

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Montana Democratic Party v. Advanced Micro Targeting and the Montana Green Party No. COPP 2018-CFP-004	DISMISSAL and SUFFICIENCY DECISION
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On March 29, 2018, the Montana Democratic Party (MDP) filed a campaign practices complaint against Advanced Micro Targeting (AMT), a political consulting firm based in Las Vegas, Nevada. The complaint alleged that the firm engaged in electioneering work in Montana via the organization and oversight of signature collection efforts meant to help the Montana Green Party (MGP) qualify to appear on Montana ballots, and that the firm failed to properly file as an incidental committee and report all contribution and expenditure activities associated with this effort with the COPP. The complaint also alleged that any payments made to AMT for signature collection efforts were not properly reported by the entity that made them.

SUBSTANTIVE ISSUES ADDRESSED

Signature gathering for Minor party qualification petitions, contribution, and expenditure campaign reporting.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: The Montana Democratic Party filed an Amended C-2 Statement of Organization as a Political Party committee for election year 2018 on January 31, 2018. (Commissioner's Records.)

Finding of Fact No. 2: The Montana Green Party filed an original C-2 Statement of Organization as a Political Party committee on January 29, 2014. An amended C-2 for election year 2018 was filed electronically via CERS on March 30, 2018. MGP filed a second amended hard copy (paper) C-2 for election year 2018 on April 13, 2018. (Commissioner's Records.)

Finding of Fact No. 3: MGP has not appeared on Montana ballots in recent years. To qualify for ballot access, MGP had to follow a petition process which required gathering signatures from registered voters in several legislative districts, the requirements and formula for which are specified in § 13-10-601(2)(b), MCA. Petition forms were to be presented to the election administrator in the county where the signatures were collected to be verified; the deadline for submitting signed petition forms to county election administrators was March 5, 2018. Once verified by the county election administrator, petition forms were to be sent to the Montana Secretary of State's Office to be certified. (Commissioner's Records.)

Finding of Fact No. 4: MGP qualified as a recognized Minor Political Party with the Montana Secretary of State's office, by submitting 7,389 accepted signatures of registered Montana voters from 38 legislative districts as certified by the Montana Secretary of State on March 12, 2018. (Montana Secretary of State.)

Finding of Fact No. 5: The political consulting firm Advanced Micro Targeting provides ballot qualification services to clients, including in Montana. Other Montana ballot issue committees have used AMT as a signature collection services provider—for example, a C-6 committee finance report filed on January 5, 2016 by Marsy's Law for Montana, a 2016 Ballot Issue group, listed three (3) expenditures made by that committee to AMT for "signature collection."

Finding of Fact No. 6: In AMT's response to this complaint, received by COPP on April 20, 2018, AMT stated that employees Cody Pope and Garrett Laubach "collected over 9,000 signatures

over the course of 19 days, between February 14 and March 4, 2018, to allow the Green Party to nominate its candidates by Primary election ballot pursuant to Montana law.” (Commissioner’s Records.)

Finding of Fact No. 7: MGP filed a hard copy (paper) C-6 committee financial report on February 1, 2018 that covered the dates of January 1, 2017 through January 30, 2018. This report did not include any contributions, expenditures made, or debts owed for signature collection to qualify the Party to appear on Montana ballots. (Commissioner’s Records.)

Finding of Fact No. 8: On May 17, 2018, MGP filed an electronic C-6 covering the dates of February 1 through April 30, 2018. This report did not include any contributions, expenditures made, or debts owed for signature collection to qualify the Party to appear on Montana ballots. (Commissioner’s Records.)

Finding of Fact No. 9: AMT did not file a C-2 Statement of Organization as an incidental committee for election year 2018 and has not previously registered with the COPP as an active political committee at any time. (Commissioner’s Records.)

DISCUSSION

The complaint alleges AMT provided signature gathering efforts to allow MGP to nominate candidates through the 2018 primary election process, found in Mont. Code Ann. § 13-10-601, and that those efforts are a reportable election expense under Montana campaign finance law. The Commissioner examines the background of the allegations.

