

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Denowh v. Cottonwood Environmental Law Center No. COPP 2022-CFP-009B	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On May 11, 2022, Chuck Denowh, the Campaign Manager for No on I-191, filed a campaign practices complaint against the Cottonwood Environmental Law Center (CELC). The complaint alleged that CELC failed to timely file a C-2 Statement of Organization, failed to report and disclose expenditure activities, and failed to report and disclose contributions received.

SUBSTANTIVE ISSUES ADDRESSED

Proper and timely filing as a ballot issue committee and subsequent committee finance reports.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: I-191, a law proposed by initiative petition, was submitted to Montana’s Secretary of State’s Office on December 3, 2021 (submission #1) and again on December 15, 2021 (submission #2). I-191 was approved for signature gathering on April 5, 2022.¹ The issue was submitted by John Meyer, Cottonwood Environmental Law Center, Gallatin Wildlife Association, and Montana Rivers. (Commissioner’s Records.)

¹ https://sosmt.gov/elections/ballot_issues/proposed-2022-ballot-issues/

Finding of Fact No. 2: Based in Bozeman, MT, the Cottonwood Environmental Law Center (CELC) describes itself as “Greater Yellowstone’s only local, homegrown environmental law center. We have been using the power of the law for more than 10 years to protect millions of acres of land and hundreds of animal species in the Greater Yellowstone Ecosystem”.² CELC is led by Executive Director John Meyer, a six-member Board of Directors, and a five-member Advisory Board.³ (Commissioner’s Records.)

Finding of Fact No. 3: In the investigation into the attribution portions of the complaint, COPP determined CELC financed no fewer than six (6) election or electioneering communications supporting or otherwise directly referencing I-191: CELC’s website, four (4) Vimeo videos, and an I-191.com website.⁴ (Commissioner’s Records.)

Finding of Fact No. 3A: As noted by the complainant, CELC sent email messages concerning I-191 on March 17, April 6, May 5, May 6, and May 10, 2022. Each of the March 17 and May 5 email messages encourage recipients make a contribution to CELC in support of I-191. For example, the March 17 message includes two (2) identical links users can follow to “Donate \$100.00” and a statement that I-191 (at the time named I-124):

will cost between \$3-\$5 million dollars to win. We have \$2,000. Big Sky has endless money. You know what Big Sky doesn’t have: heart.

We can’t pull this off unless we get a lot of support from normal people like you.

Similarly, the May 5 message includes a statement that (emphasis added):

If you haven’t already, sign the petition to put I-191 on the November ballot. The citizen initiative will permanently protect the Gallatin and Madison Rivers from water pollution...

Today and tomorrow is Give Big Gallatin Valley, the annual fundraiser for nonprofits in the area. Cottonwood isn’t just giving big—we’re giving everything—to protect and restore the Gallatin River.

² <https://www.cottonwoodlaw.org/about-us>

³ <https://www.cottonwoodlaw.org/staffboard>

⁴ See Commissioner Mangan’s Dismissal in the matter of *Denowh v. Cottonwood Environmental Law Center*, COPP-2022-CFP-009A

Please make a donation to help protect what we all care about.

(Commissioner's Records.)

Finding of Fact No. 4: On May 17, 2022, CELC Executive Director John Mayer emailed COPP a copy of a Transaction Detail describing all CELC expenses associated with I-191 between the dates of January 1, 2022 through May 17, 2022 (see Table 1). According to the Transaction Detail, CELC's expenses related to I-191 during this period totaled \$9,688.00. (Commissioner's Records.)

