

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Dailey v. Convention of States Political Fund  No. COPP 2022-CFP-011	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On May 23, 2022, Von Dailey of Florence, MT, filed a campaign practices complaint against the Convention of States Political Fund (CSPF). The complaint alleged that CSPF did not include the full “Paid for by” attribution message on campaign materials as required.

**SUBSTANTIVE ISSUES ADDRESSED**

Filing and reporting as a nonresident political committee

**FINDINGS OF FACT**

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Included with this complaint was a copy of a campaign mailer supporting Montana candidate Wayne Rusk. The mailer included an attribution statement of “Paid for by Convention of States Political Fund. Not authorized by any candidate or candidates agent”. (Commissioner’s Records.)

Finding of Fact No. 1A: Wayne Rusk filed a C-1 Statement of Candidate as a 2022 candidate for election to House District 88 on June 7, 2021. On May 23, 2022, after being notified of this complaint by COPP staff, candidate Rusk stated that “I had no knowledge of, or hand in, the support afforded me by COS [Convention of States]”. (Commissioner’s Records.)

Finding of Fact No. 2: On May 25, 2022, COPP sent email correspondence to CSPF notifying them that this Complaint had been received. The letter informed CSPF that the attribution complaint was merited, as the material mentioned by the Complaint did not appear to contain the full ‘paid for by’ attribution message as required, and provided CSPF two (2) business days to bring the unattributed material into compliance. On May 26, 2022, COPP spoke via telephone regarding this complaint and the attribution remedy process with Parker Conover, an attorney representing CSPF. (Commissioner’s Records.)

Finding of Fact No. 2A: On May 26, 2022, CSPF, through attorney Parker Conover, emailed COPP a formal response to this attribution complaint. The response included copies of eighteen (18) mailers supporting three (3) Montana candidates- Wayne Rusk, Jason Ellsworth, and Ross Fitzgerald- including a copy of the individual mailer noted in this complaint. The response indicated that CSPF “has already completed the dissemination of these materials. CSPF will include the proper disclaimer and attribution on all subsequent materials”. Each mailer included with the response contained an attribution message of “Paid for by the Convention of States Political Fund. Treasurer Richard Johnson. 500 New Jersey NW, #375 Washington, D.C. 20001” that had not been included on the material as originally distributed. (Commissioner’s Records.)

Finding of Fact No. 2B: Jason Ellsworth filed a C-1 Statement of Candidate as a 2022 candidate for election to Senate District 43 on October 21, 2021. (Commissioner’s Records.)

Finding of Fact No. 2C: Ross Fitzgerald filed a C-1 Statement of Candidate as a 2022 candidate for election to House District 17 on September 22, 2021. (Commissioner’s Records.)

Finding of Fact No. 3: Convention of States Political Fund (CSPF) registered as a Political PAC in the State of Michigan by filing a Michigan Committee Statement of Organization on February 22, 2022.<sup>1</sup> CSPF lists both the committee mailing and street addresses as 500 New Jersey Ave NW STE 375, Washington, DC 2001, and the committee phone number uses a DC area code (602). An individual named Richard A. Johnson of Washington, D.C. was listed as the committee Treasurer, with no other committee officers named. CSPF had not filed a Statement of Organization as a political committee with the State of Montana or otherwise

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<sup>1</sup> <https://cfrsearch.nictusa.com/committees/520433>

forwarded a copy of its Michigan Committee Statement of Organization to Montana’s Commissioner of Political Practices prior to COPP’s acceptance of this complaint. (Commissioner’s Records.)

On June 7, 2022, COPP spoke with Wesley Williams with the District of Columbia Office of Campaign Finance, who confirmed that CSPF had not registered as a political committee or filed campaign finance reports directly with that office. (Commissioner’s Records).

Finding of Fact No. 3A: On April 25, 2022, CSPF filed an April Quarterly CS(e) committee finance report in the State of Michigan, dated January 1, 2022 through April 20, 2022.<sup>2</sup> This report did not disclose any expenditures made by CSPF supporting, opposing, or otherwise mentioning any Montana candidates or ballot issues during the reporting period. CSPF did not forward a copy of this report to Montana’s Commissioner of Political Practices at any time. (Commissioner’s Records.)

Finding of Fact No. 3B: According to the Michigan Secretary of State’s website, Political PACs registered in the State of Michigan next have finance reports due in that state on July 25, 2022, covering the period of April 21 through July 20.<sup>3</sup> (Commissioner’s Records.)

