

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

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| Luckey v. Gianforte No. COPP 2020-CFP-048A | DISMISSAL |
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On October 23, 2020, Montana Democratic Party Executive Director Sandi Luckey filed a campaign practices complaint against Greg Gianforte, a candidate for the office of Montana Governor. The complaint alleges that candidate Gianforte coordinated certain campaign activities with the Republican Governors Association (RGA) but failed to properly disclose these coordinated activities as contributions received or expenditures made.

SUBSTANTIVE ISSUES ADDRESSED

Coordination between a candidate's campaign and political committee.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Greg Gianforte filed a C-1 Statement of Candidate as a candidate for Governor of Montana with the COPP on June 7, 2019. (Commissioner's Records).

Finding of Fact No. 1A: On the News section of the RGA's website, eleven (11) posts were made that directly reference Montana Gubernatorial candidates Greg Gianforte and/or Mike Cooney after August 6, 2020 (see Table 1). Seven (7) of these posts include video advertisements mentioning candidates Greg Gianforte and/or Mike Cooney to be publicly distributed via television, radio, or digitally in the State of Montana; the posts include headlines with

statements of (emphasis added) “RGA Releases New Ad” (four posts), “New RGA Ad”, and “RGA Releases New TV Ad” (two posts), while the body of the post describes the RGA Right Direction PAC as “an organization supported by the Republican Governors Association (RGA)”. Each of these ads includes an attribution message indicating it was paid for by the RGA Right Direction PAC. (Commissioner’s Records).

Finding of Fact No. 1B: Also included with this complaint were copies of twenty-five (25) posts made on the RGA’s official Twitter account after August 6, 2020, that directly reference Montana Gubernatorial candidates Greg Gianforte and/or Mike Cooney. None of the posts appeared to be paid ads themselves. (Commissioner’s Records).

Finding of Fact No. 1C: Also included with this complaint were copies of eight (8) posts made on the RGA’s official Facebook account that directly reference Montana Gubernatorial candidates Greg Gianforte and/or Mike Cooney after August 6, 2020. None of the posts appeared to be paid ads themselves.

According to its ads library, the RGA did not run any paid advertisements on Facebook that directly reference Montana Gubernatorial candidates Greg Gianforte and/or Mike Cooney in election year 2020.¹ (Commissioner’s Records).

Finding of Fact No. 1D: Mike Cooney filed a C-1 Statement of Candidate as a Democratic candidate for the office of Governor of Montana with the COPP on July 2, 2019. (Commissioner’s Records).

Finding of Fact No. 2: The Republican Governors Association (RGA) is a national Republican political organization “dedicated to one primary objective: electing and supporting America’s Republican governors”.² The RGA did not register as a political committee or file finance reports with the COPP in the State of Montana.

An organization named the RGA Right Direction PAC did register as a Federal political committee with the Federal Election Commission³ and filed copies of its federal Statement of

¹https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=85337666730

² <https://www.rga.org/about/>

³ <https://www.fec.gov/data/committee/C00490730/?tab=about-committee>

Organization and certain Federal finance reports with the COPP. (Commissioner's Records).

Finding of Fact No. 3: On July 7, 2019, candidate Gianforte filed his initial C-5 campaign finance report, dated June 1, 2019 through June 30, 2019. This report did not disclose candidate Gianforte as receiving any contributions, either monetary or in-kind, from the RGA or RGA Right Direction PAC. (Commissioner's Records).

Finding of Fact No. 4: On October 7, 2019, candidate Gianforte timely filed a periodic C-5 campaign finance report, dated July 1, 2019 through September 30, 2019. This report did not disclose candidate Gianforte as receiving any contributions, either monetary or in-kind, from the RGA or RGA Right Direction PAC. (Commissioner's Records).

Finding of Fact No. 5: On January 6, 2020, candidate Gianforte filed a periodic C-5 campaign finance report, dated October 1, 2019 through December 31, 2019. This report did not disclose candidate Gianforte as receiving any contributions, either monetary or in-kind, from the RGA or RGA Right Direction PAC. (Commissioner's Records).

Finding of Fact No. 6: On March 23, 2020, candidate Gianforte filed a periodic C-5 campaign finance report, dated January 1, 2020 through March 15, 2020. This report did not disclose candidate Gianforte as receiving any contributions, either monetary or in-kind, from the RGA or RGA Right Direction PAC. (Commissioner's Records).

