

BEFORE THE COMMISSIONER
OF POLITICAL PRACTICES OF THE STATE OF MONTANA

Adams v. College Democrats at MSU No. COPP-2015-CFP-003	Summary of Facts and Findings of Sufficient Evidence to Show a Violation of Montana's Campaign Practices Act As To College Democrats at MSU Dismissal of Complaint Against Ailport and Wilmer
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On April 29, 2015, Timothy Adams, a resident of Bozeman, Montana filed a complaint against the College Democrats at Montana State University (MSU) as well as two individuals, Franke Wilmer and Justin Ailport. The complaint alleges that the named parties engaged in 2014 general election activities without properly attributing, reporting and disclosing.

I. DISCUSSION

The complaint focuses on several documents distributed in the area of the MSU campus during Montana's 2014 general election. The foundational facts necessary for this discussion are the following.

Finding of Fact No. 1: Franke Wilmer was the 2014 general election Democratic candidate for election to the Montana Senate from SD 32. Zach Brown was the 2014 general election Democratic candidate for election to the Montana Senate from HD 63. (COPP Records, Secretary of State (SOS) Website.)

Finding of Fact No. 2: The website for Montana State University listed College Democrats of Montana State University under campus “social/political organizations”. (MSU Website, COPP Records.)

Finding of Fact No. 3: The Complaint in this Matter was filed on April 29, 2015. (COPP Records.)

Finding of Fact No. 4: The Complaint included copies of campaign documents (card stock weight handbills and a campaign poster) prepared by the College Democrats during the 2014 general election. (COPP Records.)

Finding of Fact No. 5: On May 19, 2015 the College Democrats registered as a political committee with the COPP and filed campaign finance reports. (COPP Records.)

The Complaint alleges that several election-related documents (FOF No. 4) were distributed by the College Democrats at MSU (College Democrats) on the MSU campus during the 2014 general election. The response from the College Democrats does not deny that these documents were distributed.¹ On May 19, 2015 the College Democrats registered as a political committee (FOF No. 5) with the COPP and simultaneously filed campaign finance reports covering the time period of the 2014 general election.

Finding of Fact No. 6: The College Democrats campaign finance report for the time period of June 19, 2014 through October 18, 2014 was filed on May 19, 2015. The campaign finance report discloses 12 contributors with total contributions in the approximate amount of \$2,000. The campaign finance report discloses expenditures of \$869, including costs of \$127.75 for an October 1, 2014 Zach Brown flyer and \$56.00 for an October 17, 2014 Brown/Wilmer flyer. (COPP Records.)

¹ The response was made through a May 20, 2015 letter from Helena attorney Peter Michael Meloy.

Finding of Fact No. 7: The College Democrats campaign finance report for the time period of October 19, 2014 through November 19, 2014 was filed on May 19, 2015. The campaign finance report discloses receipts in the approximate amount of \$268.98, consisting of a cost reimbursement by Zach Brown. The campaign finance report discloses expenditures of \$1,521² including costs of \$317 for a campus newspaper ad in support of the candidacies of Zach Brown and Frankie Wilmer. (COPP Records.)

Under Montana law the College Democrats became a political committee when it made expenditures in support of or against a candidate in the 2014 elections. A political committee must “file the [C-2] certification ...within 5 days after it makes an expenditure” §13-37-201 MCA. The College Democrats disclose that such an expenditure occurred on October 1, 2014 (FOF No. 6). Without looking further, that October 1, 2014 expenditure required that the College Democrats file as a political committee with the COPP within five days of that expenditure, or no later than October 6, 2014 (§13-37-201 MCA).

Sufficiency Finding No. 1: The Commissioner determines that sufficient facts exist to show that the College Democrats failed to meet Montana campaign practice law and standards when it late filed (May 15, 2015 instead of October 6, 2014) as a political committee.

Any political committee, including the College Democrats political committee, was required to file reports “of contributions and expenditures made by or on behalf of a candidate” (§13-37-225(1) MCA). These campaign finance reports must be filed on certain schedules, including a date certain pre-election and

² The bulk of the College Democrats’ expenses were for volunteer support (pizza, food, balloons) and transportation to polling places.

post-election campaign finance report, as defined by §13-37-226 MCA.³ The College Democrats response, as does the Complaint, assumes that the expenditures involved are independent expenditures.⁴ That independent expenditure status does not change reporting responsibility as independent expenditures “shall be reported in accordance with the procedure for reporting other expenditures” ARM 44.10.531(4).

Sufficiency Finding No. 2: The Commissioner determines that sufficient facts exist to show that the College Democrats failed to timely report and disclose contributions and expenditures in that it did not timely file either the pre-election or post-election campaign finance report.

The Commissioner notes that the late filing by the College Democrats meant that Montanans were deprived of information as to funding and expenses of campaign materials until well after the date of the election. That said, the Commissioner appreciates the straightforward manner in which the College Democrats dealt with its error. The College Democrats did not dispute political committee status but filed as a political committee.⁵ Nor did the College Democrats dispute any nuance related to whether or not the language of the Brown/Wilmer handbills accompanying the Complaint were or were not

³ The College Democrats failed to timely file either the pre-election or post-election campaign finance report.