Finding of Fact No. 3C: As part of its May 26, 2022 response to this attribution complaint, CSPF included a draft copy of its “forthcoming Michigan report” due on July 25 because “the report includes expenditures related to Montana’s elections and discloses the amount, payee, payee’s address, and the candidate identified in the materials” as well as the contributions made to the committee. The draft report indicated CSPF made fifteen (15) independent expenditures for 18 election communications intended to support candidates Rusk, Ellsworth, and Fitzgerald beginning May 5, 2022, totaling \$121,314.50 (Table 1). The draft report does not provide any information disclosing the specific services provided by or type of material obtained from a specific vendor for any given expenditure. CSPF also included a copy of its Michigan Committee Statement of Organization as filed in the state of Michigan with this response. (Commissioner’s Records.)

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<sup>2</sup> <https://cfrsearch.nictusa.com/documents/523990/details?type=web#>

<sup>3</sup> [https://www.michigan.gov/sos/-/media/Project/Websites/sos/05delrio/CFR\\_Quick\\_Dates.pdf?rev=54152bc941604d1d97126703f696f2c7&hash=B28F0584E0F17DD703E664DD9ED97FDF](https://www.michigan.gov/sos/-/media/Project/Websites/sos/05delrio/CFR_Quick_Dates.pdf?rev=54152bc941604d1d97126703f696f2c7&hash=B28F0584E0F17DD703E664DD9ED97FDF)

Table 1: Montana expenditures as disclosed by CSPF on the draft Michigan finance report provided to COPP in response to the filed Complaint

Entity	Date	Candidate	Amount
CBQ Media	05/05/2022	Rusk*	\$25,200.00
CBQ Media	05/05/2022	Ellsworth	\$12,000.00
CBQ Media	05/05/2022	Fitzgerald	\$7,920.00
Splice Media LLC	05/06/2022	Fitzgerald	\$637.50
Splice Media LLC	05/06/2022	Ellsworth	\$637.50
Splice Media LLC	05/06/2022	Rusk*	\$637.50
Advantage Inc.	05/12/2022	Ellsworth	\$4,679.00
Advantage Inc.	05/12/2022	Rusk	\$7,518.00
Advantage Inc.	05/12/2022	Fitzgerald	\$3,787.00
Impact Advertising LLC	05/18/2022	Rusk	\$11,307.00
Impact Advertising LLC	05/18/2022	Fitzgerald	\$11,361.00
Impact Advertising LLC	05/18/2022	Ellsworth	\$23,395.00
Impact Advertising LLC	05/24/2022	Rusk	\$3,769.00
Impact Advertising LLC	05/24/2022	Ellsworth	\$4,679.00
Impact Advertising LLC	05/24/2022	Fitzgerald	\$3,787.00
			\$121,314.50

\*Identified as “Rush” on the draft report as provided to COPP

**Finding of Fact No. 4:** On June 6, 2022, the Montana Free Press published an article discussing CSPF and this Complaint.<sup>4</sup> The article included links to FCC records indicating that CSPF had purchased radio advertisements in Montana, beginning May 10, 2022, at a total cost of \$14,400.00 (Tables 2-5).<sup>5</sup> Each contract lists the activity as a contract agreement between KGVO-FM and CBQ Media LLC. (Commissioner’s Records).

**Finding of Fact No. 4A:** On June 9, 2022, as part of its investigation into this complaint, COPP requested additional documentation from CSPF detailing its Montana election expenditure activity. On June 14, 2022, CSPF, through attorney Parker Conover, responded to this request by emailing COPP additional documentation detailing Montana election expenditure activity.

<sup>4</sup> <https://montanafreepress.org/2022/06/06/outside-spending-targets-primaries/>

<sup>5</sup> <https://publicfiles.fcc.gov/am-profile/KGVO/political-files/2022/non-candidate-issue-ads/b5dd5547-ead4-c409-e1cf-40f7e755dd16>

According to invoices provided by CSPF, the committee utilized four vendors-Stormo & associates, CBQ Media, Splice Audio LLC, and Impact Advertising-for all Montana expenditure activity, which included research, radio advertisements, and mailers. According to the invoices, CSPF’s total expenditure activity for Montana’s June 7, 2022 primary election totaled \$126,752.00 (Table 2). An updated draft copy of the “forthcoming Michigan report” due on July 25 was also included (Table 3). (Commissioner’s Records).

