

Cook, Scott

From: Mangan, Jeff
Sent: Monday, October 24, 2022 7:15 AM
To: Cook, Scott
Subject: FW: [EXTERNAL] Re: COPP-2022-CFP-022 and 023
Attachments: 2022-10-21 - MontPIRG Response - 023 - final.pdf; 2022-10-21 - FMF Response - 022 - final.pdf

Jeffrey A. Mangan
Commissioner of Political Practices
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From: Rylee Sommers-Flanagan <rylee@uppersevenlaw.com>
Sent: Friday, October 21, 2022 5:46 PM
To: Mangan, Jeff <Jeff.Mangan@mt.gov>
Cc: MacNaughton, Jaime <JMacNaughton@mt.gov>; James, Austin <Austin.James@mt.gov>; Niki Zupanic <niki@uppersevenlaw.com>
Subject: [EXTERNAL] Re: COPP-2022-CFP-022 and 023

Dear Commissioner Mangan,

Please find attached responses to the Secretary's complaints against both Montana Public Information Research Group ("MontPIRG") in *Secretary of State v. MontPIRG*, COPP-2022-CFP-023, and Forward Montana and Forward Montana Foundation in *Secretary of State v. Forward Montana*, COPP-2022-CFP-022.

These response letters have also been mailed to your office today by certified mail.

Many thanks,
Rylee

Rylee Sommers-Flanagan
she/her/hers
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On Fri, Oct 21, 2022 at 12:31 PM Rylee Sommers-Flanagan <rylee@uppersevenlaw.com> wrote:

Dear Commissioner Mangan,

My colleague Niki Zupanic and I represent respondents Forward Montana (COPP-2022-CFP-023) and MontPIRG (COPP-2022-CFP-023) in relation to the complaints filed this morning by the Montana Secretary of State's Office.

We are reaching out to let you know that we will be responding to each complaint by letter within the next 24 hours.

Many thanks,
Rylee

Rylee Sommers-Flanagan
she/her/hers
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HOLD THE POWERFUL ACCOUNTABLE

October 21, 2022

VIA CERTIFIED MAIL AND EMAIL

Jeffrey A. Mangan
Commissioner of Political Practices
1209 Eighth Avenue
P.O. Box 202401
Helena, MT 59620-2401

Re: *Montana Secretary of State v. MontPIRG*, COPP-2022-CFP-023;
complaint received October 21, 2022

Dear Commissioner Mangan,

The undersigned counsel submits this response on behalf of Montana Public Interest Research Group (“MontPIRG”) in connection with *Montana Secretary of State v. MontPIRG*, COPP-2022-CFP-023.

MontPIRG is a student directed and funded 503(c)(4) nonpartisan organization that is dedicated to effective, tangible, positive change through education and empowering the next generation of civic leaders. MontPIRG has, consistent with applicable law, operated drop boxes to collect voter registration applications and often works with other nonprofit entities to host drop boxes at their locations across Montana.

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 acted swiftly to remedy the situation by contacting its partners to correct that language and clarify that any completed voter registrations must be sent to their local County Elections Office—not to MontPIRG. In fact, only one drop box was affected by the inaccuracy and the entity hosting the drop box confirmed that no registration forms had been deposited into the drop box, and none were mailed to an improper address. At no time did any voter mail MontPIRG a voter registration form to submit on their behalf.

The Secretary’s complaint is meritless. MontPIRG has not, at any time “mailed and **advised applicants** to mail a voter registration to an address other than the county election administrator’s address” (emphasis added) in violation of § 13-25-604, MCA. MontPIRG’s minor miscommunication, captured in the attachment to the Secretary’s

complaint, did not result in any applicant being misadvised as to the proper procedure for returning a voter registration application and does not support any allegation that an applicant was improperly advised. In other words, the complaint does not reach the level of materiality that would justify investigation or enforcement.

Beyond dismissing the Secretary's complaint, you should assess fees against the Secretary.

The Secretary appears to have ignored facts known to it before making this complaint. Namely, as the attached communications make clear, on September 28, 2022, the Commissioner informed MontPIRG about a potential complaint regarding the inaccurate language that had been communicated related to the use of drop boxes by partner organizations. On the same day that MontPIRG became aware of the inaccurate language, it contacted its partners and corrected the inaccuracy and specifically reached out to the organization hosting the sole drop box that had been affected to ensure that voter registration applications would be returned not to MontPIRG but to the local county election office. The Commissioner then communicated to the Secretary of State's Office that MontPIRG had remedied the concern. The Secretary made no attempt to reach out to MontPIRG to express concern or to otherwise indicate any other issue associated with the miscommunication.

Moreover, MontPIRG is currently a party in a lawsuit against the Secretary of State's Office, challenging the constitutionality of several laws passed during the 2021 legislative session that restrict access to ballots and stifle voting. The Secretary filed her complaint against MontPIRG on the same day that she filed complaints against co-plaintiffs Forward Montana Foundation and the ACLU of Montana and the ACLU of Montana Foundation ("ACLU").

On September 21, 2022, the Montana Supreme Court upheld a preliminary injunction that prevented enforcement of the challenged laws while the case remained pending before the district court. Shortly thereafter, on September 30, 2022, the Yellowstone County District Court issued a final decision declaring four election laws unconstitutional and permanently enjoining them. Two of these four laws were particular priorities of the Secretary's Office. In the last two weeks, MontPIRG has, alongside its co-plaintiffs, advocated for enforcement of the court's order. While the Secretary ultimately agreed to update her website with accurate information about the availability of Election Day Registration and accurate summaries of identification that can be used at the polls, these changes were made only under threat of a temporary restraining order. The Secretary also distributed similar misinformation in the Voter Information Packet that was distributed to all registered voters—and their households—on October 11.

The contents of the Secretary's complaint against MontPIRG do not reach the level of materiality that would justify investigation or enforcement. And the complaint appears to be an attempt to punish or retaliate against MontPIRG for its participation in the recent lawsuit. The Secretary should not be allowed to abuse the complaint process in this manner. This office has admonished complainants who abuse the complaint process in the past. Even meritless complaints that are resolved quickly expend taxpayer time and resources and undermine the legitimacy of the process.

MontPIRG looks forward to your prompt resolution of this matter. Please do not hesitate to be in touch with any questions.

Many thanks,



Rylee Sommers Flanagan
Executive Director
(406) 396-3373



Niki Zupanic
Staff Attorney

cc:
Austin James
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