⁴ The Commissioner agrees with this assumption as applied to this Decision. Were coordination involved with Zach Brown (thereby converting some College Democrat expenses to contributions to the Zach Brown campaign), the \$268.98 reported by College Democrats (FOF No. 7) as “reimbursed” by Zach Brown to the College Democrats for expenditures related to his campaign brought the remaining expenditures (FOF No. 6) within the \$170 amount allowed by law. 44.10.338 ARM.

⁵ Under Montana law a political committee is “a combination of two or more individuals ...who makes a contribution or expenditure...to support ” a candidate. §13-1-101(22) MCA.

express advocacy.⁶ Instead, the College Democrats reported (albeit late reported) the amount spent on the handbills. While that does not and cannot release the College Democrats from paying a social debt (fine) for its error, it does factor toward mitigation of the fine amount.

The Complaint further asserts that the College Democrats did not properly attribute the campaign materials. Under Montana law, a political committee, including the College Democrats, was required to “attribute” campaign materials with “the name of the committee, the name of the committee treasurer, and the address of the committee.” §13-35-225(1)(b) MCA. The handbills and flyer accompanying the complaint⁷ each lacked at least one component of full attribution. One handbill lacked attribution completely.

Sufficiency Finding No. 3: The Commissioner determines that sufficient facts exist to show that the College Democrats failed to meet Montana campaign practice law and standards when it failed to properly attribute campaign materials.

Again, the Commissioner notes appreciation for the College Democrats straightforward acceptance of responsibility for error. While that does not and cannot release the College Democrats from paying a social debt (fine) for its error, it does factor toward mitigation of the fine amount.

The Complaint lists several campus specific concerns regarding the role of the advisor (Frankie Wilmer) to the College Democrats campus club, the use

⁶ For a full discussion of this issue please see *Dick v. RSLC*, COPP 2012-CFP-038 at pages 4-10.

⁷ The College Democrats accepted responsibility for financing these expenditures through its campaign finance reports.

of campaign materials within the boundaries of campus, and the relationship of a particular student (Justin Ailport) to a particular candidate (Zach Brown).⁸ Some of these concerns may be legitimate, but they are not within the scope of review by the COPP. College students are involved with many aspects of the “real world” while they also are prodded to experiment, adventure and grow through their academic and extracurricular experiences. When the academic or extracurricular experiences of a student cross into an area of rules imposed by the real world then the student or students must abide by the real world rules.

So it is with political campaign activity. The Commissioner applies the real world campaign rules to the students’ campaign activity through this sufficiency decision. But the student centered concerns including club advisors, leafleting on campus property, and club campus activity should be dealt with by the University itself. Through this Decision the Commissioner holds Campus Democrats responsible for violations of the Montana Campaign Practice Act but dismisses the complaints against the individuals named.

II. ENFORCEMENT OF SUFFICIENCY FINDINGS

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must act on, an alleged campaign practice violation as the law mandates

⁸ The Commissioner has addressed coordination as to Candidate Zach Brown at FN No. 4. The Commissioner considers the risk of coordination as to Candidate Frankie Wilmer, based solely on her status as advisor to a campus group, to be small so as to be subsumed under the University’s greater responsibility to analyze the appropriate role of an advisor to a campus group.

that the Commissioner (“shall investigate,” *See*, §13-37-111(2)(a) MCA) investigate any alleged violation of campaign practices law. The mandate to investigate is followed by a mandate to take further action if there is a finding of “sufficient evidence” of a violation. Upon such a sufficiency finding the Commissioner must (“shall notify,” *see* §13-37-124 MCA) 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, as set out in this Decision, to show that the College Democrats have, as a matter of law, violated Montana’s campaign practice laws, including but not limited to the statutes and regulations set out in this 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 decisions to act or to not act made by the College Democrats were choices. Excusable neglect cannot be applied to such choices. *See* discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009. Montana has determined that political discourse is more fairly advanced when election funding is kept fair and, through disclosure, the public is informed as to the identity of those who seek to influence elections. There

can be no excuse for instances of failing to attribute, report and disclose as are involved in this matter.

Likewise, the amounts of money are too significant to be excused as *de minimis*. See discussion of *de minimis* principles in *Matters of Vincent*, Nos. CPP-2013-CFP-006 and 009. With the above analysis in mind, this Matter is also not appropriate for application of the *de minimis* theory.

Because there is a finding of sufficient showing of violation and a determination that *de minimis* and excusable neglect theories are not applicable, civil adjudication and/or a civil fine is justified (see §13-37-124 MCA). This Commissioner hereby, through this Decision, issues a “sufficient evidence” Finding and Decision justifying civil prosecution under §13-37-124 MCA. This matter will now be submitted to (or “noticed to”)⁹ the Lewis and Clark County Attorney for his review for appropriate civil action (see §13-37-124(1) MCA). Should the County Attorney waive the right to adjudicate (§13-37-124(2) MCA) or fail to initiate civil action within 30 days (§13-37-124(1) MCA) this Matter returns to this Commissioner for settlement or possible adjudication.

Dated this 25th day of January, 2016.

Jonathan R. Motl
Commissioner of Political Practices
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⁹ Notification is to “the county attorney in which the alleged violation occurred.” §13-37-124(1) MCA. The failures to attribute and report occurred in Lewis and Clark County. This Commissioner chooses to Notice this matter to the county attorney in Lewis and Clark County.