engaged in other personal travel around

liberally construed any allegation against the Jarussis jointly as a possible allegation against Mr. Jarussi individually for purposes of this Decision. Also, to avoid confusion Mrs. Jarussi is hereafter referred to by her first name, Karen.

Texas during their trip. Mr. Jarussi paid for the expenses of this trip on his personal credit card.

16. On September 22, 2016, while the couple was in San Antonio, Karen received an email from candidate Karjala forwarding a copy of a Facebook message sent to “Jessica Karjala for Montana Legislature” from Stewart Lundy on September 12, 2016. The subject line to Karen read, “Worse than we thought,” and contained a single line of text from the candidate: “This might be a setup, but I doubt it.”

17. In the forwarded message, Mr. Lundy wrote to the Karjala campaign and said he was a former classmate of candidate Saunders. Mr. Lundy suggested talking to other alumni about race-based comments Saunders had allegedly made in college and gave an example of something Saunders’ allegedly said about then-President Obama’s family; Mr. Lundy provided his contact information in Virginia.

18. Karen felt the message had been forwarded to her as a constituent and because she had expressed to candidate Karjala how much she (Karen) disliked Saunders and had “deep concerns and suspicions about his character.”

19. Karen forwarded the email to her husband based on their shared feelings about and distrust of candidate Saunders. They later decided it might be interesting to find out if Mr. Lundy’s allegations had any substance based on their existing opposition to candidate Saunders (*supra*, FOF Nos. 11-13).

20. Using the contact information Mr. Lundy provided, Mr. Jarussi called him to discuss the statements in the Facebook message sent the Karjala campaign. During this conversation, Mr. Lundy provided the name of a second former classmate of candidate Saunders with whom it was suggested Mr. Jarussi should contact to further discuss the allegations.

21. Mr. Jarussi used Facebook to locate contact information for the second classmate, Erin Eskew, and discovered her phone number had a San Antonio area code. Mr. Jarussi called her to discuss the alleged past comments of candidate Saunders and learned Ms. Eskew had evidently just returned to San Antonio and was temporarily living with her parents, very near to his brother-in-law’s assisted living facility. Ms. Eskew would soon be moving to Ft. Hood where her husband was going to be stationed.

22. Mr. Jarussi arranged to meet Ms. Eskew for coffee to discuss her experiences with candidate Saunders. Ms. Eskew agreed to have her statement recorded on video and, in a quiet family dining room area at the assisted living facility, Mr. Jarussi asked questions of Ms. Eskew while Karen used her iPhone to record the video.

23. The couple returned from Texas in early October 2016. Once back in Billings, Mr. Jarussi provided copies of the Eskew video statement to two news reporters—Tom Luty for the Billings Gazette and David Crisp for the Last Best News.

24. Neither Karen nor Mr. Jarussi ever provided to, or even discussed with, candidate Karjala the Eskew video or any other information they learned about Saunders' alleged past statements to his college classmates.

25. Between Mr. Jarussi's return to Montana on or around October 1 and the post on Montana Cowgirl on October 20, 2016, the undersigned found no evidence any of the information he obtained from Mr. Lundy or Ms. Eskew was received by either the Karjala campaign or NRFL.

26. Candidate Karjala asserts she was only made aware of Mr. Jarussi's discussions with candidate Saunders's former classmates, including the video, when she "read about it in the Billings Gazette, along with the rest of the public."

27. Both Mr. Jarussi and candidate Karjala expressly deny the allegation that candidate Karjala asked Mr. Jarussi to do any opposition research.

28. Mr. Jarussi asserts he was never "retained/engaged/hired/asked/ [or] approached" to do any opposition research and denies that he performed any such service for the Karjala campaign; he thus neither received nor expected nor was offered any remuneration for his activities.

29. Mr. Jarussi characterized his interactions with candidate Saunders' former classmates while in Texas as "simply recreational research on my part," born of personal opposition to candidate Saunders.

30. Even after learning of the information and video Mr. Jarussi provided to the Gazette and detailed in its October 22, 2016 article, the Karjala campaign did not make any use of this information in its campaign materials.

1. Alleged violation for failure to report contributions.

The first alleged campaign practice violation against Mr. Jarussi is that he failed to report contributions and expenditures related to "political meeting(s) taken on behalf of candidate Karjala and/or Neighbors for Responsible Legislators[,]" *i.e.*, the expenses of contacting one former classmate and meeting with another in Texas.