Table 2: Montana expenditures as disclosed by CSPF according to invoices included with the June 14, 2022 email to COPP in response to COPP investigation

Vendor	Type	Amount
Stormo & associates	Research	\$4,800.00
CBQ Media	Radio advertising	\$45,120.00 (same amount as detailed in Table 1)
Splice Audio, LLC	Radio advertising	\$2,550.00 (\$637.50 more than detailed in Table 1)
Impact Advertising	Mailers	\$74,282.00 (same amount as detailed in Table 1)
		\$126,752.00

Table 3: Montana expenditures as disclosed by CSPF on the updated draft Michigan finance report provided to COPP on June 14, 2022 in response to COPP investigation

Entity	Date	Candidate	Amount
Stormo and Associates	05/02/2022		\$4,800.00*
CBQ Media	05/05/2022	Rusk	\$25,200.00
CBQ Media	05/05/2022	Ellsworth	\$12,000.00
CBQ Media	05/05/2022	Fitzgerald	\$7,920.00
Splice Media LLC	05/06/2022	Fitzgerald	\$637.50
Splice Media LLC	05/06/2022	Ellsworth	\$637.50
Splice Media LLC	05/06/2022	Rusk*	\$637.50
Impact Advertising LLC	05/12/2022	Ellsworth	\$4,679.00
Impact Advertising LLC	05/12/2022	Rusk	\$7,518.00
Impact Advertising LLC	05/12/2022	Fitzgerald	\$3,787.00
Impact Advertising LLC	05/18/2022	Rusk	\$11,307.00
Impact Advertising LLC	05/18/2022	Fitzgerald	\$11,361.00

Impact Advertising LLC	05/18/2022	Ellsworth	\$23,395.00
Impact Advertising LLC	05/24/2022	Rusk	\$3,769.00
Impact Advertising LLC	05/24/2022	Ellsworth	\$4,679.00
Impact Advertising LLC	05/24/2022	Fitzgerald	\$3,787.00
			\$126,114.50

\*Amount of \$10,910.00 as listed on the draft report includes state of South Dakota activity as well. Amount charged for Montana activity as described in the invoice is used by COPP in this table

## **DISCUSSION**

### *Attribution*

Under Montana law “all election communications... must clearly and conspicuously include the attribution ‘paid for by’ followed by the name and address of the person who made or financed the expenditure for the communication.” §13-35-225(1) MCA. The complaint attached copies of a campaign mailer distributed by Convention of States Political Fund (CSPF) supporting Montana candidate Wayne Rusk that did not include the full ‘paid for by’ attribution statement. COPP review determined that the specific campaign material included with this complaint qualified as an election communication<sup>6</sup> requiring full attribution (Paid for by) (FOF No. 2).

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<sup>6</sup> (15) (a) "Election communication" means the following forms of communication to support or oppose a candidate or ballot issue:

- (i) a paid advertisement broadcast over radio, television, cable, or satellite;
- (ii) paid placement of content on the internet or other electronic communication network;
- (iii) a paid advertisement published in a newspaper or periodical or on a billboard;
- (iv) a mailing; or
- (v) printed materials.

Montana law requires an accelerated review (“as soon as practicable”) of a campaign practice complaint alleging an attribution violation. Accordingly, CSPF was immediately contacted by the Commissioner’s office (FOF No. 2). CSPF took responsibility for the election communication (FOF No. 2A), discussed attribution requirements and attribution remedy with COPP, and provided COPP with a copy of the election communication that included full attribution messaging (FOF No. 2A). CSPF also noted that it would take care to include full attribution with any future election communications.

The law governing complaints of failure to properly attribute political communications provides precise directions to the Commissioner:

1. The Commissioner is to immediately assess the merits of the attribution Complaint. §13-35-225(5), MCA. The Commissioner found merit to the attribution Complaint and hereby memorializes that finding (FOF No. 2).
2. The Commissioner shall notify the respondent of the merit finding, requiring them to bring the campaign material into compliance, §13-35-225(6)(a), MCA. The COPP, by contacting CSPF via both email telephone to provide Notice of Non-Compliant Election Communication, did this and hereby memorializes the Notice (FOF No. 2).
3. The respondent is provided 2 business days to bring the material into attribution compliance §13-35-225(6)(a)(i), MCA. (FOF No. 2).

Under Montana law the respondent with the attribution deficiency is relieved of a campaign practice violation, provided he/she/they promptly carries out the attribution correction as provided by statute. CPSF has met these duties by accepting responsibility for attribution oversight on election communications and providing COPP with corrected copies of the unattributed

communications that include full attribution messaging (FOF No. 2A) and is therefore relieved of a campaign practice violation under §13-35-225(6), MCA.

