

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Hawk v. Montana Trap Free No. COPP 2016-CFP-010	Dismissal of Complaint
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On April 25, 2016, Richard Hawk, a resident of Kalispell, Montana, filed a complaint against Montana Trap Free. The Complaint alleges that Montana Trap Free was improperly paying initiative petition signature gathers.

Foundational Findings of Fact

The following findings of fact are necessary before proceeding to discussion of this Matter:

Finding of Fact No. 1. Initiative 177 (I-177) was qualified for petition (signature gathering) purposes on August 20, 2015. (Montana Secretary of State (SOS) Website.)

Finding of Fact No. 2. I-177 is currently in the active signature gathering process with 10,895 petition signatures received and tallied by the Montana Secretary of State. (SOS Website.)

Finding of Fact No. 3. On October 22, 2015 a ballot committee in support of I-177 registered with the Office of the Commissioner of Political Practices. The ballot committee was, called “Montanans for Trap Free Public Lands – Safe Public Lands for All Users.” (COPP Website.)

Introduction

Montanans have a constitutional right to by-pass representative government (the Legislature) and enact laws by a direct vote of citizens through the initiative process.¹ The Legislature, along with the COPP, has established certain procedures, steps and safeguards defining the process, integrity and fairness of this “direct democracy” form of lawmaking.²

I-177 is an attempt by a group of Montana citizens to place a change of law - prohibiting trapping of certain animals on public lands- for enactment by Montana voters in the November 2016 elections. As directed by law, those Montana citizens have formed special form of political committee, called a ballot committee, to advance their ballot issue efforts. (§13-1-101(7), MCA). That Ballot Committee is called “Montanans for Trap Free Public Lands – Safe Public Lands for All Users” and it is properly registered with the COPP.³ The Commissioner determines that the “Montana Trap Free” entity named in the Complaint means the Ballot Committee formed in support of I-177.

The Decision will necessarily use words that have technical meaning under Title 13 of the Montana Code. Those words include “initiative,” “petition,” and “signature gatherers.” Under Montana law an “initiative” is synonymous with

¹ Mont. Const. Art. III, §4.

² See MCA §§ 13-27-101 through 504 and Administrative Rules of the COPP.

³ COPP Homepage, Political Committee search portals.

“ballot issue” (§13-1-101(6)(a), MCA); both terms meaning that a Montanan or group of Montanans (in this Matter, the Ballot Committee) has prepared a formal proposal of law that they wish to present to voters for approval.⁴ The formal ballot issue proposal (in this Matter I-177), however, is placed on the ballot only after obtaining a specific percentage (or more) of signature support from registered Montana voters.⁵ The signature support must be made in the form of signatures on a petition in support of the ballot issue. Those signatures are examined for authenticity by County and State election officials and approved, if judged to be authentic.⁶

Signature gatherers are individuals who carry the ballot issue petition and ask registered voters for their signatures.⁷ For decades signature gatherers on Montana initiatives were volunteers - Montanans who gathered signatures because they supported the proposal advanced by the ballot issue. That began to change in the late 1990s with the regular emergence of paid signature gatherers in Montana ballot issue campaigns. In 1999 the Montana legislature defined “signature gatherer” and required the reporting of amounts compensated to a “paid signature gatherer.” (§13-27-112, MCA).

The 1999 Legislature, however, could not have anticipated the paid signature gathering firestorm that faced Montanans in the 2006 elections. A

⁴ The process of preparation and approval of ballot issue language is set out at §§13-27-201 through 205, MCA, along with §13-27-312, MCA.

⁵ I-177, as a ballot issue proposing a change in statutes, will need 24,175 supporting signatures, with those signatures including at least 5% of registered voters in at least 34 of Montana’s 100 legislative districts. SOS Website.

⁶ The process of examination and approval of initiative petition signatures is set out at §§13-27-301 through 308, MCA.

⁷ Ballot issue signature gatherers are commonly seen around Montana at public events in the spring of even numbered years.

ballot proponent group (Montanans in Action or MIA), funded with hundreds of thousands of dollars from “out of state national organizations”, organized to place three ballot issues (CI-97, CI-98 and I-154) on the November 2006 ballot.⁸ MIA gathered enough signatures on initiative petitions to place the two constitutional and one statutory initiatives on the ballot, but all three were stricken by the Montana Supreme Court based on fraudulent practices engaged in by the MIA signature gatherers. *Montanans for Justice v. State of Montana*, 2006 MT 277, 334 Mont. 237, 146 P. 3d 759.