Montana law requires “each candidate and political committee” to file periodic campaign finance reports detailing contributions and expenditures “made by or on the behalf of a candidate or political committee.” § 13-37-225(1), MCA.⁶ Reporting requirements also attach to persons when they make an “election communication,” “electioneering communication,” or “independent expenditure.” *Id.*, (3).

Mr. Jarussi was not a candidate for political office in the fall of 2016. (FOF No. 2.) There is no evidence that in the 2016 elections Mr. Jarussi filed a declaration or petition for nomination, accepted a nomination, or was appointed as a candidate for public office; neither is there evidence that he solicited or accepted campaign contributions, or made expenditures related to securing his own nomination or election to office. § 13-1-101(8), MCA. Therefore, he was not a candidate required to file campaign finance reports.

This still leaves the possibility of political committee reporting obligations. In its most basic sense, and as relevant here, a political committee is formed when two or more individuals receive a contribution or make an expenditure to support or oppose a candidate or make an electioneering or election communication or independent expenditure; but not if they spend “\$250 or less.” § 13-1-101(31), MCA. Because Mr. Jarussi’s efforts to talk with the former classmates of candidate Saunders also involved his wife, their expenditures are analyzed jointly on this point.

The efforts to contact and eventual conversation with Mr. Lundy could have been undertaken anywhere, the Jarussis did not meet Mr. Lundy in person, and so no travel

⁶ The statutes cited in this decision are from the 2017 Montana Code Annotated since none of the cited provisions were substantively amended from the 2015 code version in effect during the events at issue in this case.

expense can be associated with information gleaned from him. (FOF No. 20.) As to Ms. Eskew, there is no evidence suggesting that it was anything more than happenstance that she was in San Antonio at the same time and only a few miles from where the Jarussis's were visiting. (FOF No. 21.) The evidence convincingly establishes that the Jarussis traveled to Texas exclusively on personal matters and, while already there, acted of their own volition to follow-up on the possibility of candidate Saunders having made racist statements. (FOF Nos. 11-13, 15-16, 19-21, 29.) There is no evidentiary support and, therefore, no merit to the allegation that they were acting as agents of anyone but themselves, or that they went to "great lengths" to obtain information about candidate Saunders. Furthermore, the fruits of the Jarussi's efforts was a bona fine news story.⁷ (FOF Nos. 4, 23.) There is no evidence, or even allegation, that a political committee tied to them made use of the information. Nor is there any evidence, or allegation, that candidate Karjala's campaign made use of the information. In other words, the Jarussi's made no expenditure or contribution and engaged in no reportable election activity. Their actions were, therefore, not undertaken as a political committee; rather, they acted as individuals.

Even viewing the events at issue in the improper light the Complaint attempts to cast, there is still no evidence of a campaign practices violation because the cost of the Jarussis's efforts—even if their activities had, *arguendo*, resulted in an "expenditure" or "contribution" or reportable election activity—was *de minimis*. The couple was already

⁷ Although the Montana Cowgirl post pre-dates the story published in the Billings Gazette, the post makes no mention of Mr. Jarussi, and he makes no mention of any contact with the blog in his response, nor did the undersigned find any connection. Mr. Jarussi acknowledges giving the information to the Gazette reporter, and that article is the subject of the Complaint in any event. Finally, there is no legal difference in an opinion piece or blog post and a newspaper article for purposes of the relevant analysis in this case. § 13-1-101(18)(b)(iii), MCA; *accord id.*, at (14)(b)(iii), (16)(b)(i).

in Texas when they received the information regarding alleged statements by candidate Saunders; they made contact with the former classmates by telephone or the internet, a trifling expense; the Jarussis already had a rental car with unlimited miles, and traveled but a short distance to and from a place they were already going (the assisted living facility) to meet with one of the classmates; there was no evidence that the Jarussi's incurred any charge for sitting in a dining area at the facility where Karen's brother lived; it is not clear that the Jarussi's paid for Ms. Eskew's coffee, but if they did such an expense would have been negligible at best; and they used a personal cellphone to record the classmate's statement. (FOF Nos. 15-16, 20-21, 22.) Even if these activities somehow constituted an expenditure for purposes of forming a political committee, there is simply no basis to find that the couple spent \$250.00 or more. § 13-1-101(31), MCA; *see also Safe Montana v. Greener Pastures and Lionheart Caregiving*, 2016-CFP-034, at 3 (discussing committee formation and \$250 threshold). Therefore, even if a political committee had been formed, Mr. Jarussi was not required to file campaign finance reports for such minimal, incidental expenditures.