1. Signature Gathering Efforts for May 2017 Special Elections

MGP initiated a signature gathering petition effort to place a candidate on the Federal Special Election ballot in January of 2017.¹ Before the deadline for that special election, on March 6, 2017, MGP candidate Thomas Breck, and

¹ Submitted signature gathering petition, Missoula County, Danielle Breck signature gatherer. (Commissioner’s Records).

Independent candidates Doug Campbell and Steve Kelly submitted nominating petitions to the Secretary of State. In April of 2017, Candidates Breck, Campbell and Kelly successfully argued a claim in federal district court that Montana’s 5% signature requirement for minor party ballot access for the May 2017 special elections was severely burdensome. *See Breck, et. al. v. Stapleton*, 259 F. Supp. 3d 1122 (D. Mont. 2017).²

According to their testimony in 2017, Breck gathered 10 signatures, Campbell gathered a few hundred, and Kelly gathered none. The Court held that an indigent candidate, working on their own without paid or volunteer signature gathering assistance could have gathered 400³ signatures between March 1, 2017 and March 6, 2017, demonstrating that their candidacy had a “substantial modicum of support” during the shortened signature gathering period for the special election and thereby qualifying to be on the ballot. *Breck*, 259 F. Supp. 3d at 1138. Had Breck, Campbell or Kelly submitted 400 verified signatures to the Secretary of State, the Green Party and Independent candidates’ names would have been on the May 2017 special election ballot.

2. *Current MGP Minor Party Signature Gathering Efforts*

MGP continued to gather signatures to qualify as a minor party through 2017 and into 2018. Danielle Beck of MGP told the press that signature collection efforts were initiated in the summer of 2017, with an incentive to

² Requiring the minor party candidate to gather 14,268 verified registered voters signatures between January 19, 2017 and March 6, 2017 when the signatures were due to the Secretary of State (46 days).

³ Working an 8 hour day at the rate of 10 signatures per hour.

signature gatherers of gift cards, partially funded by a \$2,000 contribution from the National Green Party.⁴ On October 12, 2017, MGP posted on its Facebook page the gift card incentive and an offer for “gas money” with a link to the MGP signature petition.⁵ The petition provided by MGP to its volunteers included the “principle” of the green party as “People, Planet, Peace.” (Commissioner’s Records).

To appear on Montana’s 2018 primary and general ballot, all minor party qualification petitions were due to County Election Administrators no later than March 5, 2018 (FOF No. 3). Records indicate 10,160 total signatures were gathered and submitted, and 7,389 were certified as valid by the Montana Secretary of State office on March 12, 2018 (FOF No. 4).

A review of the petitions show that a total of 15 individuals gathered signatures, including the MGP’s Danielle and Thomas Breck’s approximate 700 signatures gathered between January 2017 and March of 2018. The petitions submitted indicate that an additional 13 signature gatherers collected 9,461 signatures between February 14 and March 4, 2018 (a 19-day period) in Missoula, Lewis & Clark, Cascade, and Yellowstone Counties. A majority of the 13 gatherers collected signatures in two or more of those counties. The party qualification petition signature forms used by those 13 signature collectors

⁴ Missoulain, Holly Michels, https://missoulain.com/news/local/how-the-green-party-qualified-for-montana-s-ballot/article_28d68cd4-9eec-5690-9151-213ca572cf0c.html (last accessed July 20, 2018).

⁵ MGP Facebook page (Oct. 17, 2017).

included the “principle” of the green party as “Social and environmental justice.”⁶ Six of the 13 signature collectors listed an out-of-state address.

ANALYSIS

AMT does not dispute its involvement in gathering signatures for MGP’s recent qualification petition, stating in its response to the complaint, “AMT’s petition spending, which it does not dispute” and “simply qualified the Green Party to be able to nominate its candidates by primary election.” AMT contends while it did provide paid signature gathering services to MGP (FOF No. 6), that AMT is not required to file as a political committee as it is not organized to support or oppose a candidate or petition for nomination, and further, its spending did not support or oppose a candidate or ballot issue, citing Mont. Code Ann. § 13-01-101.