The Supreme Court noted that MIA “hired and paid up to 43 out-of-state signature gatherers...paid on a per-signature basis.” *Id.*, at ¶50. The Supreme Court further noted that the petitioners: improperly executed certification affidavits (*Id.*, at ¶59); used false or fictitious addresses so as to “leave no trail” (*Id.*, at ¶62); and used “bait and switch” tactics to gain signatures on several initiative petitions (*Id.*, at ¶76). The Supreme Court noted that three MIA petitioners, paid on a per-signature basis, received \$84,103.30, \$70,170.94 and \$69,214.78, respectively for their signature gathering efforts. (*Id.*, at ¶50.) All of these activities were found to be a “pervasive and general practice of fraud” such that the signatures gathered by the petitioners were invalidated (*Id.* at ¶80).

The 2007 Montana legislature responded to the MIA fraudulent actions by passing a law prohibiting payment of a signature gatherer “based on the number of signatures gathered.” §13-27-102(2)(b), MCA. This is the section of

⁸ A good discussion of this effort is set out in the COPP Decision: *Motl v. Montanans in Action*, June 26, 2009 (Commissioner Unsworth).

law that the Complaint asserts was violated by the Ballot Committee.⁹

Discussion

The background of Ballot Committee contributions and use of paid signature gatherers is as follows:

Finding of Fact No. 4. The Ballot Committee has taken in less than \$30,000. The funding has come from contributions by individuals with the majority of funders listing Montana addresses. (COPP campaign finance reports.)

Finding of Fact No. 5. The Ballot Committee has primarily used its funds to hire signature gatherers to place I-177 on the ballot. (COPP campaign finance reports.)

Finding of Fact No. 6. The leaders of the Ballot Committee (such as Connie Poten) are Montana residents and business owners. (COPP campaign finance reports.)

Finding of Fact No. 7. The signature gatherers report to leaders of the Ballot Committee. (COPP campaign finance reports; Poten Communication.)

The Commissioner determines that the Ballot Committee is a group of Montanans engaged in a Montana civic activity. There is no element of a national campaign with outside direction and funding coming into play as there was in the MIA situation discussed above.

1. Ballot Committee Signature Gatherers Are Paid, But Not Per-Signature

This Decision determines that Ballot Committee signature gatherers were paid for their work. (FOF No. 5.) The Complaint claims that the Ballot Committee paid per signature through a payment plan that promised "\$10 per

⁹ Section 13-27-113, MCA provides enforcement authority to the COPP.

hour with raises for outstanding production”.¹⁰ Further, the Ballot Committee payment plan expected that “a signature gatherer collect an average of 15 plus valid signatures per hour from MT registered voters.”¹¹

Neither the COPP nor Courts have yet interpreted the statutory prohibition of payment of ballot issue signature gathering “based on the number of signatures gathered.” §13-27-102(3), MCA. Accordingly, the Commissioner hereby determines that the Ballot Committee’s payment plan, as described in this Decision, is not a payment per-signature plan.

By way of explanation, the Ballot Committee payment plan lacks the “per signature” incentives that compelled aggressive signature gathering, including the bait and switch tactics, employed by MIA petitioners seeking signatures on all three 2006 initiatives.¹² If anything, the job expectation indicates satisfaction with a modest effort of 15 signatures per hour. Likewise an unspecified bonus as a reward for work well done, paid at the discretion of the employer, is not a payment per signature. Further, the Commissioner notes that the Ballot Committee is sponsoring a single initiative thereby removing the possibility for bait and switch by a petitioner carrying more than one initiative petition. For these reasons, the Commissioner determines that there is no “per signature” payment to petitioners engaged by the Ballot Committee and the

¹⁰ See information submitted with Complaint.

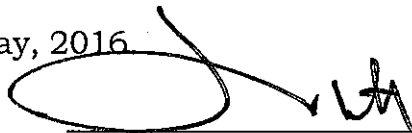
¹¹ The Ballot Committee, in response, agreed that it is paying people to gather initiative signatures. The Ballot Committee stated that: “We are not paying per signature [however] we do expect production for pay.” Email from Connie Poten, May 5, 2016.

¹² As stated in the Introduction, above, the MIA petitioners were paid per signature with one petitioner receiving over \$84,000 for his signature gathering efforts. This was made possible because petitioners were carrying three petitions at once but only presenting one and telling signers that multiple signatures were required (the bait and switch).

Complaint is dismissed as lacking in merit.

Paid professional signature gathering is likely here to stay in Montana ballot issue campaigns. This Decision determines that payment to signature gatherers can be based on minimum work expectations, with a discretionary bonus untied to a specific number of signatures gathered. Such a payment plan, untied to a per-signature payment, rewards performance without triggering the mercenary signature gathering conduct demonstrated by the MIA signature gatherers.

DATED this 31st day of May, 2016



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