As neither a candidate nor a committee, Mr. Jarussi was not required to file financial reports with the COPP detailing what money he spent to support or oppose candidates for election in 2016; indeed, in Montana, no private citizen bears such an obligation in these circumstances. In any event, any alleged violations for failure to file required campaign finance reports describing "opposition research" services allegedly provided by Mr. Jarussi would be the province of the offending candidate or committee, not Mr. Jarussi. This allegation is, therefore, dismissed.

2. Alleged violation of the coordination rules.

The second allegation against Mr. Jarussi is that he violated the prohibition on coordination by conducting alleged “opposition research” on candidate Saunders, at the request and for the benefit of the Karjala campaign, and which was not reported and disclosed.

As a general rule, any expenditure that is coordinated between a candidate and a committee must be reported as an in-kind contribution from and an expenditure by the person funding, facilitating, or engaging in the reportable election activity; “[b]oth the candidate and the committee shall report the coordinated expenditure and/or in-kind contribution as the case may be.” ARM 44.11.602(5). Reporting is required not only to disclose the connections, but also because such activity implicates contribution limits. The coordination rule, referenced by Complainant, defines “coordinated expenditure,” in pertinent part 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.

ARM 44.11.602(1); *accord* § 13-1-101(10), MCA. Of particular import here, Montana law expressly states that “a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, [etc. ...]” is **not** considered either an election communication or an electioneering communication, §§ 13-1-101(14)(b)(iii), (16)(b)(i), MCA;⁸ similarly,

⁸ There is no allegation, and no indication from the investigative findings, that the exception in § 13-1-101(16)(b)(i), MCA, could apply in these circumstances.

“the cost funded or facility by a person for any bona fide news story, ...” is **not** a coordinated expenditure. ARM 44.11.602(3)(c).

Coordination—that is, a campaign practice violation based on the failure to report coordination—has been found only in particular, limited circumstances by prior Commissioners. *Ponte v. MT BASE*, 2014-CFP-012, at 4-8 (discussing coordination decisions of COPP going back to 1997); *id.* (rejecting as frivolous a complaint alleging coordination in a shared expense for a kick-off party; finding such a weak allegation would “likely implicate[] any association between any entity and a candidate including picnics, award ceremonies and workshops”). Prior decisions have found coordination “only on the basis of a specific act(s) of coordination and have never assumed coordination based solely on a relationship.” *Dick v. RSLC*, 2012-CFP-038, at 11 (fn 18 omitted (re FEC approach)); *see also id.*, at 14-16 (analyzing requirement for specific acts of coordination); *accord* ARM 44.11.602(4)(a). Said another way, to find coordination there must be something *more* than a generalized connection. Where coordination is found, the expenditure “is treated as though it is a contribution to and/or expense by the candidate’s own committee.” *Ponte*, at 4-5; *accord* ARM 44.11.602(5).⁹

Thus, for Mr. Jarussi’s activity to be “coordinated” with the Karjala campaign, the telephone/internet contact and face-to-face conversation Mr. Jarussi had in Texas must first qualify as “reportable election activity” for candidate Karjala, such that it constituted either a contribution received, or expenditure made by her campaign. ARM 44.11.602(1). This is because even if Mr. Jarussi acted, *e.g.*, “at the suggestion or

⁹ In this respect, it is notable that even if the alleged wrongdoing by Mr. Jarussi were shown, such a violation would be one against the Karjala campaign rather than him individually since it has already been determined that a political committee was not formed, *supra* at 1. Rather than cut short the analysis of the Complaint and to eliminate any doubt as to the allegations, the undersigned proceeds to a merits evaluation.

request” of candidate Karjala when he contacted her opponent’s former classmates, coordination does not result unless and until there is “any election communication, electioneering communication, or reportable election activity[.]” *Id.*

“Reportable election activity” essentially means a contribution or expenditure.

ARM 44.11.103(31). A contribution means,

- (i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support or oppose a candidate or a ballot issue;
- (ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution[.]

§ 13-1-101(9)(a), MCA. None of the information Mr. Jarussi found out while in Texas vis-à-vis the allegations of candidate Saunders’s former classmates was given directly to, or sought by, the Karjala campaign. (FOF Nos. 23, 24, 26, 27-28.) If, as the Complaint alleges, it is assumed that what Mr. Jarussi describes as recreational research could be considered “opposition research,” then it could have represented something “of value” to the Karjala campaign. However, Mr. Jarussi gave that information to the news media and never directly provided it to the campaign; the campaign only learned of these activities and any information Mr. Jarussi had gathered at the same time as the general public. (*Id.*) Further, the Karjala campaign did not make use of the information even after it was made public in the Gazette article. (FOF No. 30.) Mr. Jarussi’s activity thus was not a reportable contribution to the Karjala campaign. § 13-1-101(9)(a), MCA; *see also* §§ 13-1-101(14)(b)(iii), (16)(b)(i), MCA (news stories are not election or electioneering communications).

