

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

DUSTIN SCOTT v. MARY CAFERRO (Montana House District 81 candidate)	COPP-2024-CFP-038 FINDING OF FACTS SUFFICIENT TO SUPPORT VIOLATIONS
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COMPLAINT

On September 23, 2024, Dustin Scott of Helena, MT filed a Campaign Finance and Practices (CFP) complaint against Montana House District 81 candidate and current HD 82 Representative, Mary Caferro. The complaint alleges that Rep. Caferro failed to timely file a C-5 campaign finance report on or before September 20, 2024, as required.

The complaint conforms to the requirements of Admin. R. Mont. 44.11.106 and alleged violation of statutes which fall under my jurisdiction as Commissioner of Political Practices. Therefore, I accepted it as filed, and in accordance with COPP procedures, requested a response from Rep. Caferro. Rep. Caferro timely filed a response with COPP on September 26, 2024. The complaint and response are posted on COPP’s website, www.politicalpractices.mt.gov

BACKGROUND

Mary Caferro, current representative for Montana House District 82, filed a C-1 Statement of Candidate as a candidate for election to the position of representative for Montana House District 81, on October 5, 2023. Rep. Caferro filed her initial C-5 campaign finance report for the fourth quarter of 2023 on January 23, 2024, 18 days following the January 5, 2024, due date; timely filed C-5 campaign finance reports on March 19, April 20 and May 14, 2024; and late filed reports on June 22 (due June 20), August 21 (due August 20), and September 26, 2024 (due September 20).

The September 20, 2024, C-5 report specifically referred to in this complaint, in addition to being late filed by 6 days on September 26, was originally submitted

showing no financial activity. This report was subsequently amended on October 7, 2024, to show \$950 in contributions and \$846.52 in expenditures.

DISCUSSION

MCA § § 13-37-226 and 228 require candidates to file campaign finance reports with COPP and mandate a specific reporting schedule. Candidates are required to file campaign finance reports quarterly, prior to the election year, and on “the 20th day of March, April, May, June, August, September, October, and November in the year of an election in which the candidate participates.” MCA § 13-37-226(1). In *Bradshaw v. Bahr*, the Commissioner found that “*any* failure to meet a mandatory, date-certain filing date is a violation of § 13-37-226 MCA.” COPP-2018-CFP-008, *emphasis added*.

Here, as a candidate that registered with COPP in October 2023, Rep. Caferro was required to file a report for the final quarter of 2023 on January 5, 2024, and begin filing monthly reports on March 20, 2024. Rep. Caferro late-filed four reports, the initial report due January 5, and consecutive monthly reports due June 20, August 20, and September 20, 2024. It is noteworthy that Rep. Caferro did not file the report at issue here, due September 20, 2024, until she received notice of the above-named complaint, ultimately filing it 6 days late.

Additionally, when Rep. Caferro did finally file the September 20 report, as originally submitted it did not show any contribution or expenditure activity occurring during the reporting period. This report was later amended on October 7, 2024, to disclose \$950 in contributions and \$846.52 in expenditures.

MCA § 13-37-231 requires that reports be certified to be true, complete, and correct. COPP grants candidates and committees a great deal of leniency to amend reports because this provides the greatest degree of transparency to Montana voters. However, filing a report in response to a complaint in a manner where relevant contribution and expenditure information is not disclosed, as was done by Rep. Caferro regarding the report due September 20, 2024, is unacceptable.

In her September 26, 2024, response to this complaint, Rep. Caferro states “the required C5 financial reports have now been filed. The C5 reports are within the legal timeframe of three days following receipt of the second notice.” (Response.) Rep. Caferro seems to conclude that, because she had filed the report within 3 days of receiving an email notice from COPP notifying her that the September 20 report was outstanding, she has satisfied the timely filing obligations of MCA §§ 13-37-226(1) and 228. This is an incorrect interpretation.

It is the practice of COPP compliance officers to send e-mail reminders that an upcoming report is due. Candidates are then sent an additional reminder if they do not timely file, and then a second reminder if they remain delinquent. If the candidate has received a second notice, as Rep. Caferro references here, they are not being provided additional time in which to file but are being notified that COPP is considering legal action, specifically including issuing an Order of Noncompliance if the required report remains outstanding. MCA § 13-37-121. These notices are provided to candidates as a courtesy and do not serve to provide additional time in which to file statutorily mandated reports. Nor do these notices preclude COPP from acting on a filed complaint, as occurred here.