(17) (a) "Expenditure" means 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;...

The Commissioner finds AMT did not make an expenditure under the law, which would require it to form as a Montana political committee when it provided signature gathering services to MGP. The complaint against AMT is hereby dismissed.

This dismissal determination does not end the analysis. Once a complaint is filed, the Commissioner “shall investigate any other alleged violation” Mont. Code Ann. § 13-37-111(2)(a). This investigative authority

⁶ Minor Party qualification petitions as submitted to Montana election administrators. (Commissioner’s Records).

includes authority to investigate “all statements” filed with COPP, inspect a variety of records and require their production for purposes of the investigation, and examine “each statement or report” filed with the COPP. *Id.*, §§ 13-37-111, -123. The Commissioner is afforded discretion in exercising this authority. *Powell v. Motl*, OP-07111, Supreme Court of Montana, November 6, 2014 Order.

Therefore, the Commissioner now examines whether MGP, as the beneficiary of the AMT spending, is responsible for reporting and disclosure of the contribution from AMT to the Montana Green Party. While Montana law provides for the reporting of the expenditures made for paid signature gatherers for “an initiative, a referendum, or the calling of a constitutional convention,” it is silent on any reporting of expenditures for paid signature gatherers for minor party qualification petitions. Mont. Code Ann. §§ 13-27-111 and 112.

Political committees are required to file periodic reports of contributions and expenditures. Mont. Code Ann. § 13-37-225 (FOF No. 2). In examining Montana’s definition of “contribution,” paid personal services of a person⁷ that are rendered to a political committee are contributions which must be reported and disclosed. *See* Mont. Code Ann. §13-1-101(9)(a)(iv).

In this matter, AMT does not dispute it provided signature gathering services to the benefit of MGP. Indeed, AMT’s spending allowed MGP to qualify

⁷ A “person” means “an individual, corporation, association, firm, partnership, cooperative, committee, including a political committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (8).” Mont. Code Ann. § 13-1-101(29).

for the 2018 primary ballot by collecting in excess of 9,000 signatures over a 19-day period when MGP had previously been unable to meet Montana's signature threshold over a period of 13 months (gathering only 700).

AMT employee Cody Pope reached out to MGP on March 5, 2018, the deadline to turn in petitions to county election administrators, to remind MGP of this deadline.⁸ On March 16, 2018, Ms. Breck told a reporter, "It wasn't entirely volunteer' Breck said. 'We did have the national party help out with signature gathering, paid signature gathering toward the end, but we don't have any of those numbers.'"⁹ Mr. Breck later stated, on July 12, 2018, on MGP's facebook page, "[w]e turned in 10,360 raw signatures...."

In this matter, AMT (or an entity that retained AMT) provided compensation for paid signature gathering services on behalf of MGP (FOF No. 6). The Montana Green Party is required to report the contribution of personal services from AMT (or the entity that retained AMT) as an in-kind contribution. The MGP has not reported any contribution for services that include paid signature gathering in its 2018 campaign finance records (FOF Nos. 7, 8).

"The Commissioner's office has a 20 year plus history of interpreting §13-1-101(7)(a)(iii) MCA to require in-kind contribution reporting and disclosure of the value of election use of paid staff by an entity involved in a ballot issue campaign." [COPP-2014-AO-009](#), at 2 (May 19, 2014). Ballot issue committees

⁸ Cody James Pope, AMT MGP Qualification petition Coordinator, commented on MGP's Facebook page, "Was the motivation enduring? It's March 5th, the party qualification deadline, and county election departments statewide have not received your signatures."

⁹ Missoulian, Holly Michels, https://missoulian.com/news/local/how-the-green-party-qualified-for-montana-s-ballot/article_28d68cd4-9eec-5690-9151-213ca572cf0c.html (last accessed July 20, 2018).

regularly report and disclose the expenditures made to paid signature gatherers, *id.* Political party committees report and disclose the expenditures for paid personal services that they provide to candidates, Mont. Admin. R. 44.11.225(3). Political committees of all varieties are subject to the personal services reporting, which on these facts we have said include the paid signature gathering processes, Mont. Code Ann. § 13-1-101(9)(a)(iv).

