

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

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| Denowh v. Cottonwood Environmental Law Center No. COPP 2022-CFP-009A | DECLARATION OF MERIT OF COMPLAINT MEMORIALIZATION OF NOTIFICATION OF MERIT TO RESPONDENT RESOLUTION OF COMPLAINT BY PROMPT REMEDIAL ACTION BY RESPONDENT DISMISSAL OF COMPLAINT |
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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 the CELC failed to include “Paid for by” attribution message on campaign materials as required. The complaint also alleged CELC failed to file as a political committee and disclose committee finance activity. This decision only addresses the attribution allegations to meet the specific timeframes as provided by statute. The remainder of the allegations will be addressed in Denowh v. CELC, COPP-

FINDING OF FACTS

The facts necessary for a determination in this matter 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. (Commissioner’s Records.)

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”.¹ As of May 18, 2022, CELC had not filed a C-2 Statement of Organization as a political committee with the COPP. At the time this complaint was filed (May 11, 2022), the CELC website homepage auto-played a video that specifically referenced I-191², and additionally included a page dedicated to Montana Citizen Initiative I-191³, containing: four (4) Vimeo videos specifically referencing I-191, titled I-191 Algae⁴; josh_191⁵; Gutkoski⁶; and I-191⁷; and a link to “Sign the Petition”, which directed users to a different website, i-191.com, where an I-191 petition form could be accessed and signed. None of the CELC website’s homepage, I-191 page, Vimeo videos about I-191, or the i-191.com website included any ‘paid for by’ attribution messaging. COPP determined that each campaign material required a ‘paid for by’ attribution message. (Commissioner’s Records.)

Finding of Fact No. 3: On May 12, 2022, COPP sent email correspondence notifying the CELC that this Complaint had been received. This notice included a letter informing CELC that the attribution complaint was merited, as material/s mentioned by the Complaint did not appear to contain the full ‘paid for by’ attribution message as required, and provided CELC two (2) business days hours to bring any unattributed campaign material/s into compliance by adding attribution. A hard copy of this notice was also sent via the U.S. Postal Service to CELC on this same date. (Commissioner’s

¹ <https://www.cottonwoodlaw.org/about-us>

² <https://www.cottonwoodlaw.org/>

³ <https://www.cottonwoodlaw.org/work/il191>

⁴ <https://vimeo.com/692081316>

⁵ https://vimeo.com/705923777?embedded=true&source=video_title&owner=22401686

⁶ <https://vimeo.com/695971668>

⁷ <https://vimeo.com/692639149>

Records.)

Finding of Fact No. 3A: On May 16, 2022, COPP sent follow-up email correspondence to CELC about this Complaint. The follow-up notice again noted that the attribution complaint was merited and re-iterated the requirement that CELC bring any non-attributed campaign material/s into compliance by adding attribution. Also on May 16, CELC Board Chairman Bill Bartlett contacted COPP via telephone- as part of this discussion, COPP Compliance Specialists re-iterated the requirement that the attribution complaint was merited and that any unattributed materials financed by CELC supporting, opposing, or directly mentioning I-191 required addition of the ‘paid for by’ attribution messaging. (Commissioner’s Records.)

Finding of Fact No. 4: On May 16, 2022, John Mayer, Executive Director and General Counsel for CELC, emailed the COPP with CELC’s formal response to this attribution complaint. The response stated “I have attached a photo of the attribution on our website that indicates the full “paid for by” message that your office has deemed necessary”. Included was a photo of the homepage of the CELC website, where the following statement had been added (emphasis added):

The Polluters are getting nervous. They started a new political action committee (No on I-191) and filed this complaint.

Everything on our website and social media accounts regarding I-191 was made and paid for by Cottonwood unless otherwise noted. Sign the Petition and tell polluters to take a hike.

This message did not appear anywhere on the I-191 page on CELC’s website (separate from the homepage), nor was it included with any of the Vimeo videos about I-191 or the I-191.com website. (Commissioner’s Records.)

Finding of Fact No. 4A: On May 17, 2022, COPP emailed Executive Director Mayer on two (2) occasions concerning the CELC’s attribution response. The first message sent by COPP detailed Montana’s attribution requirements, including an example, and noted that “the attribution message would need to be included on each individual campaign material”. The second email message further explained that the attribution provided by CELC (“everything on our website and social media accounts regarding I-191 was made and paid for by Cottonwood unless otherwise noted”) did “not meet the requirements of Mont. Code Ann. §13-35-225. Each paid campaign material- website, video, printed material, etc.- must include a distinct ‘paid for by’ attribution message”. (Commissioner’s Records.)

