

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Montana Secretary of State v. Forward Montana  No. COPP 2022-CFP-022	DISMISSAL
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On October 20, 2022, the Montana Secretary of State’s office filed a campaign practices complaint against Forward Montana. The complaint alleged that Forward Montana mailed and advised applicants to mail voter registration applications to an address other than the county election administrator.

**SUBSTANTIVE ISSUES ADDRESSED**

Proper return by mail of a voter registration form to the appropriate county election administrator as required by Mont. Code Ann. § 13-35-604.

**FINDINGS OF FACT**

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Forward Montana is a nonprofit organization that describes itself as “the largest youth civic engagement organization in Montana, with year-round staff in Billings, Bozeman, Missoula, and the Flathead Valley”.<sup>1</sup> (Commissioner’s Records.)

Finding of Fact No. 2: As part of this complaint, the Montana Secretary of State’s office included a picture of a business card for Forward Montana’s Billings Field Manager, as well as a picture of a deposit box set up by Forward Montana to deposit completed

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<sup>1</sup> <https://forwardmontana.org/about/>

voter registration applications. As available from the photograph, Forward Montana's drop box does not encourage applicants to mail completed voter registration forms to any address. (Commissioner's Records.)

Finding of Fact No. 3: On October 21, 2022, Forward Montana, through Upper Seven Law, emailed COPP a formal response to this complaint. In its formal response, Forward Montana writes that:

Over the last decade, Forward Montana Foundation has, consistent with applicable law, operated drop boxes to collect voter registration applications across Montana. Forward Montana Foundation staff and volunteers monitor these drop boxes and either mail or hand-deliver applications to correct county election offices. For each drop box, Forward Montana Foundation staff tracks the number of applications received and the date they are delivered to election offices. Drop boxes are removed when the regular registration period has elapsed.

The response goes on to state that, in this case, Forward Montana "removed the drop boxes pictures on October 11, 2022, to avoid receiving any voter registration applications after the regular registration period had elapsed. The Secretary has made no attempt to reach out to Forward Montana Foundation to express concern or provide instruction relating to the drop boxes in question". (Commissioner's Records.)

### **DISCUSSION**

In this matter, the Montana Secretary of State's office ("the Office") alleges that Forward Montana mailed and advised applicants to mail completed voter registration applications to an address other than that of the county election administrator. COPP considers the allegation in full.

Mont. Code Ann. § 13-35-604, the specific statute referenced by the Office in this matter, states that:

"A third-party registrar may not mail or advise an applicant to mail a voter registration or absentee ballot application to any address other than the county election administrator's address in the applicant's county of residence"

In filing this complaint, the SOS Office references a drop box photo operated by Forward Montana where individuals could place completed voter registration forms (FOF No. 2). As available from the photograph, Forward Montana's drop box does not encourage applicants to mail completed voter registration forms to any address.

In responding to this complaint, Forward Montana asserts that all drop boxes are monitored by Forward Montana staff, and completed voter registration applications are delivered by mail or in-person directly to the proper county election office (FOF No. 3). Forward Montana goes on to assert that, despite having been operating drop boxes like this in previous election years, nobody in the SOS Office has ever reached out to Forward Montana "to express concern" about the practice or provide instructions or guidance.

The COPP is unable to identify a single specific instance where Forward Montana encouraged individuals to mail a voter registration application to any address other than the individual's county elections office.

### **PROCESS**

Following the Respondent's response in this matter, the SOS Office hand delivered a letter addressed to the Commissioner (Exhibit A). In this letter, the SOS Office describes what can only be considered its new process for handling what they describe as complaints. As an example, in this matter, the SOS Office referred a photo of a box and a photo of a business card it had received from an unnamed source to the Commissioner of Political Practices as a formal Campaign Finance and Practices (CFP) Complaint. The SOS Office additionally

submitted two related 'complaints' that were received by the SOS Election and Voter Services Division to the Commissioner of Political Practices as formal CFP Complaints. The SOS Office states this new process is necessary "in order for the State to formally document and log the allegations and disposition".

As described by the SOS Office, this process is unworkable. In all three cases referred by the SOS Office, the formal complaints filed with the Commissioner were based entirely on concerns raised and reported to the SOS of possible election information and security issues. Both the SOS Office and the COPP receive similar concerns, issues, and allegations daily, via email and phone calls. The COPP addresses such concerns informally, by providing education and guidance where appropriate, referring the matter to the appropriate state or local agency, including the formal complaint process when necessary. The COPP receives hundreds of such inquires prior to every election, and most are easily and immediately resolved informally. COPP would note that any unique concern, issue, or allegation raised informally and any communications, guidance, or referrals made by COPP are documented by COPP staff.

