

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

BILL BRONSON v. FREE TO LEARN ACTION	COPP-2023-CFP-006 FINDING OF FACTS SUFFICIENT TO SUPPORT VIOLATIONS DISMISSAL STATUTE OF LIMITATIONS and COMMISSIONERS DISCRETION
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COMPLAINT

On May 3, 2023, Bill Bronson of Great Falls, MT, filed a campaign practices complaint against Free to Learn Action. The complaint alleged Free to Learn Action distributed election communications and failed to include the required ‘paid for by’ attribution message. Mr. Bronson further states that Free to Learn listed the political affiliation of each candidate despite the non-partisan nature of the School Board election.

The complaint met the initial requirements of Admin. R. Mont. (ARM) 44.11.106, the administrative rule governing complaints, and alleged violations which fall under my jurisdiction as Commissioner of Political Practices. Therefore, I accepted it for further consideration.

BACKGROUND

The complainant, a candidate for the school board, presented a screenshot of a text message which identified the five school board candidates in an upcoming Great Falls School Board election. The text message contained “Candidate Highlights” and identified four of the five candidates by their political party. No attribution messaging was included.

Mr. Bronson “traced the number the text messages originated from to Free to Learn Action, a Virginia based 501(c)(4).” COPP was unable to verify Mr. Bronson’s information because the attached phone number was not in service when COPP began its investigation. At the time of this decision, a Virginia

Secretary of State business entity search for Free to Learn leads to the Concord Fund, a nonstock corporation.

COPP's investigator was of course unable to reach the likely respondent via the now inactive phone number attached to the text message so a response was requested from Free to Learn Action via the contact information on their website and Facebook messenger. COPP also sent a certified letter to Free to Learns' parent company "the Concord Fund" via their principle business address registered with Virginia's State Corporation Commission. No reply was received from either Free to Learn Action or The Concord Fund.

COPP makes every effort to provide a timely and well-reasoned decision in each matter before the Commissioner. Unfortunately, here, the statute of limitations is now expired and if I were to determine sufficient evidence of violations exists, I would be unable to pursue enforcement. MCA § 13-37-130. Statute of limitations notwithstanding, I would nevertheless use my discretion as Commissioner to determine pursuit of this matter is impracticable and a misuse of limited tax-payer resources. See Commissioner's Letter, Re: *In the Matter of the Complaints Against Robert T. Fanning*, June 6, 2017. Therefore, this matter would also be dismissed based on the following discussion.

DISCUSSION

Administrative rule requirements

44.11.106(2) provides the minimum requirements for filing a campaign practices complaint:

[A] complaint shall: (a) be typewritten or legibly handwritten in ink; and (b) contain the following information: (i) the complete name and mailing address of the complainant; (ii) the complete name and mailing address of the alleged violator, if known or readily discoverable; (iii) a detailed description of the alleged violation, including citation to each statute and/or rule that is alleged to have been violated; (iv) any evidentiary material; and (c) be signed and verified by the oath of affirmation of the complainant, taken before any officer authorized to administer oaths.

Here, the complainant cites MCA § 13-35-225 as a statute that was potentially violated. However, the “alleged violator” was not known and although the complainant identified a potential party, COPP was unable to definitively verify that information. Regarding the inclusion of political party affiliation on election materials, the complainant did not cite a specific statute or rule alleged to have been violated. It would be within my authority and COPP practices to dismiss this complaint on this basis. However, strict adherence to ARM 44.11.106 disadvantages citizens lacking resources or legal training and COPP often accepts complaints that regardless of some deficiencies appear to have merit. *Hogan v. Knudsen and Olson*, COPP-2024-CFP-017 and 018, *Cabrera v. Karjala*, COPP-2024-CFP-020, 1. That is the circumstance here.

Inclusion of partisan affiliation in a non-partisan race.

The statute potentially violated by including partisan affiliation is MCA § 13-10-602 which prohibits a candidate from using “the name of any existing political party or organization in the candidacy in a manner that indicates or implies that the individual is a candidate of that party or organization.”¹ This statute is specific to the use of political party affiliation by a *candidate*. Here, the material at issue was produced by a third party rather than any candidate.

Additionally, providing information that a candidate is registered as a Democrat or Republican, as is the case here, does not imply that the candidate is running under party affiliation. Therefore, with the evidence presented, I cannot find any violation of MCA § 13-10-602. See *In re: McKee*, COPP-September 19, 1996.

¹ Although I have briefly analyzed this issue, it is important to note that chapter 10 of MCA Title 13 does not fall under my authority as Commissioner. Election law issues that do not fall under MCA Title 13 chapters 35 and 37 are generally addressed to Montana’s Secretary of States Office.

Attribution

Montana election law requires all “election communications, electioneering communications, and independent expenditures to clearly and conspicuously include the attribution “paid for by. . .” MCA § 13-35-225.

The text message at issue is not an election communication or an independent expenditure because it does not support or oppose any particular candidate. MCA §§ 13-1-101(15) and (27). An “Electioneering Communication” means “a paid communication that is publicly distributed by radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other distribution of printed materials. . . that does not support or oppose a candidate. . .” MCA § 13-1-101(19). The text message at issue does not straightforwardly fall into the definition of electioneering communication provided by the Montana legislature. Without further research COPP cannot conclude definitively that a text message that neither supports or opposes a candidate meets the definition of an electioneering communication. However, as any violation found here would be unenforceable, there is no need to reach such a determination.

Enforcement of attribution violations

When COPP receives a complaint alleging failure to include the required “paid for by” attribution on election material, Montana election law provides an expedited process which facilitates bringing unattributed material into compliance through notification and the opportunity to correct the violation. MCA § 13-35-225(6). While the expedited statutory process almost always has the desired effect of bringing election materials into compliance, when a complaint is received following an election, the expedited process becomes impracticable. Nevertheless, the violation remains.

Previous commissioners have occasionally concluded that pursuit of such violations when received following an election do not warrant enforcement due to the cost to taxpayers. *Nelon v. Miller*, COPP-2022-CFP-013. While I may not always reach the same conclusion, in the present instance not only has the election now passed, it has not been determined that the communication at

issue requires attribution, and COPP has not successfully identified and contacted the respondent.

Although lack of a response rarely results in a dismissal, here I am unable to determine a violation of MCA § 13-35-225 exists. To reach a sufficiency finding and subsequently enforce that finding, would require additional investigation and use of resources with little return for Montana voters.

Further investigation and enforcement of this matter, after voters have already cast their ballots, would constitute waste of taxpayer resources. Therefore, I determine that pursuit of this matter is not justified.

SUMMARY

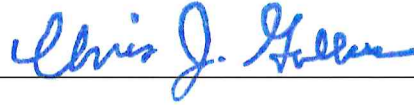
The Commissioner hereby exercises his discretion and determines that expending taxpayer resources to investigate and enforce this matter is not in the best interest of Montana voters. See Commissioner's letter, *In re: Fanning*, June 6, 2017.

While COPP is unable to pursue this matter at this time, in considering enforcement of all violations, we consider responsiveness of the respondent and their pattern of compliance when determining if prosecution is justified. Going forward, if Free to Learn or the Concord Fund is involved in political activity in Montana, this decision may be revisited in determining if any futures violations are deemed justified for prosecution.

CONCLUSION

This complaint has been considered as described above and is hereby dismissed in full.

DATED this 1st day of August, 2025.



Chris J. Gallus
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