Finding of Fact No. 7: On April 19, 2020, candidate Gianforte filed a periodic C-5 campaign finance report, dated March 16, 2020 through April 15, 2020. This report did not disclose candidate Gianforte as receiving any contributions, either monetary or in-kind, from the RGA or RGA Right Direction PAC. (Commissioner's Records).

Finding of Fact No. 8: On May 22, 2020, candidate Gianforte filed a periodic C-5 campaign finance report, dated April 16, 2020 through May 14, 2020. This report did not disclose candidate Gianforte as receiving any contributions, either monetary or in-kind, from the RGA or RGA Right Direction PAC. (Commissioner's Records).

Finding of Fact No. 9: Montana's Primary election was held on June 2, 2020. Candidate Gianforte advanced to the November 3 General

election as the Republican candidate receiving the highest number of votes. (Commissioner's Records).

Finding of Fact No. 10: On June 22, 2020, candidate Gianforte timely filed a periodic C-5 campaign finance report, dated May 15, 2020 through June 15, 2020. This report did not disclose candidate Gianforte as receiving any contributions, either monetary or in-kind, from the RGA or RGA Right Direction PAC. (Commissioner's Records).

Finding of Fact No. 11: On August 20, 2020, candidate Gianforte timely filed a Periodic C-5 report, dated June 16, 2020 through August 15, 2020. This report did not disclose candidate Gianforte as receiving any contributions, either monetary or In-Kind, from the RGA or RGA Right Direction PAC. (Commissioner's Records).

Finding of Fact No. 12: On September 21, 2020, candidate Gianforte timely filed a periodic C-5 report, dated August 16, 2020 through September 15, 2020. This report did not disclose candidate Gianforte as receiving any contributions, either monetary or in-kind, from the RGA or RGA Right Direction PAC. (Commissioner's Records).

Finding of Fact No. 13: On October 20, 2020, candidate Gianforte timely filed a periodic C-5 campaign finance report, dated September 16, 2020 through October 14, 2020. This report did not disclose candidate Gianforte as receiving any contributions, either monetary or in-kind, from the RGA or RGA Right Direction PAC. (Commissioner's Records).

Finding of Fact No. 14: On November 20, 2020, candidate Gianforte timely filed a periodic C-5 campaign finance report, dated October 15, 2020 through November 15, 2020. This report did not disclose candidate Gianforte as receiving any contributions, either monetary or in-kind, from the RGA or RGA Right Direction PAC. (Commissioner's Records).

Finding of Fact No. 15: On FEC finance reports provided to the COPP, RGA Right Direction PAC did not disclose making any contributions to candidate Gianforte. (Commissioner's Records).

Finding of Fact No. 16: On October 29, 2020, candidate Gianforte, through Jake Eaton, provided his response to this complaint via email to the COPP. The response denied the allegation that the Gianforte campaign had coordinated with the RGA, stating that the associated website, Twitter, or Facebook posts noted in the complaint "were not made or distributed "in cooperation with, in

consultation with, at the request or suggestion of, or with the express prior consent” of the Gianforte campaign. The response goes on to state that “The simple fact is that GFM and RGA’s use of similar generic terms to describe Mike Cooney is not coordination”. (Commissioner’s Records).

Finding of Fact No. 17: On October 30, 2020, the RGA (through counsel) provided its response to this complaint via email to the COPP. The response argues that the RGA “has made no reportable expenditures whatsoever in conjunction with any election in Montana”; instead, all Montana expenditures were made by the RGA Right Direction PAC, “a wholly separate, federal political action committee”. The response goes on to assert that the RGA Right Direction PAC properly and timely filed its FEC finance reports with the COPP to disclose relevant Montana expenditures. The response goes on to argue that:

...for the avoidance of confusion, neither the timing, price, audience, nor any other aspect of any expenditures made by RGA Right Direction PAC was discussed directly or indirectly with...Mr. Gianforte. Rather, all RGA Right Direction PAC expenditures were made completely independently and in compliance with law. (Commissioner’s Records).

DISCUSSION

The complaint alleges the Gainforte campaign coordinated campaign activities with the Republican Governors Association and failed to properly report campaign finance transactions. The Commissioner examines the allegations.

