

**BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)**

<b>MING CABRERA (@Ming for Congress)</b>	<b>COPP-2024-CFP-020</b>
<b>v.</b>	<b>DISMISSAL</b>
<b>JESSICA KARJALA/FOOTLOOSE MONTANA</b>	

**COMPLAINT**

On May 20, 2024, Ming Cabrera, a Democratic candidate for election to the United States House of Representatives, District 2, who participated in Montana’s June 4, 2024, primary election, filed a Campaign Finance and Practices (CFP) Complaint against Jessica Karjala, an employee of Footloose Montana, a charitable organization based in Missoula, MT. The complaint alleges that Mrs. Karjala, using a social media account belonging to Footloose Montana, threatened individuals who intended to vote for candidate Cabrera, and that she made untrue and defamatory statements about the Ming for Congress campaign.

Administrative Rule of Montana (ARM) 44.11.106 sets out specific requirements for the filing of complaints which includes “a detailed description of the alleged violation, including citation to each statute and/or rule that is alleged to have been violated.” Complaints must be notarized, include reference to law within the commissioner’s authority and show facts. *Id.* The requirement that a complaint actually cite numerically and correctly to particular statutes has not been strictly enforced by myself or previous commissioners, because doing so limits access to justice by everyday citizens lacking resources or legal training. Commissioners “regularly proceed with complaints that adequately describe violations of law, even when the complainant does not provide specific citation.” *Hogan v. Olson/Knudsen*, COPP-2024-CFP-017, at 14.

Here, the complainant does not cite to specific statutes but vaguely asserts

“that Montana Annotated Code Title 13, chapters 35-37 was violated.”<sup>1</sup> The submitted complaint otherwise conforms to the requirements of Admin. R. Mont. 44.11.106 and alleges potential violations which fall under my authority as Commissioner of Political Practices. Therefore, I accepted it as filed, and in accordance with COPP procedures requested a response from Ms. Karjala. Ms. Karjala timely filed a response via email, on June 3, 2024. The complaint and response are posted on COPP’s website, [politicalpractices.gov](http://politicalpractices.gov).

## BACKGROUND

As documented in the submitted complaint and affirmed in the response provided by Ms. Karjala, COPP can determine the following occurred:

- Jessica Karjala, using what appears to be a personal Facebook account, messaged David Graves to “encourage” they vote for Democratic candidates Steve Held or Kevin Hamm rather than Ming Cabrera, due to alleged previous conduct or statements from candidate Cabrera.
- Mr. Graves responded to this message with a picture of a partially completed primary election ballot, showing a vote for candidate Cabrera.
- Ms. Karjala completes the interaction by sending messages stating “Good to know. If I had known I would not have supported your legislative race”, “And thank you for going on the record.” and “I will keep this conversation handy for when it’s needed.”

The complaint additionally alleges:

- Ms. Karjala endorsed candidates without “consent or knowledge” of Footloose Montana;
- Ms. Karjala, via Facebook Messenger posts, accused Mr. Cabrera of using profane language when referring to herself and another individual;
- Ms. Karjala accused Mr. Cabrera of “attack[ing] with defamatory statements” another individual because they were chosen to serve as convention delegates and Mr. Cabrera was not;
- Ms. Karjala returned a call from Mr. Cabrera’s social media coordinator “and told him he needed to leave this campaign or she would make his life miserable for the rest of his life.”

---

<sup>1</sup> The complainant’s statement “chapters 35-37 was violated” may be read to include Title 13, chapter 36. Only Title 13, chapters 35 and 37 are under COPP jurisdiction. Consequently, no potential violations of chapter 36 have been considered.

As evidence of the above-described conduct, Mr. Cabrera provided screenshots of a Messenger conversation between Ms. Karjala and an unknown individual regarding that individual's vote for Cabrera in the primary election. (Complaint,3.) Mr. Cabrera has provided no evidence in support of the second set of allegations outlined above.

In Ms. Karjala's response, she asserts David Graves and the Ming for Congress campaign have violated Montana Code Annotated (MCA) § 45-8-213, Privacy in Communications, by sharing Mr. Karjala's private communications without her permission. (Response, 2.)

### DISCUSSION

As an initial point of discussion, the above-described Facebook Messenger interaction, which serves as the primary if not sole point of evidence submitted by the Ming for Congress campaign, was conducted by private individual Jessica Karjala, using what appears to be a personal Facebook account. In responding to this complaint, Ms. Karjala argues that these messages were sent from her "personal, private messaging application." (Response, 2.) As the referenced communications were sent by Ms. Karjala, in a personal capacity, from a personal account, this complaint is immediately dismissed in its entirety as it applies to Footloose Montana.

Second, as stated above, in her response Ms. Karjala's claims that David Graves and the Ming for Congress campaign have violated Montana Code Annotated (MCA) § 45-8-213, Privacy in Communications, by providing COPP with screenshots of her Messenger messages. (Response, 2.) COPP has no jurisdiction over Title 45 of the Montana code and therefore is not the proper authority to consider or adjudicate such concerns. Ms. Karjala additionally asserts Mr. Cabrera committed defamation as defined by Title 27, chapter 1, part 8, which is also outside of COPP's jurisdiction. If Ms. Karjala wishes COPP to consider potential violations of Montana election law by Mr. Cabrera, she would need to file a separate complaint as provided in ARM 44.11.106. Accordingly, no potential violations of Montana law by Mr. Cabrera are considered here.