A formal CFP Complaint filed with the Commissioner, however, must be handled according to the process provided for by Montana law and rule. "...Upon the submission of a written complaint by any individual, the commissioner **shall investigate** any other alleged violation of the provisions of chapter 35 of this title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter". At a minimum, this process required COPP

staff to process the formal Complaint and make it available on the agency website, requires the Commissioner request a formal written response from the subject of the complaint and make this response available on the agency's website, and requires the Commissioner to issue a final agency decision.

In this matter, the SOS Office filed a formal CFP Complaint with COPP, delaying resolution of the issues. Had the issues been referred to the Commissioner by the SOS Office informally, via email message or telephone call, they could have been easily & immediately addressed through the informal process. Instead, because the SOS Office filed a formal CFP Complaint on an issue that did not rise to a level of a potential violation, COPP was required process the formal CFP Complaint, request Forward Montana provide a formal written response, and issue a formal agency decision, a much more time consuming process.

### **FINDINGS**

In this matter, the Commissioner examines dismissing the Complaint as as frivolous under under *Landsqaard v. Peterson, et al.*, COPP-2014-CFP-008. “Complaints identified as frivolous will be swiftly dismissed so as to lessen the burden on participants (contributors, candidates, ballot committees and others) frivolously accused of campaign practice violations”, *id.* at page 3, Mont. Admin. R. 44.11.106(4) (formerly Mont. Admin R. 44.10.307(3)(2014).

“Most COPP complaints raise a campaign practice issue and initiate a valuable civic debate that justifies the social cost. Some complaints, however (labeled frivolous by this Decision) do not raise a legitimate issue and still assess a social cost. The targets of a frivolous complaint (legislators, contributors and others) bear the monetary cost of defending against a COPP complaint and the

social cost associated with the stigma of being accused of wrong doing. The Commissioner's staff (and the public) bear the cost of applying limited public resources to less worthy complaint issues rather than prosecution of serious campaign violations. The Commissioner should, and hereafter will, reduce the effect of such frivolous complaints."

*Landsgaard*, p. 5.

As articulated in law and rule, should the Commissioner receive a complaint that does not provide evidentiary support for the allegations presented or that does not make sufficient allegations to state a potential violation under the Commissioner's jurisdiction, the Commissioner *may* dismiss the complaint as a frivolous, Mont. Admin. R. 44.11.106(4). This administrative rule has been in place in Montana campaigns since the implementation of the laws and rules establishing the Commissioner's office in 1976.

In its Complaint, the SOS Office argues that the COPP must handle the issue with alacrity because:

[w]ith the proximity to the election, the activity ongoing, and the number of violations continue to increase, it is of paramount importance that your office issue a sufficiency finding and sufficiency determination documenting regarding [sic] Forward Montana's illegal voter registration activities".

Even this statement is frivolous, unsupported and untrue. The underlying allegation in this matter lacks any evidentiary or legal support, much less allegations of "activity ongoing", "the number of violations continue to increase" concerning "illegal voter activities".

The SOS also alleges that "[o]ur department and county election offices fielded numerous complaints from voters concerned about their privacy related

to the [Forward Montana’s] illegal voter registration activity”. To this point, COPP would note that the SOS’s Complaint refers to two photos received by the SOS without reference to a date, time, or other information. The formal CFP Complaint was not filed by the SOS Office until October 20, 2022. In September of 2022, a similar issue involving potential voter registration activity<sup>2</sup> was forwarded to the COPP and immediately reviewed and remedied informally, including follow up with both the SOS Office and local election office.

A complaint against Forward Montana was not provided to the COPP by the SOS until October 20, 2022, and we were unable to ascertain a date or time the complaint was received by the SOS. The complaint against Forward Montana contains undated material received by the SOS from an unnamed source. As discussed in *Montana Secretary of State vs. MontPIRG, 2022-CFP-023*, in time proximity, a similar issue involving potential voter registration activity<sup>3</sup> was forwarded to the COPP and immediately reviewed and remedied, including follow up with both the SOS and local election office.

Nothing in the complaint against Forward Montana evidences a violation of Mont. Code Ann. § 13-35-604. The attachments contain undated pictures of a drop box and a business card of a Forward Montana field manager. Neither reference an address to return the forms to, or a form itself, and the complaint

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<sup>2</sup> MontPIRG, see *SOS v. MontPIRG, 2022-CFP-023*

<sup>3</sup> MontPIRG – see *SOS v. MontPIRG 2022-CFP-023*

fails to allege facts that would give rise to a potential violation of Mont. Code Ann. § 13-35-604.