This leaves the question of whether Mr. Jarussi's activities constituted an expenditure, which is defined as:

a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

- (i) made by a candidate or political committee to support or oppose a candidate or a ballot issue; or
- (ii) used or intended for use in making independent expenditures or in producing electioneering communications.

§ 13-1-101(18), MCA.

The Jarussis's travel to Texas was made for personal reasons, and all expenses incurred were paid for by Mr. Jarussi personally. (FOF No. 15.) The "opposition research" allegedly conducted by him while in Texas was not the purpose of this travel and was not even conceived of until after his arrival. (FOF Nos. 15, 16, 19.) Further, any expenses he directly incurred doing this "opposition research" are minimal and incidental; *i.e.*, are *de minimus*, as explained above. (FOF Nos. 15-16, 20-22.) At no point were any payments made by candidate Karjala's campaign to Mr. Jarussi to induce him, cause him, or otherwise secure his performance of the alleged opposition research. (FOF No. 27-28.) There is substantial evidence of the Jarussis's personal interest in opposing candidate Saunders. (FOF Nos. 11-13, 18.) However, there is no evidence that Mr. Jarussi used the information to make an independent expenditure or produce an electioneering communication.¹⁰ Similarly, there is no evidence the Karjala campaign was in any way obligated (or offered) to pay for Mr. Jarussi's alleged services. (FOF Nos. 27-28.) Given these facts, Mr. Jarussi's activity cannot be considered a reportable

¹⁰ There is an allegation that NFRL reported an in-kind contribution from Karen for "promotion of Facebook posts" on the committee's financial report covering the timeframe of the Billing Gazette article. This allegation is beyond the scope of the undersigned's appointment, and neither the report nor the Complaint explain what Facebook post was promoted or when. Thus, the undersigned could only speculate about whether that expenditure by NFRL might fall within the coordination rule; in any event, the allegation does not concern Mr. Jarussi.

expenditure either. § 13-1-101(18)(a), (b)(iii), MCA, and ARM 44.11.602(3)(c) (cost funded or facilitated by person for a bona fide news story is not an expenditure or coordinated expenditure); *accord* §§ 13-1-101(14)(b)(iii), (16)(b)(i), MCA (news stories are not reportable election activities).

Even if, *arguendo*, the activities in question did amount to “reportable election activity,” Mr. Jarussi conduct still would not fall within the coordination rule for several reasons. First, it lacks the hallmarks of a coordinated expenditure identified in the rule. ARM 44.11.602(2)(a)-(e). While the assumed “reportable election activity” is based on information provided, indirectly, by the candidate (*id.*, at (2)(a)), there is a total dearth of evidence establishing that Mr. Jarussi was acting as an agent of the Karjala campaign (*id.*, at (2)(b)), and Mr. Jarussi did not retain the paid services of anyone in obtaining or producing the assumed “reportable election activity” (*id.*, at (2)(c)). Further, while the assumed “reportable election activity” reproduces part of the material from the candidate, there is no evidence candidate Karjala “distributed” the information as that term is used in the Rule (*id.*, at (2)(d)), and Mr. Jarussi never spoke with candidate Karjala about the details of the assumed activity (*id.*, at (2)(e)). In other words, even ignoring that the outcome of Mr. Jarussi’s efforts was a bona fide news article, there is still only one factor indicating coordination and four factors that are absent.

Looking, second, to the additional factors of coordination found elsewhere in the rule, the evidence in this case still does not demonstrate coordination. The rule expressly states that a coordinated expenditure does not exist solely because of personal relationships between the candidate and other persons, nor because someone has previously contributed to the candidate. *Id.*, at (4)(a), (b). Here, there is evidence of a

personal relationship between Karen and candidate Karjala (*id.*, at (4)(a)), but as for Mr. Jarussi, the connection consists only of a previous contribution to the candidate (*id.*, at (4)(b)). Similarly, there is no evidence the Karjala campaign used the information it learned from the Gazette article, nor that Mr. Jarussi informed Karjala (though the Gazette article surely did) that he had done the research (*id.*, at (4)(c)). *See also id.*, at (3)(e). There is also a complete lack of evidence that Mr. Jarussi undertook his actions at the suggestion of another committee or candidate (*id.*, at (4)(d)). Combining the evaluation of these factors with those under the first point (and continuing to assume without deciding that “reportable election activity” resulted therefrom), Mr. Jarussi’s actions would show—at best—two of nine factors possibly indicating coordination, one of which is arguably stated in the negative (that he contributed to her campaign does not itself establish anything).