This Commissioner finds sufficient evidence that the Montana Green Party was required to report and disclose the personal services contributed to it on its campaign finance reports and the time the contribution was received, Mont. Code Ann. § 13-35-229. No later than August 24, 2018, Montana Green Party is directed to file an amended campaign finance report providing the required sufficient detail for the personal services in-kind contribution provided by AMT to the MGP noted in this decision. “To provide full disclosure of the of the value of such [paid personal staff] services, the value must include total compensation paid, including benefits, travel expenses, bonuses or other supplemental payments.” *Heffernan v. Montana Chamber of Commerce*, at 43, Commissioner Vaughey (June 2000). The Commissioner notes that this office is already working with MGP to attempt to bring it into compliance with the reporting and disclosure obligations to the people of Montana.

Finally, it is likely a significant amount of money was expended in an effort to place the Montana Green Party on the ballot. Montana citizens expect transparency in all political practices, yet no one has stepped forward to simply report the amount of money spent in this signature gathering process. We do

know that it involved a political consulting firm, who employed 13 paid signature gatherers over the course of 19 days in the communities of Missoula, Helena, Great Falls and Billings.

DECISION

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner “shall investigate” any alleged violation of campaign practices law. §13-37-111(2)(a), MCA. The mandate to investigate is followed by a mandate to take action; if there is “sufficient evidence” of a violation the Commissioner must (“shall notify,” *see* §13-37-124, MCA) initiate consideration for prosecution.

Second, having been charged to make a decision, the Commissioner must follow substantive law applicable to a particular campaign practice decision. This Commissioner, having been charged to investigate and decide, hereby determines that there is sufficient evidence, as set out in this Decision, to show that the Montana Green Party’s campaign practices violated Montana’s campaign practice laws, including, but not limited to the laws set out in the Decision. Having determined that sufficient evidence of a campaign practice violation exists, the next step is to determine whether there are circumstances or explanations that may affect prosecution of the violation and/or the amount of the fine.

The failure to fully and timely report and disclose cannot generally be excused by oversight or ignorance. Excusable neglect cannot be applied to oversight or ignorance of the law as it relates to failures to file and report. *See*

discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006, 009. Likewise, the Commissioner does not normally accept that failures to file or report be excused as *de minimis*. See *Matters of Vincent*, Nos. COPP-2013-CFP-006, 009 (discussing *de minimis* principles).

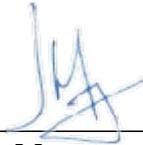
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Finding, a civil fine is justified, Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of the Montana Green Party. Because of the nature of the violation (the failure to timely report and disclose a contribution), this matter is referred to the County Attorney of Lewis and Clark County for his consideration as to prosecution. *Id.*, at § 13-37-124(1). Should the County Attorney waive the right to prosecute (*id.*, at (2)) or fail to prosecute within 30 days (*id.*, at (1)) this Matter returns to this Commissioner for possible prosecution.

Most of the Matters decided by a Commissioner and referred to the County Attorney are waived back to the Commissioner for his further consideration. Assuming that the Matter is waived back, this Finding and Decision does not necessarily lead to civil prosecution as the Commissioner has discretion (“may then initiate” see *id.*, at (1)) in regard to a legal action. Instead, most of the Matters decided by a Commissioner are resolved by payment of a negotiated fine. In setting that fine the Commissioner will

consider matters affecting mitigation, including the cooperation in correcting the issue when the matter was raised in the Complaint.

While it is expected that a fine amount can be negotiated and paid, in the event that a fine is not negotiated and the Matter resolved, the Commissioner retains statutory authority to bring a complaint in district court against any person who intentionally or negligently violates any requirement of campaign practice law, including those of, Mont. Code Ann. §§ 13-37-225 and 128. Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

DATED this 20th day of July 2018.



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