Table 1: Expenditures pertaining to I-191 as described by CELC on the Transaction Detail provided to COPP

Date	Number	Name	Memo	Amount
01/23/2022	1099	Bradley Gillick	xxxxxx website xxxxxx	\$1,050.00
02/02/2022	dc	Cairns Film		\$632.00
02/22/2022	dc	Cairns Film	1-124 (now I-191)	\$408.00
03/11/2022	1164	Bradley Gillick	I-124 (now I-191)	\$2,500.00
03/11/2022	1162	Ryan Frank	Ballot Initiative	\$295.00
03/15/2022	1167			\$200.00
03/18/2022	1165	Bradley Gillick		\$375.00
03/22/2022	168	Nate Heggen	I-191	\$500.00
03/29/2022	1170	Bradley Gillick	I-124 (now I-191)	\$2,500.00
04/04/2022	square	Squarespace		\$276.00
04/05/2022	???	Cairns Film	I-191 Editing	\$832.00
04/06/2022	dc	Signeasy		\$120.00
				\$9,688.00

Finding of Fact No. 5: On May 25, 2022, Executive Director Mayer provided CELC’s formal response in this matter to COPP. This response noted that CELC as an organization had “decided not to keep working on I-191”. (Commissioner’s Records.)

Finding of Fact No. 6: On June 27, 2022, Cottonwood Environmental Law Center I-191 filed a C-2 Statement of Organization as an incidental committee with the COPP. Under Purpose of Committee, the Cottonwood Environmental Law Center I-191 listed Support for I-191. (Commissioner’s Records.)

Finding of Fact No. 6A: On June 29, 2022, Cottonwood Environmental Law Center I-191 filed an initial C-4 incidental committee finance report, dated January 15, 2022, through April 15, 2022. This report disclosed eleven (11) expenditures made by the committee in support of I-191, totaling \$9,488.00 (see Table 2). The report did not disclose any contributions received by the Cottonwood Environmental Law Center I-191 committee, monetary or in-kind. The report was filed as a Closing report. (Commissioner’s Records.)

Table 2: Expenditures made by the Cottonwood Environmental Law Center I-191 incidental committee, as disclosed on the committee’s initial C-4 finance report

Entity	Purpose	Date	Amount
Cairns Film	Video Development by Cairns Film	02/02/2022	\$632.00
Cairns Film	Video Development by Cairns Film	02/22/2022	\$408.00
Cairns Film	Video Development by Cairns Film	04/05/2022	\$832.00
Gillick, Bradley	Web Development	03/18/2022	\$375.00
Gillick, Bradley	Web Development	03/29/2022	\$2,500.00
Gillick, Bradley	Web Development	01/23/2022	\$1,050.00
Gillick, Bradley	Web Development	03/11/2022	\$2,500.00
Kenney, Nate	Filming	03/22/2022	\$500.00
Ryan Frank	Litigation Support	03/11/2022	\$295.00
Signeasay	Digital petition for I-191	04/06/2022	\$120.00

Squarespace	Squarespace Inc. Website Hosting	04/04/2022	\$276.00
			\$9,488.00

Finding of Fact No. 6B: A June 27, 2022 email received by COPP from individual Isaac Cheek concerning Cottonwood Environmental Law Center I-191 stated that the committee “did not receive any earmarked contributions for the I-191 initiative”.⁵ (Commissioner’s Records.)

Finding of Fact No. 7: On June 15, 2022, a ballot issue committee named I-191 filed a C-2 Statement of Organization with the COPP. Under Purpose of Committee, the I-191 ballot issue committee listed both Support and Education for I-191. (Commissioner’s Records.)

Finding of Fact No. 7A: On June 29, 2022, the I-191 ballot issue committee filed an initial C-6 committee finance report, dated January 15, 2022 through April 15, 2022. This report disclosed eleven (11) in-kind contributions received, all from Cottonwood Environmental Law Center I-191, totaling \$9,488.00 (see Table 3). The report was filed as a Closing report. (Commissioner’s Records.)

Table 3: Contributions received by the I-191 ballot issue committee from Cottonwood Environmental Law Center I-191, as disclosed on the committee’s initial C-6 finance report

In-Kind Description	Date	In-Kind Value
I-191 website editing/creation	03/11/2022	\$2,500.00
Video editing for I-191 (Cairns Film)	04/05/2022	\$832.00
I-191 webpage creating/editing	03/18/2022	\$375.00
Signeasy petition for I-191	04/06/2022	\$120.00
Legal briefing and research	03/11/2022	\$295.00
Filming for I-191	03/22/2022	\$500.00
Video editing for I-191 (Cairns film)	02/02/2022	\$632.00

⁵ COPP had previously spoken with Mr. Cheek via telephone and email on June 14, 2022 and June 23, 2022, to discuss political committee registration and reporting requirements.