### *Other Issues*

Once a complaint is filed the Commissioner “shall investigate any other alleged violation ...” §13-37-111(2)(a), MCA. This investigative authority includes the authority to investigate “all statements” and examine “each statement or report” filed with the COPP. §13-37-111, 123 MCA. The Commissioner is afforded discretion in exercising this authority. *Powell v. Motl*, OP-07111, Supreme Court of Montana, November 6, 2014 Order.

CSPF is a registered Political PAC committee in the State of Michigan and filed a Michigan Committee Statement of Organization in Michigan on February 22, 2022 (FOF No. 3). In its response to this complaint, CSPF describes itself as “a Michigan political committee” that files reports “with the Michigan Secretary of State’s Bureau of Elections”. CSPF has been following the state of Michigan’s finance reporting schedule, to date having formally filed only a singular finance report on April 20, 2022 (FOF No. 3A). In responding to this complaint, CSPF provided COPP with a draft copy of an unfiled Michigan committee report on May 26, 2022, and an updated version of this unfiled report on June 14, 2022 (FOF Nos. 3C, 4A) in response to COPP investigation. CSPF has not filed finance reports directly in the state of Montana at any time.

As part of the attribution remedy process, COPP requested CSPF identify any additional campaign materials financed in the state of Montana. In response to this request, CSPF provided COPP with copies of eighteen (18)

mailers, supporting Montana candidates Rusk, Jason Ellsworth, and Ross Fitzgerald (FOF No. 2A). The copies of CSPF's draft Michigan finance reports and associated invoices provided to COPP indicated that the group's first reportable Montana expenditure- research regarding candidates Rusk, Ellsworth, and Fitzgerald- was made on May 2, 2022 (Tables 2, 3). In total, CSPF describes no fewer than sixteen (16) Montana expenditures, totaling \$126,752.00 (Table 2).

*Committee Registration Requirements*

In this matter, CSPF became involved in Montana elections on May 5, 2022 by financing election communications supporting Montana candidates Rusk, Ellsworth, and Fitzgerald. Under Montana law, a political committee is formed when a "combination of two or more individuals or a person other than an individual...makes an expenditure...to prepare or disseminate an election communication" of \$250 or more, Mont. Code Ann §13-1-101(32)(a)(iii) and (d). CSPF's May 2, 2022 expenditure for "research" regarding candidates Rusk, Ellsworth, and Fitzgerald qualifies as an expenditure as the research was used or intended for use in making future election communications supporting those candidates, Mont. Code Ann. §13-1-101(19)(a)(iii). Each of CSPF's May 5 mailers qualify as an election communication as defined by Mont. Code Ann. §13-1-101(15), as each material is a mailing supporting candidate Rusk, Ellsworth, or Fitzgerald.<sup>7</sup> CSPF does not in any way argue against the idea that

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<sup>7</sup>(15) (a) "Election communication" means the following forms of communication to support or oppose a candidate or ballot issue:

it is “combination of two or more individuals or a person other than an individual”, does not dispute the assertion it has either made reportable expenditure/s nor that it financed election communications in the state of Montana, and does not dispute that the election communications it has financed cost more than \$250.00. CSPF therefore qualifies as a political committee in the state of Montana, Mont. Code Ann. §13-1-101(32).

Under Montana campaign finance law, a political committee is required to file a Statement of Organization within 5 days of making an expenditure, Mont. Code Ann. § 13-37-201(2)(b). The Commissioner determines CSPF first became a political committee in the state of Montana on May 2, 2022, by

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- (i) a paid advertisement broadcast over radio, television, cable, or satellite;
  - (ii) paid placement of content on the internet or other electronic communication network;
  - (iii) a paid advertisement published in a newspaper or periodical or on a billboard;
  - (iv) a mailing; or
  - (v) printed materials.