Finding of Fact No. 4B: On May 17, 2022, Executive Director Mayer again contacted COPP via email. This message stated that “The websites should be good to go re: Paid for by language”. COPP review of the CELC website determined that an attribution message of “Paid for by Cottonwood Environmental Law Center, PO Box 412 Bozeman, MT 59771” had been added to the homepage and the I-191.com website. This message was not included anywhere the I-191 page on CELC’s website (separate from the homepage), nor was it included with any of the Vimeo videos about I-191. (Commissioner’s Records.)

Finding of Fact No. 4C: On May 18, 2022, COPP review of the CELC website determined that all references to I-191- including those on the homepage, the I-191 page (separate from the homepage), and the four (4) Vimeo videos- had been removed. COPP’s review also determined that the i-191.com website was no longer publicly accessible.

Finding of Fact No. 5: This complaint also included email messages sent by CELC on March 17, April 6, May 5, May 6, and May 10, 2022 as alleged unattributed material. COPP was unable to independently obtain copies of any of these email messages, or obtain evidence that CELC specifically paid to distribute them. Information provided by CELC in its May 17, 2022 attribution response (detailed in FoF No. 4B) appears to indicate that CELC did not specifically pay to distribute any of the March 17, April 6, May 5, May 6, or May 10 email messages. (Commissioner’s Records.)

DISCUSSION

Under Montana law “all election communications, electioneering 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.” Mont. Code Ann. §13-35-225(1). The complaint attached copies of campaign material distributed by Cottonwood Environmental Law Center (CELC). COPP review determined that specific campaign material- the CELC website, four (4) Vimeo videos, and an I-191.com website- qualified as election communications or electioneering communications but failed to include a complete attribution (Paid for by) (FOF

No. 2).

Montana law requires an accelerated review (“as soon as practicable”) of a campaign practice complaint alleging an attribution violation. Accordingly, CELC was immediately contacted by the Commissioner’s office (FOF Nos. 3, 3A). CELC took responsibility for the campaign communications (FOF No. 4), discussed attribution requirements and attribution remedy with COPP (FOF Nos. 4A, 4B), and took corrective measures to remedy by ultimately removing the unattributed campaign materials (FOF No. 4C).

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. 3).
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 CELC via both email and U.S. Mail to provide Notice of Non-Compliant Election Communication, did this and hereby memorializes the Notice (FOF No. 3).
3. The respondent is provided 2 business days to bring the material into attribution compliance §13-35-225(6)(a)(i), MCA. (FOF No. 3).

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. CELC has met these duties by removing unattributed campaign materials from paid circulation (FOF No. 4C)

and is therefore relieved of a campaign practice violation under Mont. Code Ann. §13-35-225(6).

The complainant in this matter also included copies of email messages sent by CELC on March 17, April 6, May 5, May 6, and May 10, 2022 as alleged unattributed material. In investigating this matter, COPP was unable to determine that CELC paid specifically to *distribute* any of these messages (FOF No. 5) within the timeframe of this decision. Any expenses associated with the email communications will be addressed in *Denowh v. CELC*, COPP-2022-CFP-009B.

COPP would note that this decision addresses ***only*** the attribution allegations to meet the specific timeframes as provided by statute. The Commissioner notes the neither the CELC or any other party has filed as a political committee in this specific matter (FOF No. 2) as required by Montana campaign finance and practice law. Attribution concerns regarding the items specifically addressed within this decision may be revisited upon any future filing if necessary. The remainder of the allegations, including political committee registration and the reporting of expenditures made by CELC to produce and distribute campaign materials, will be addressed in *Denowh v. Cottonwood Environmental Law Center*, COPP-2022-CFP-009B.

Finally, the Commissioners orders the CELC to ensure that any future or additional election communications, electioneering communications, or independent expenditures financed by the CELC or its political committee/s include a complete attribution as required by Mont. Code Ann. §13-35-225.

Normally the Commissioner first provides Decisions to the parties and public on the following day. The Legislature, however, has set very tight timelines on this sort of attribution Complaint. Accordingly, the Commissioner provides this Decision to the parties and public on the day it is made.

DATED this 18th day of May, 2022.



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