Video development/editing for I-191 website (cairns film)	02/02/2022	408.00
Squarespace for I-191 website	04/04/2022	\$276.00
Website development for I-191	03/29/2022	\$2,500.00
I-191 educational website creation/editing	01/23/2022	\$1,050.00
		\$9,488.00

DISCUSSION

Committee Registration

The first allegation considered by COPP in this matter is the claim that the Cottonwood Environmental Law Center (CELC) failed to timely and properly register as a political committee in Montana.

The term political committee is specifically defined under Mont. Code Ann. § 13-1-101(32) as:

(32) (a) "Political committee" means a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

(i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination;

(ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.

(b) Political committees include ballot issue committees, incidental committees, independent committees, and political party committees.

(c) A candidate and the candidate's treasurer do not constitute a political committee.

(d) A political committee is not formed when a combination of two or more individuals or a person other than an individual makes an election communication, an electioneering communication, or an independent expenditure of \$250 or less.

In this case, CELC qualifies as “a combination of two or more individuals” that made an expenditure to support a ballot issue in Montana, with expenditures financing election communications exceeding \$250.00 (FOF Nos. 2,3,4,6A). CELC is therefore a political committee under Montana campaign finance law. CELC would appropriately qualify as an incidental committee, as the organization was “not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues” but incidentally became involved in Montana’s elections by making expenditures supporting I-191, Mont. Code Ann. § 13-1-101(24)(a). In other words, while not originally organized to engage in electoral politics, CELC became a political committee by financing election communications supporting I-191 and seeking its placement before Montana voters in an election. Once I-191 became a ballot issue on April 5, 2022, within 5 days the CELC was required to file as a political committee and report its financial activity in support of the ballot issue, 13-1-101(6)(b), MCA.

Sufficiency Finding No. 1: Cottonwood Environmental Law Center failed to file its Statement of Organization as an incidental committee within 5 days of I-191 qualifying for signature gathering in order to qualify for the ballot, because they had made expenditures in support of I-191.

The Commissioner finds sufficient facts the CELC failed to timely file as an incidental political committee within 5 days upon I-191 becoming a ballot issue, a Montana campaign practice violation.

I-191 ballot issue committee

Political committees seeking to place a ballot issue before electors “shall file” a C-2 Statement of Organization with the COPP “within 5 days after the issue becomes a ballot issue”, Mont. Code Ann. § 13-37-201(2)(c). I-191 became a ballot issue on April 5, 2022, upon its “preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue”, Mont. Code Ann. § 13-1-101(5)(b) (FOF No. 1). As a political committee seeking to place I-191 before electors on the ballot, [Advocates for] I-191 was required to register as a political committee with the COPP by filing a C-2 Statement of Organization on or before April 12, 2022, five (5) business days after I-191 became a ballot issue. [Advocates for] I-191 did not file a C-2 Statement of Organization as a political committee with COPP until June 27, 2022(FOF No. 6).

As noted above, political committees seeking to place I-191 before electors were required to file a C-2 Statement of Organization with the COPP on or before April 12, 2022, Mont. Code Ann. § 13-37-201(2)(c). A ballot issue committee named “I-191” filed a C-2 Statement of Organization with the COPP on June 15, 2022 (FOF No. 7), later than five days after “I-191” became a ballot issue committee.

Sufficiency Finding No. 2: I-191 failed timely to file its Statement of Organization as a ballot issue committee within 5 days of becoming a ballot issue committee.

The Commissioner finds sufficient facts that I-191 failed to timely file as a ballot issue political committee within 5 days upon I-191 becoming a ballot issue, a Montana campaign practice violation.

Finance Reports and Reporting Expenditures

The second allegation raised in the complaint in this matter is that CELC failed to file timely and appropriately disclose contributions received and expenditures made by the committee by failing to file campaign finance reports with the COPP.

