

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Montana Secretary of State v. MontPIRG  No. COPP 2022-CFP-023	DISMISSAL
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On October 20, 2022, the Montana Secretary of State’s office filed a campaign practices complaint against MontPIRG. The complaint alleged that MontPIRG 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: MontPIRG, based out of the University of Montana in Missoula, is a “student directed and funded non-partisan organization dedicated to affecting tangible, positive change through educating and empowering the next generation of civic leaders... Our goal is to help students become informed and equipped with the knowledge, skills, and confidence to advocate for the public interest”.<sup>1</sup> (Commissioner’s Records.)

Finding of Fact No. 2: As part of this complaint, the Montana Secretary of State’s office included an internet screenshot of a

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<sup>1</sup> <https://www.mtpirg.org/mission>

“Nonprofit Voter Registration Kit signup” that notes kits include “prepaid envelopes to return forms to MontPIRG on a monthly basis”. (Commissioner’s Records.)

Finding of Fact No. 2A: On September 28, 2022, Commissioner of Political Practices Jeff Mangan contacted MontPIRG Executive Director Hunter Losing to discuss the “Nonprofit Voter Registration Kit”. In an email that day to other MontPIRG staff, Executive Director Losing writes “I just spoke with the Commissioner of Political Practices, Jeff Mangan (cc’d here) about our voter registration kits...I misspoke when speaking to you about the process for getting those registrations turned in to Elections Offices. We are not actually providing prepaid postage envelopes to mail registrations to us prior to submitting... I apologize for the miscommunication and am asking you to remove the statement about prepaid envelopes from any publications about the registration kits”. (Commissioner’s Records.)

Finding of Fact No. 3: On October 21, 2022, MontPIRG, through Upper Seven Law, emailed the COPP a formal response to this complaint. In its response, MontPIRG states that “Earlier this year, a miscommunication between MontPIRG and one of its partners led the partner to share an inaccurate statement about how voter registration forms collected in the drop boxes were to be returned. Upon being alerted to the inaccuracy, MontPIRG worked swiftly to remedy the situation...to correct the language and clarify that any voter registration forms must be sent to their local County Elections Office-not to MontPIRG”. The response adds that only one drop box “was affected by the inaccuracy” and that “at no time did any voter mail MontPIRG a voter registration form to submit on their behalf”. (Commissioner’s Records.)

## **DISCUSSION**

In this matter, the Montana Secretary of State’s office (“the SOS Office”) alleges that MontPIRG 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 SOS 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 making this complaint, the SOS Office references a picture from an internet website stating that MontPIRG would include “prepaid envelopes to return” voter registration applications “to MontPIRG” (FOF No. 2). Prior to COPP’s receipt of this Complaint, the Commissioner had been notified that a website containing MontPIRG information stated it would provide prepaid postage on envelopes to return voter registration forms to them and had already spoken with the organization to explain Mont. Code Ann. § 13-35-604’s prohibition on mailing voter registration forms to an address other than the county elections office (FOF No. 2). Following these discussions, the Commissioner worked with MontPIRG to rectify any issues (FOF No. 2A). MontPIRG has since apologized, and further notes that no pre paid envelopes were ever provided or any completed voter registration forms ever mailed to the organization instead of the individual’s county elections office (FOF Nos. 2A, 3).

The Commissioner notes that COPP was able to work with MontPIRG to resolve this issue on September 28-29, 2022, almost a month prior to the filing of this complaint.

### **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 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 screenshot of an unknown website 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 inquiries 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. This particular complaint addressed an issue the SOS Office had previously referred to the Commissioner informally, via email message, and was easily addressed and rectified through that process. Instead, the SOS Office filed a formal CFP Complaint on a concern that never rose to the level of a potential violation, was previously addressed by the COPP, and the SOS was, in turn, notified of the resolution.

### **FINDINGS**

In this matter, the Commissioner examines dismissing the Complaint as as frivolous under *Landsgaard 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.

A formal complaint was forwarded that directed to a previously referred and corrected activity. 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).

The SOS complaint against MontPIRG involves allegations that were not performed by MontPIRG, and additionally concerns involving the allegation having been corrected for almost a month upon a referral from the SOS Office.

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] MontPIRG'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 [MontPIRG’s] illegal voter registration activity”. To this point, COPP would note that the SOS’s Complaint refers to a screenshot image of an unknown website. The formal CFP Complaint was not filed by the Office until October 20, 2022. Ironically, this very issue involving potential voter registration activity was forwarded to the COPP by the SOS and immediately reviewed and remedied, including follow up with both the SOS Office and local election office.

Upon receipt of the SOS Office CFP Complaint some 20+ days following the informal resolution of the issue by the COPP following a referral from the very same SOS Office.

The Complaint itself does not reference an address to return the forms to or a pre addressed form itself, and the complaint fails to allege facts that would give rise to a potential violation of Mont. Code Ann. § 13-35-604.

The allegations against MontPIRG 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**

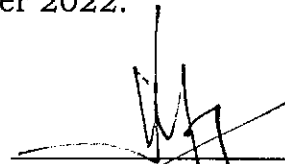
The COPP’s campaign finance and practice complaint process is free and accessible to anyone alleging a genuine violation of the laws. As discussed above, the cost of COPP staff time in addressing and investigating allegations, and the Commissioner in making a determination are public costs; as are the

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 MontPIRG, 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 27<sup>th</sup> day of October 2022.



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Jeffrey A. Mangan  
Commissioner of Political Practices  
Of the State of Montana  
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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