Third, and unavoidable, is the fact that the cost of funding or facilitating bona fide news stories excluded as a “coordinated expenditure”; so too are services provided by volunteers and meals and lodging in private residences to candidates or other individuals. ARM 44.11.602(3)(b), (c); *accord* § 13-1-101(9)(b), MCA. Fourth, and perhaps most applicable here, a coordinated expenditure cannot be found in “activity by an individual acting solely on his or her own behalf independently of any candidate or the candidate’s agent[.]” *Id.*, at (3)(d).

As the foregoing provisions of the coordination rule demonstrate, even when combined and evaluated against the multitude of factors which can establish coordination, Mr. Jarussi’s activities in Texas are outside the reach of this rule. Most clear are the exclusionary rules. *Id.*, at (3). In particular, that what an individual does for

themselves, independent of the candidate, cannot constitute coordination. *Id.*, at (3)(c), (d). The reasoning of the independent activity exclusion is perhaps obvious—the COPP does not prohibit or even regulate individual political speech nor election activities individuals undertake for their own edification or interests, with their own money; neither is there any indication the citizenry expects or would tolerate such regulations, to say nothing of the First Amendment implications.

Returning, now, to review again the simple facts of this matter: The original email regarding candidate Saunders’ alleged racist statements and sparking Mr. Jarussi’s “recreational research” undoubtedly, though indirectly, came from candidate Karjala. (FOF Nos. 16-19.) Critically, though, there was no indication in the substance of that very short message that candidate Karjala was trying to get Karen (or Mr. Jarussi) to do anything and there are no facts indicating an agency relationship between either of the Jarussis and the campaign. (FOF Nos. 16, 18.) Even if such a request could be implied into candidate Karjala’s forwarded message, Mr. Jarussi gave the information he collected to the news media to be shared with the public; he did not give it back to the campaign or engage in reportable election activity himself. (FOF Nos. 23-24, 26-30.) Such an implication must exist in candidate Karjala’s text forwarding the message or some other source because it cannot be made simply from Karen’s prior relationship with candidate Karjala, nor from Mr. Jarussi’s financial contribution to the candidate several months prior. ARM 44.11.602(4)(a)-(b). On this key issue—whether any *hint, hint* or nudge or even direct ask can be found—there is a total lack of evidence.

Under different circumstances—*e.g.*, if the email had contained some statement from which to infer a wink and a nod for the recipient to take action, or if there were

evidence the allegations from Saunders’s classmates had been distributed by Mr. Jarussi somewhere besides the news media, or even if the Jarussis involvement with candidate Karjala’s campaign were pronounced or formalized in some way—coordination might have been found. But those are not the facts of this case.

Instead, the facts here establish that Mr. Jarussi was never asked, instructed, or otherwise suggested by candidate Karjala to investigate candidate Saunders’s alleged past comments. Nor is there evidence of any agreement between them on any necessary element of the coordinated expenditure. Mr. Jarussi undertook these efforts of his own volition, to satisfy his own interests, and to actively involve himself as a citizen in the electoral process. The fruits of Mr. Jarussi’s efforts was born out in a single way—through a bona fide news story—which was itself exempted from reporting requirements. No evidence from COPP’s investigation contradicts this assessment, and no statute or regulation concerns such efforts in the circumstances presented in this case.

None of the alleged “opposition research” activities carried out by Mr. Jarussi can be considered either a contribution to or expenditure of the Karjala campaign under Montana law, nor can the activity be considered coordinated under 44.11.602(1), ARM. Therefore, the allegations of illegal coordination by Mr. Jarussi with the Karjala campaign are dismissed.

OVERALL DECISION

Having duly considered the matters raised in the Complaint concerning the individual conduct of Mr. Jarussi, and having completed a review and investigation thereof, this Deputy Commissioner hereby holds and determines, under the above stated reasoning, that there is no evidence of a campaign practice violation, and certainly none

sufficient to justify a civil adjudication against Mr. Jarussi as complained of in this Matter.

Therefore, the allegations of this Complaint against Mr. Jarussi are hereby DISMISSED in full.

DATED this 20th day of April, 2018.



KIRSTEN K. MADSEN
Deputy Commissioner of Political Practices

Agency Legal Services Bureau
1712 Ninth Avenue
P.O. Box 201440
Helena, MT 59620-1440