After a complaint is filed with the commissioner pursuant to 13-37-111, the procedure described in this section regarding the provision of notice and issuance of orders of noncompliance is not a prerequisite to initiation of any other administrative or judicial action authorized under chapter 35 of this title or this chapter. MCA § 13-31-121(5).

Although, in accordance with MCA § 13-37-121(1), the Commissioner must notify a candidate they are out of compliance before issuing an Order of Noncompliance, there is no statutory requirement that COPP allow any specific amount of time in which to bring the campaign into compliance before issuing such an order. *Id.* Furthermore, the three-day notice COPP provides does not extend the due date for the report mandated by MCA § 13-37-226, nor, as stated above, does it preclude COPP from investigating a complaint and initiating other legal remedies. MCA § 13-37-121(1), (5).

ENFORCEMENT

MCA § 13-37-124(1) requires that I refer a matter to the appropriate county attorney when I find sufficient evidence “to justify a civil or criminal prosecution.” The county attorney may then choose to prosecute the matter or refer it back to me for appropriate civil or criminal action. *Id.* While I do not have discretion to pursue a civil action without first referring the matter to the affected county attorney, I do have discretion to determine if enforcement action and therefore referral to the county attorney is justified. *Montana Freedom Caucus v. Rep. Zephyr*, COPP-2023-CFP-010, 23, *Doty v Montana Commissioner of Political Practices*, 2007 MT 341, 340 Mont. 276, 173 P.3d 700. “The determination of whether a prosecution is justified must take into account the law and the particular factual circumstances of each case, and the prosecutor can decide not to prosecute when they in good faith believe that a prosecution is not in the best interest of the state.” *Zephyr*, COPP-2023-CFP-010, at 26.

Recently, in *MTGOP v. Mullen*, COPP-2024-CFP-030, *MTGOP v. Alke*, COPP-2023-COPP-018, and *O’Neill v. Wilson*, COPP-2024-CFP-022, I discussed in detail the objective factors I apply in determining when prosecution is justified. These primarily consist of proximity to the election, a campaign’s pattern of behavior, the size of contributions or expenditures which have gone unreported, and finally, responsiveness of the campaign. The above factors are listed in order of relevance, with proximity to the election being the most determinative factor.

Applying the above factors to Rep. Caferro, I find prosecution to be justified. While these matters seem to have been resolved in advance of the election, and none of the contributions or expenditures are particularly large, Rep. Caferro’s campaign shows a significant pattern of non-compliance and a lack of responsiveness. Rep. Caferro only filed the September 20, 2024, C-5 after being notified of this complaint, despite having received notification from COPP which she acknowledges in her response to this complaint. Additional evidence shows that while Rep. Caferro quickly filed the required report upon receipt of this complaint, she waited an additional 11 days to disclose financial transactions that occurred

during the reporting period, ultimately making no effort to ensure this filing was truthful or accurate.

Recently, I found violations by a candidate whose reports were filed later than those of Rep. Caferro, were not justified for prosecution. *Kronebusch v. Coombs*, COPP-2024-CFP-014. Mr. Coombs' situation is distinguished from that of Rep. Caferro because Mr. Coombs filed his report before a complaint was received and the candidate showed a significant effort to comply with statute and with COPP requests. The opposite is true here. Consequently, prosecution of this matter is justified.

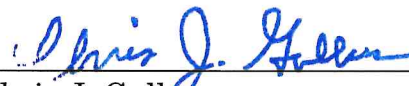
CONCLUSION

The above-named complaint has been considered as described above and sufficient evidence exists to determine the following:

- Rep. Caferro violated MCA § 13-37-226 by failing to timely report C-5 campaign finance reports due on January, 5, 2023, June 20, August 20, and September 20, 2024.

Having determined that prosecution is justified, this matter will now be referred to the Lewis and Clark County Attorney in accordance with the provisions of MCA § 13-37-124. The Lewis and Clark County Attorney's office is free to conduct their own investigation under MCA § 13-37-125, request additional material from COPP, or refer the matter back to this office for potential prosecution. Most matters are returned to COPP and are concluded with a negotiated settlement where mitigating factors are considered, and a civil penalty is determined pursuant to MCA § 13-37-128. If a negotiated settlement is unsuccessful, the Commissioner will pursue the matter in Lewis and Clark County District Court.

Dated this 10th day of October, 2024,



Chris J. Gallus
Commissioner of Political Practices
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