In this matter, upon receipt of the Complaint, Forward Montana confirmed its voter registration process as indicated by the undated photo ended on October 11, 2022, and at no time did any materials or process descriptions include references to mailing to anyone other than the local election office.

The allegations against Forward Montana are unsupported by evidence of a potential factual violation, are indefinite, unsubstantiated and therefore dismissed as “frivolous”, Mont. Admin R. 44 11.106(4).

### **COSTS**

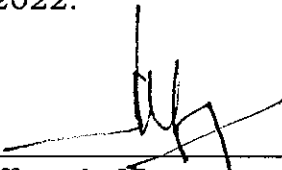
The COPP’s campaign finance and practice complaint process is free and accessible to anyone alleging a genuine violation of the laws. As discussed above, the cost of COPP staff time in addressing and investigating allegations, and the Commissioner in making a determination are public costs; as are the costs to the group herein defending against the frivolous complaint. That being said, there is no provision in Montana law which allows the Commissioner to assess the costs of frivolous complaints or proceedings in campaign finance complaints. Therefore, although the relief was requested by the Respondent Forward Montana, the Commissioner must dismiss the request for relief as it is beyond the office’s grant of authority.



**DECISION**

The Commissioner hereby dismisses the Complaint as frivolous and dismisses the Respondent's request for relief in this matter.

DATED this 21<sup>st</sup> day of October 2022.



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Jeffrey A. Mangan  
Commissioner of Political Practices  
Of the State of Montana  
P.O. Box 202401  
1209 8<sup>th</sup> Avenue  
Helena, MT 59620  
Phone: (406)-444-3919



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**CHRISTI JACOBSEN** OCT 24 P 12:14  
MONTANA SECRETARY OF STATE

COMMISSIONER OF  
POLITICAL PRACTICES

October 24, 2022

Commissioner Mangan,

SOS is disappointed to see the response from the attorneys representing MontPIRG, Forward Montana, and ACLU regarding the complaint referrals COPP-2022-CFP-021, COPP-2022-CFP-022, and COPP-2022-CFP-023 in the characterization and politization of the ministerial state government process of referring complaints to the proper authority.

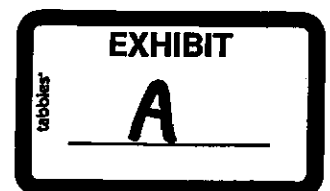
The Secretary of State's Office and the Commissioner of Political Practices have a shared responsibility to ensure the integrity of elections, however, as you know 13-37-111, MCA notes "the commissioner is responsible for investigating all of the alleged violations of election laws contained in chapter 35 of this title or this chapter..." The Secretary does not have the same authority.

Upon receiving complaints from Montana election officials, the Secretary properly referred the complaint to the investigating authority. Future complaints will be referred in the same manner.

- Last month, SOS Election and Voter Services Division (EVS) contacted COPP shortly after an Elections Administrator in the southwest portion of the state contacted EVS. The EA shared that her office was made aware by constituent(s) in the southwest portion of the state that MontPIRG was advising citizens they may register to vote by filling out a voter registration application addressed to MontPIRG. COPP communicated to EVS that he informed MontPIRG of the violation and the group agreed to fix the error.
- A week or so later, EVS heard from an EA in southeastern Montana of a nearly identical allegation, by a different entity.
- After that, EVS heard from a third official in a third county of a third nearly identical allegation by a third entity.

SOS provided all three complaints received to the Commissioner in order for the State to formally document and log the allegations and disposition, as the new landscape appears to require.

It is recognized and appreciated that MontPIRG acknowledged and rectified the violation when contacted. If the Commissioner chooses to document that the violation occurred and it was promptly addressed by the party as findings without any additional recourse, SOS would be satisfied.



SOS also acknowledges the supplemental information provided by ACLU may assist the Commissioner in dismissing the complaint if upon investigation of the matter no additional information to the contrary is found.

We wholeheartedly trust your office to identify the facts and determine whether a violation actually occurred.

While the active litigation related to Montana's voting identification and registration deadline involves the subject organizations, or affiliates, as parties, the Office's referral has absolutely nothing to do with the fact that the organizations are parties in the proceeding. While we dispute the narrative included in their response, we see no need to address it in this improper forum.

Sincerely,

A handwritten signature in black ink, appearing to read "Dana Cunniff". The signature is fluid and cursive, with a long horizontal stroke at the end.

Elections and Voter Services Division  
Montana Secretary of State