(b) The term does not mean:

(i) an activity or communication for the purpose of encouraging individuals to register to vote or to vote, if that activity or communication does not mention or depict a clearly identified candidate or ballot issue;

(ii) a communication that does not support or oppose a candidate or ballot issue;

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

(iv) a communication by any membership organization or corporation to its members, stockholders, or employees;

(v) a communication not for distribution to the general public by a religious organization exempt from federal income tax when compliance with Title 13 would burden the organization’s sincerely held religious beliefs or practices; or

(vi) a communication that the commissioner determines by rule is not an election communication.

making a reportable expenditure. Under Mont. Code Ann. §13-37-201(2)(b), and 44.11.305(2)(a), ARM, (discussed in more detail, below- *see Reporting Expenditures*), CSPF was required to either forward the COPP a copy of its home state Statement of Organization (in this case, Washington, DC) or directly register as a political committee in the state of Montana by filing a C-2 Statement of Organization no later than May 9, 2022, 5 business days after its initial Montana expenditure activity. CSPF did not take either action by May 9, 2022. CSPF failed to timely file a statement of organization, a Montana campaign finance and practice violation.

Sufficiency Finding of No. 1: The Convention of States Political Fund failed to file a Statement of Organization as a political committee within 5 days of making an expenditure of \$250 or more in a Montana candidate's campaign/s.

The Commissioner finds there are sufficient facts to show the CSPF failed to file as a political committee in Montana upon incurring election activity in excess of \$250. A nonresident committee that becomes involved in Montana elections cannot simply register in another state or jurisdiction without providing any copies or notice of this registration to COPP in the time and manner required by Montana law, as CSPF did in this matter.

#### Reporting Expenditures

Mont. Code Ann. § 13-37-226(2)(b) requires that Montana political committees file finance reports on “the 30th day of March, April, May, June, August, September, October, and November in the year of an election in which the political committee... participates”. CSPF became a political committee

participating in Montana’s 2022 elections on May 2, meaning the first required committee finance report was due on or before May 30, 2022.

Montana’s committee reporting dates are tailored to the state’s primary (June 7, 2022) and general (November 8, 2022) election dates to provide transparency prior to each election. A nonresident committee such as CSPF participating in Montana’s elections cannot simply shop other jurisdictions and file reports disclosing Montana activity under that jurisdiction’s reporting calendar to avoid Montana’s campaign finance transparency requirements.

Nonresident committees may qualify for an alternative method for filing campaign finance reports in compliance with Montana law. Mont. Code Ann. § 13-37-227 specifically states that “The commissioner shall adopt rules under which... committees headquartered outside the state of Montana shall report in accordance with this title”. The rule that the Commissioner adopted, 44.11.305, ARM, lists the reporting requirements for nonresident political committees.

44.11.305(2)(a), ARM states that “Committees headquartered outside the state of Montana that are not federally filing committees and that make expenditures and contributions in elections in Montana may satisfy the requirements of the Montana Campaign Practices Act in one of two ways”. Option 1 would be for the nonresident committee to file copies of its home state reports with the Commissioner of Political Practices “if those reports fully disclose the source and disposition of all expenditures and contributions used in elections in Montana. Such reports need only be filed only for the periods in

which the committee makes expenditures and contributions in elections in Montana.”, 44.11.305(2)(a), ARM.

Based on the information provided in its Michigan Committee Statement of Organization, CSPF is headquartered in Washington DC, not Michigan. CSPF lists its mailing address, street address, and Treasurer’s address as being in Washington, DC, and provides a Washington, DC phone number (FOF # 3). For purposes of 44.11.305(2)(a), ARM, CSPF’s home state would be Washington, DC. Washington, DC political committees register and report with the District of Columbia’s Office of Campaign Finance. The COPP searched that office’s records, including contacting the office directly, and found no record of the committee being formed in or reporting with DC. Because CSPF has not reported with its home state, it does not qualify under 44.11.305(2)(a), ARM.

Campaign finance reports filed by a nonresident committee in other states are only accepted by COPP when the reports are filed in accordance with Montana law, Mont. Code Ann. § 13-37-227. Montana law requires disclosure of contributions and expenditures on certain dates tailored to our election cycle, see MCA §§ 13-37-226, 13-27-227, and ARM 44.11.305. Stated another way, the Commissioner’s office is not required to accept home state finance reports for nonresident committees if those home state reports fail to meet Montana’s reporting and disclosure laws.<sup>8</sup>

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<sup>8</sup> A Washington DC independent political action committee is required to report and disclose on dates tailored to their primary date of June 21, 2022. Similarly, Michigan’s primary elections are held on August 2, 2022, and their reporting and disclosure deadlines are tailored to provide transparency prior to Michigan’s elections.

If a nonresident committee's home state report/s cannot or does not meet Montana's reporting and disclosure requirements, the nonresident committee is to register and report in Montana using the COPP's reporting forms and schedule, 44.11.305(2)(b), ARM. As a practical matter, most committees headquartered out of state that become involved in Montana's elections report and disclose on Montana's forms and schedules, as they are designed to elicit the information that Montana's campaign finance reporting and disclosure laws require.