Part One: Coordination

The complaint alleges candidate Gianforte coordinated several campaign activities with the Republican Governors Association (RGA) in an effort to circumvent Montana campaign finance law.

Mont. Code Ann. §13-1-101(10), defines the term coordinated:

"Coordinated", including any variations of the term, means made in cooperation with, in consultation with, at the request of, or with the express prior consent of a candidate or political committee or an agent of a candidate or political committee

44.11.602, ARM provides additional detail, as Subsection (1) states:

A "coordinated expenditure" means 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. The coordination of an expenditure need not require agreement, cooperation, consultation, request, or consent on every term necessary for the particular coordinated expenditure, but only requires proof of one element, such as content, price, or timing, to be met as a fact of a coordinated expenditure.

It is important to note that coordination itself is NOT a violation of Montana campaign finance law. In the event an activity is coordinated between a candidate for election and a political committee, each entity would be required to disclose the activity on the relevant finance report filed with the COPP. All coordinated activity "shall be treated and reported as an in-kind contribution from and expenditure by the person funding, facilitating, or engaging in" the activity, 44.11.602(5), ARM. Coordinated activities would be subject to Montana's contribution limits but are not by themselves a violation of any Montana campaign finance rule or law.

Greg Gianforte ran as the Republican candidate for election to the office of Governor in Montana's 2020 General election (FOF No. 1). The RGA is a national political organization dedicated to the election of Republican governors across the United States (FOF No. 2). Candidate Gianforte did not report receiving any contributions, either monetary or in-kind, from the RGA (FOF

Nos. 3 -14). The RGA Right Direction PAC, a federal political action committee directly affiliated with the RGA, did not disclose making any contributions to candidate Gianforte (FOIF No. 15).

An examination of the terms contribution and expenditure before considering each alleged instance of coordination is also warranted. Mont.

Code Ann. §13-1-101(9) defines a contribution:

(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;

(iii) the receipt by a political committee of funds transferred from another political committee; or

(iv) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) The term does not mean services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual.

(c) This definition does not apply to Title 13, chapter 37, part 6.

Conversely, expenditure is defined by §13-1-101(18) as:

(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; or

(ii) used or intended for use in making independent expenditures or in producing electioneering communications.

(b) The term does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (9);

(ii) payments by a candidate for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(c) This definition does not apply to Title 13, chapter 37, part 6.

The first materials complainant Luckey references as evidence of coordination between candidate Gianforte and the RGA were several posts made to the RGA website that directly mention candidate Gianforte and/or his Democratic opponent Mike Cooney. COPP review was able to determine that the RGA made eleven (11) posts on its website that directly mention candidates Gianforte and/or Cooney after the beginning of Montana's August 6, 2020 electioneering period (FOF No. 1A, Table 1).

The next materials referenced by the complainant in this matter as evidence of coordination were posts made to the RGA's official Twitter feed. Twenty-five (25) individual posts, each dated after August 6, that mention candidates Gianforte and/or Cooney were included with this complaint,

however COPP review determined that none was a paid communication (FOF No. 1B).

The final material referenced by the complaint as evidence of coordination between candidate Gianforte and the RGA were posts made to the RGA's official Facebook page after August 6, 2020. COPP review of the RGA Facebook page's Ads Library determined that the committee did not run any paid communications on that platform in 2020 that mentioned candidates Gianforte and/or Cooney (FOF No. 1C).

Candidate Gianforte, in his response to this complaint, denied all accusations of coordination between the campaign and the RGA (FOF No. 16). Similarly, the RGA denied that any coordination had occurred, telling the COPP that "neither the timing, price, audience, nor any other aspect" of materials produced or distributed by the RGA or RGA Right Direction PAC "was discussed directly or indirectly with...Mr. Gianforte" (FOF No. 17). In determining if coordination has occurred, COPP can consider if a candidate or individuals associated with that candidate's campaign have "made or participated in any discussion or in making any decision regarding the content, timing, location, media, intended audience, volume of distribution, or frequency of placement" of materials financed by an outside entity, 44.11.602(2)(e), ARM. The investigation could not find evidence to dispute candidate Gianforte's and the RGA's denials that such conversations occurred regarding the specific materials noted in this complaint.