Mont. Code Ann. § 13-37-226(2)(b) requires that 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”. As discussed earlier, committees seeking to place I-191 before electors were required to register as a political committee with COPP on or before April 12, 2022, meaning the first required committee finance report for those committees was due on or before April 30. These committees were to “disclose all contributions received and expenditures made prior to the time an issue becomes a ballot issue by transmission of the petition to the proponent of the ballot issue or referral by the secretary of state even if the issue subsequently fails to garner sufficient signatures to qualify for the ballot” on this initial committee finance report, Mont. Code Ann. § 13-37-228(1). Subsequent required committee finance reports were then due on or before May 30 and June 30.

Montana’s campaign finance report filing requirements are mandatory: “shall file” (See §13-37-226 MCA). The filing date requirements are date certain. In Bradshaw v. Bahr, COPP 2018-CFP-008, Commissioner Mangan found candidate Bahr had filed two days late and wrote “any failure to meet a mandatory, date-certain filing date is a violation of §13-37-226, MCA.”

In this matter, CELC filed its initial C-4 committee finance report with COPP on June 29, 2022 (FOF No. 6A). CELC failed to file required committee finance reports on or before April 30 and May 30, 2022, as required, violations of Mont. Code Ann. § 13-37-226(2)(b).

CELC also failed to disclose all expenditures made in support of I-191 on the C-4 incidental committee finance report filed with the COPP. According to the Transaction Detail provided to COPP by CELC, the committee made 12 total expenditures, totaling \$9,688.00 (FOF No. 4, Table 1). The C-4 report filed by CELC, however, discloses only 11 expenditures, totaling \$9,488.00 (FOF No. 6A, Table 2). CELC failed to include an expenditure of \$200.00 made by the committee on March 15, 2022⁶ on the C-4 report filed with COPP, a violation of Mont. Code Ann. §§ 13-37-228(1) and 13-37-232(3)(c) (which requires incidental committees disclose the “total sum of expenditures made during a reporting period”).

Incidental committees are also required to disclose contributions received that are “designated by the contributor for a specified candidate, ballot issue, or petition for nomination or that are made by the contributor in response to an

⁶ No additional detail was provided other than amount and date

appeal by the incidental committee for contributions to support incidental committee election activity”, Mont. Code Ann. § 13-37-232(2) (emphasis added).

In email messages sent on March 17, 2022, and May 5, 2022, CELC inarguably appealed for financial contributions to help fund the committee’s expenditure activities supporting I-191 (FOF No. 3A). Despite these public solicitations, CELC did not disclose receiving any contributions for use supporting I-191, claiming it did not receive any such contributions (FOF Nos. 6A, 6B). CELC is required to disclose all in-kind and financial contributions received in response to the March 17 and May 5 email messages as earmarked contributions received, in accordance with Mont. Code Ann. § 13-37-232(2).

As with the CELC incidental committee, the “I-191” ballot issue committee filed its initial C-6 committee finance report with COPP on June 29, 2022 (FOF No. 7). The I-191 ballot issue committee failed to file required committee finance reports on or before April 30 and May 30, 2022, as required, violations of Mont. Code Ann. § 13-37-226(2)(b).

Sufficiency Finding No. 3: Cottonwood Environmental Law Center failed to timely file April 30 and May 30 campaign finance reports

The Commissioner finds sufficient facts the CELC failed to timely file April 30 and May 30 committee finance reports, a Montana campaign practice violation.

Sufficiency Finding No. 4: I-191 failed to timely file April 30 and May 30 campaign finance reports

The Commissioner finds sufficient facts that “I-191” failed to timely file April 30 and May 30 committee finance reports, a Montana campaign practice violation.

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 decision. This Commissioner, having been charged to investigate and decide, hereby determines that there is sufficient evidence to show that Cottonwood Environmental Law Center, [Advocates for] I-191 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).

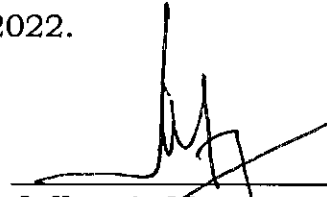
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of Cottonwood Environmental Law Center, [Advocates for] I-191. 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(2)(c), 226(2)(b). *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 15th day of July 2022.



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