CSPF did not provide the COPP a copy of any committee finance report/s filed in Washington DC (CSPF's home state under 44.11.602(2)(a), ARM) disclosing its Montana expenditure or contribution activity on or before May 30, 2022, nor did CSPF use COPP's reporting forms to disclose its Montana contribution and expenditure activity on or before May 30, 2022.<sup>9</sup> CSPF failed to timely file a committee finance report with the COPP on or before May 30, 2022 as required, a Montana campaign finance and practice violation.

Sufficiency Finding of No. 2: The Convention of States Political Fund failed to file a political committee finance report on or before May 30, 2022 for its political spending in three (3) Montana candidate elections of a minimum \$126,752.00 during the period of May 6 to May 24, 2022.

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<sup>9</sup> COPP does not consider the draft Michigan finance report included by CSPF on May 26, 2022 or the updated version provided on June 14, 2022 as meeting this filing requirement. Each report was provided to COPP specifically as a **draft** finance report, subject to change, and has at no time been formally filed with the state of Michigan. Further, the information enclosed describing Montana expenditures and does not meet the disclosure requirements of Montana law, MCA 13-37-127, ARM 44.11.305(2)(a).

The Commissioner finds there are sufficient facts to show the CSPF failed to fully and properly disclose a minimum of \$126,752.00 in political spending in three Montana candidate state district legislative races.

COPP would also note that the information provided by CSPF on its draft Michigan finance report/s meant to disclose the committee's Montana expenditures fail to comply with Montana's reporting and disclosure requirements. Mont. Code Ann. §13-37-229(2)(b) specifically requires that

Reports of expenditures made to a consultant, advertising agency, polling firm, or other person that performs services for or on behalf of a candidate or political committee must be itemized and described in sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was made.

As provided to COPP, CSPF's draft Michigan finance report/s do not itemize or describe the "specific services performed" by the vendor for any of its Montana expenditures. For example, while COPP's investigation determined CSPF financed radio advertisements in Montana supporting candidates Rusk, Ellsworth, and Fitzgerald using vendor CBQ Media, CSPF's draft Michigan finance reports in no way identify or even refer to radio advertisements when listing the CBQ Media expenditures. Similarly, while CSPF took full responsibility for financing 18 mailers supporting candidates Rusk, Ellsworth, and Fitzgerald, no single expenditure on the draft Michigan reports make any reference to mailers.

As discussed above, nonresident committees who cannot meet Montana's disclosure requirements using their home state forms are to utilize Montana's reporting forms. If CSPF is unable to itemize and describe the "specific services

provided” by the vendor for each Montana expenditure on its home state (Washington, DC) reporting forms, the committee will be required to use the COPP’s forms to do so, 44.11.305(2)(b), ARM.

CSPF is hereby ordered to file with the COPP as a Montana political committee and file committee finance reports for the period of May 5, 2022, through the date of this decision within 5 days of the receipt of this decision. CSPF shall follow all Montana reporting and disclosure requirements, including use of Montana’s reporting forms if unable to meet these requirements using its home state (Washington, DC) forms. CSFP shall follow campaign finance reporting and disclosure laws for any future Montana political activity, including the proper and timely filing of political committee finance reports.<sup>10</sup>

### **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. Mont. Code Ann. § 13-37-111(2)(a). The mandate to investigate is followed by a mandate to take action; where there is “sufficient evidence” of a violation the Commissioner must (“shall notify,” *see id.*, at § 13-37-124) initiate consideration for prosecution.

Second, having been charged to make a decision, the Commissioner must follow substantive law applicable to a particular campaign practice

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<sup>10</sup> Montana political committees next have a committee finance report due on or before June 30, 2022

decision. This Commissioner, having been charged to investigate and decide, hereby determines that there is sufficient evidence to show that Convention of States Political Fund 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 *Matters of Vincent*, Nos. COPP-2013-CFP-006, 009 (discussing excusable neglect principles). Likewise, the Commissioner does not normally accept that failures to file or report be excused as *de minimis*. *Id.* (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 Findings, 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 Convention of States Political Fund. Because of the nature of the violation this matter is referred to the County Attorney of Lewis and Clark County for his consideration as to prosecution. *Id.*, at (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.*) 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. §§ 13-37-201, 225, 229. *See id.*, at § 13-37-128. Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

DATED this 16 day of June 2022.



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