Further the COPP considered provisions of 44.11.602(2)(d), ARM, which states that:

(2) When determining whether a communication or reportable election activity is coordinated the following may be considered, whether:

(d) the communication or reportable election activity replicates, reproduces, republishes or disseminates, in whole or in substantial part, any material designed, produced and paid for, or distributed by the candidate, except as set forth in (3)(e).

The complaint alleges that candidate Gianforte and the RGA on multiple occasions used identical language to describe candidate Cooney.

The complaint provided no examples of materials produced or distributed by the Gianforte campaign being reproduced or redistributed by the RGA and the review by the COPP discovered no examples where the Gianforte campaign materials were replicated all or in part by the RGA or visa versa. Examples provided by the complainant involve the RGA re-posting or directly quoting material originally attributable the Montana Republican Party, not candidate Gianforte or his campaign. There was no evidence that the RGA “replicates, reproduces, republishes or disseminates, in whole or in substantial part” materials originally produced and distributed by candidate Gianforte or his campaign.

Additionally, the specific materials referenced in this complaint would not qualify as coordinated expenditures under relevant Montana campaign finance rules. Montana Administrative Rule 44.11.602(1) defines the term coordinated expenditure:

(1) A "coordinated expenditure" means 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. The coordination of an expenditure need not require agreement, cooperation, consultation, request, or consent on every term necessary for the particular coordinated expenditure, but only requires proof of one element, such as content, price, or timing, to be met as a fact of a coordinated expenditure.

As noted in greater detail in the Discussion for *Luckey v Republican Governors Association*, COPP-2020-CFP-048B, none of the RGA's direct website posts, Twitter posts, or Facebook posts would qualify as an election communication, electioneering communication, or reportable election activity. This would mean none would qualify as a "coordinated expenditure" with Gianforte's campaign as defined.

In this matter, the investigation could find no evidence to support the claim that the specific materials noted by the complainant were coordinated between candidate Gianforte and the RGA or RGA Right Direction PAC. COPP could find no evidence that these materials were produced or distributed in "cooperation with, in consultation with, at the request of, or with the express prior consent of" candidate Gianforte or his campaign, Mont. Code Ann. §13-1-101(10). Further, none of the specific materials noted by the complainant would qualify as a coordinated expenditure under 44.11.602(1), ARM or otherwise meet the conditions to be considered coordinated under 44.11.602(2)(d), ARM. Both parties have denied that the Gianforte campaign "has made or participated in any discussion or in making any decision

regarding the content, timing, location, media, intended audience, volume of distribution, or frequency of placement” with the RGA or RGA Right Direction PAC regarding these materials, 44.11.602(2)(e), ARM. The allegation that candidate Gianforte coordinated certain campaign activities in violation of Montana campaign finance law is hereby dismissed.

Part Two: Reporting Contributions Received and/or Expenditures Made

The complainant in this matter also alleges that candidate Gianforte failed to properly report the specific materials mentioned as either contributions received or expenditures made by his campaign. None of the materials referenced in this complaint were originally distributed by the Gianforte campaign; each was distributed by the RGA. This means that candidate Gianforte would not be required to report them as expenditures, as his campaign did not finance the material.

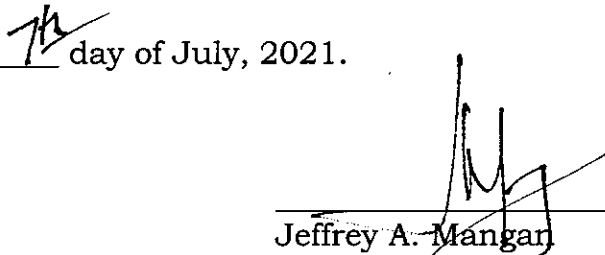
Were they to be deemed coordinated, candidate Gianforte would be required to disclose each material as a contribution received from the RGA on finance reports filed with the COPP, Mont. Code Ann. §13-1-101(9)(a)(ii). However, as noted in Part One of this Discussion, none of the materials referenced by this complaint can be considered coordinated, meaning candidate Gianforte was not required to disclose any as a contribution received by his campaign.

The allegation that candidate Gianforte failed to report materials as either contributions received or expenditures is hereby dismissed.

DECISION

The complaint is hereby dismissed.

DATED this 14 day of July, 2021.



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