

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

LaBreche v. Gianforte No. COPP 2015-CFP-010	Summary of Facts and Finding of Insufficient Evidence to Show a Violation of Montana's Campaign Practices Act DISMISSAL OF COMPLAINT
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On August 26, 2015, Richard LaBreche, a resident of Butte, MT filed a complaint against Greg Gianforte, a 2016 candidate for Governor of Montana. Mr. LaBreche alleged in his complaint that Mr. Gianforte violated campaign practice laws.

SUBSTANTIVE ISSUES ADDRESSED

The substantive area of campaign finance law addressed by this decision is that of the first date an individual becomes a candidate for public office for campaign finance and reporting purposes to the COPP.

SUMMARY OF RELEVANT FACTS:

The facts necessary for a determination in this matter¹ are as follows:

¹ The Commissioner is moving to decide this Complaint at the earliest opportunity because it raises a campaign practice concern relating to a 2016 election. The COPP intends to resolve 2016 campaign practice complaints in "real time" (that is during the time of the election) and as soon as possible after filing.

Finding of Fact No. 1: On August 17, 2015, Greg Gianforte submitted a C-1 Statement of Candidate form to the Commissioner of Political Practices office (COPP). Mr. Gianforte listed himself as a Republican candidate for Governor of Montana in the 2016 Montana primary and general elections. (Commissioner's records).

Finding of Fact No. 2: The earliest date a candidate for 2016 election to a Montana public office can file a declaration of candidacy at the Montana Secretary of State is January 14, 2016. (Secretary of State (SOS) Website).

Finding of Fact No. 3: The LaBreche complaint was accepted for filing by the COPP on August 26, 2015 and Mr. Gianforte was sent an email that same day with a copy of the complaint and a letter from the Commissioner requesting his response to the complaint by September 18, 2015. (Commissioner's records).

Finding of Fact No. 4: On September 4, 2015 Mr. Gianforte contacted the Commissioner of Political Practices Office and initiated a meeting to respond to the complaint in-person. A meeting date was set for September, 11, 2015. (Commissioner's records).

Finding of Fact No. 5: On September 11, 2015, Mr. Gianforte met with Jonathan Motl at the COPP office. Also in attendance were Mr. Gianforte's attorney (Anita Milanovich), campaign spokeswoman (Amy Lunde) and the Commissioner's investigator, (Vanessa Sanddal). The following information was provided by Mr. Gianforte:

- a. Mr. Gianforte stated that he filed his Statement of Candidacy with the COPP (FOF No. 1) within 5 days of declaring his candidacy for Governor of the State of Montana.
- b. Mr. Gianforte stated that he did not directly or through an agent solicit or accept campaign contributions prior to August 17, 2015. (Investigator's notes).

DISCUSSION

Candidate Gianforte is required (as are all other 2016 candidates for Montana public office) to file a declaration of candidacy for public office with the Montana Secretary of State within a 60 day time period defined by Montana law. (§13-10-201(7) MCA) The first such 2016 election filing day with the Montana Secretary of State is January 14, 2016. (FOF No. 2). Because the first filing date with the Montana Secretary of State is a fixed date, the Complaint against Mr. Gianforte does not and cannot concern the timing of the filing of the candidate declaration by Mr. Gianforte with the Montana Secretary of State's office.

Candidate Gianforte is also required , as are all other 2016 candidates for Montana public office, to file (or register) as a candidate with the COPP. This registration with the COPP is not set at a definite date but is instead triggered by certain actions of the individual that demonstrate he or she to be a candidate for public office. In general, under Montana law an individual becomes a candidate for public office for COPP reporting and disclosure purposes when he or she declares a candidacy (thereby triggering expenses) or when he or she solicits or accepts campaign contributions. Specifically, Montana law requires an individual to file or register as a candidate with the COPP (that is file a form C-1) within 5 days of the first date that the individual solicits or accepts contributions to, or makes expenditures for, his or her campaign. §13-37-202 read with §13-1-101(6)(b) MCA.

Mr. Gianforte filed as a candidate with the COPP on August 17, 2015 (FOF

No. 1). The complaint in this Matter alleges that Mr. Gianforte acted as a candidate for an extended time period before August 17, 2015 such that he failed to timely meet his COPP candidate registration date. The issue thus presented is whether a candidacy can be created, for campaign practice purposes, by inference from candidate-like actions.

The complaint points to candidate like actions occurring as early as March of 2015, when Mr. Gianforte spent funds on a website (GregforMontana), hired a staffer (Amy Lunde) with extensive campaign experience and launched a statewide speaking tour. Mr. Gianforte agrees he engaged in the actions alleged by the complaint but says that those actions did not require filing as a candidate with the COPP because he never crossed the line into candidacy by announcement of candidacy or by solicitation of campaign funds.

This Commissioner agrees with Mr. Gianforte's analysis. Until Mr. Gianforte says he is a candidate he is spending money as an individual and not as a candidate.² This means Mr. Gianforte has not "made expenditures ...to secure nomination or election..." under §13-1-101(6) MCA. Likewise, there is no evidence showing that Mr. Gianforte solicited or accepted contributions prior to August 17, 2015. Instead, the evidence shows that Mr. Gianforte stated his candidacy and then promptly and timely filed with the COPP (FOF No. 5).

For future reference, this Decision determines that a candidacy requiring

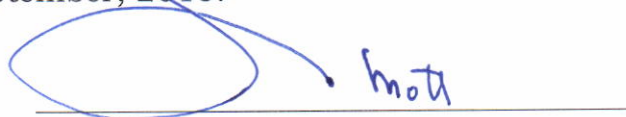
² The website address and the hiring of Amy Lunde were not by themselves an announcement of candidacy. The costs of the website and of Ms. Lunde's employment become campaign expenses once Candidate Gianforte filed his statement of candidacy with the COPP with the costs beginning no earlier than 5 days before the date of filing.

COPP registration or filing cannot be created by inference. Montana law (13-1-101(6) MCA) requires that an individual take an objective step into candidacy [“solicited or received and retained contributions” or “made expenditures”] and this leaves room for flirting with candidacy before taking a definite step into becoming a candidate. An individual is free to explore a candidacy, as Mr. Gianforte did here, and his or her intentions cannot be supposed by a third party.³

OVERALL DECISION

This Commissioner, having duly considered the matters raised in the Complaint, and having completed his review and investigation, hereby holds and determines, under the above stated reasoning, that there is insufficient evidence, to justify a civil adjudication against Candidate Gianforte. The Commissioner hereby dismisses this complaint in full.

DATED this 14th day of September, 2015.



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³ The Commissioner realizes that this inferred vs. actual candidacy issue has been debated for several campaign cycles. With this uncertainty in mind, this complaint is not frivolous but instead has value because it allowed the resolution of this issue for this campaign and for future campaigns.