Finally, COPP regulation of political speech based solely on content would be an obvious violation of the First Amendment protections provided by the United States Constitution. Similar to any executive branch agency, COPP does not decide constitutional issues, but we do recognize court decisions, so the law is applied in a constitutional way. *MRP v. Mullen*, COPP-2024-CFP-030, 4. In this regard, in *Whitney v. California*, Justice Brandeis writes, “If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the process of education, *the remedy to be applied is more speech, not enforced silence.*” 274 U.S. 357, 377 (1926) (overruled on different grounds) (emphasis added). See also Supreme Court Justice Anthony Kennedy’s plurality opinion in *United States v. Alvarez*, writing “the remedy for speech that is false is speech that is true.” 567 U.S. 709, 727 (2012). COPP agrees with Justices Brandeis and Kennedy - the remedy to speech an individual perceives as untrue is speech of their own, not an appeal to a government agency to silence the ‘offending’ speech, or to otherwise punish the other speaker for the content of their speech.

### **Statutes potentially violated by Ms. Karjala.**

The complainant lists as statutes that may have been violated “Montana Code Annotated, Title 13, chapters 35-37.”<sup>2</sup> Chapter 37 of the Montana Code addresses only campaign finance disclosure laws which are not implicated here. As to chapter 35, the following potential violations are considered.

#### *Defamation*

Each party, the Cabrera for Congress campaign in the original complaint, and respondent Karjala in the written response provided to COPP, accuse the other of making defamatory and/or libelous statements. As stated above, this is not the proper forum to consider defamation claims against Mr. Cabrera. Likewise, there is currently no defamation law that COPP may consider as applied to Ms. Karjala.

Montana law previously contained a provision addressing political civil libel in MCA § 13-37-131, which held that “it is unlawful for a person to misrepresent...any other matter that is

---

<sup>2</sup> Chapters 35-37 may be construed to include Title 13 chapter 36. COPP has no jurisdiction over chapter 36, consequently only chapters 35 and 36 are considered here.

relevant to the issues of the campaign with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.” However, in *Lair v. Murry*, the court held that the phrase “or any other matter *relevant* to the issues of the campaign” was unconstitutionally vague and a person of ordinary intelligence would not have a “reasonable opportunity to know what is prohibited” under the statute. *Lair et al v. Murry et al*, CV 12-12-H-CCL (2012) at 11 (emphasis added). Judge Lovell further states that “relevancy is in the eye of the beholder” and therefore MCA § 13-37-131 “fails to clearly mark the boundary between permissible and impermissible speech.” *Id.* 12, quoting *Buckly v. Valeo*, 423 U.S. 41.

Consequently, in 2013, the Montana Legislature passed House Bill 129 amending MCA § 13-37-131 by striking all political civil libel components. While the portion of MCA § 13-37-131 relating to voting records is still part of the Montana code, the court held that the ‘political civil libel’ portion of the statute could not be severed from the ‘misrepresentation of voting record’ portion, and enjoined enforcement of the entire statute. *Id.* at 13. Subsequently, Montana has declined to enforce any portion of this statute.

There is no statute under COPP’s jurisdiction that is applicable to any claim of defamation. Therefore, any allegations of defamation against Ms. Karjala are hereby dismissed.

Three statutes under COPP’s jurisdiction may be applicable are considered as follows:

*Illegal influence of voters*

MCA § 13-35-214(1), Illegal influence of voters, holds:

A person may not knowingly or purposely, directly or indirectly, individually or through any other person, for any election, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue: (1) give, lend, agree to give or lend, offer, or promise any money, liquor, or valuable consideration or promise or endeavor to procure any money, liquor, or valuable consideration;

In this matter, the complainant does not describe any circumstance where Ms. Karjala gave, loaned, offered, or promised money, liquor, or valuable consideration to individual Graves or any other voter for the purpose of voting for candidates Held

or Hamm, against candidate Cabrera, or to refrain from voting entirely. Ms. Karjala's communications with Mr. Graves do not provide any evidence that any such action or promise occurred.

*Illegal consideration for voting*

The second statute which may potentially be violated by such actions is MCA § 13-35-215, Illegal consideration for voting, which, in relevant part holds:

A person, directly or indirectly, individually or through any other person, may not: (1) before or during any election, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at the election or for inducing another to do so: (a) receive, agree, or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for the person or any other person; or (b) approach any candidate or agent or person representing or acting on behalf of any candidate and ask for or offer to agree or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for the person or any other person;

In this matter, the complainant does not provide any evidence of, or describe any individual circumstance where Mrs. Karjala promised or provided any money, gift, loan, liquor, valuable consideration, office, place, or employment to Mr. Graves or any other person or persons in return for agreeing to vote for candidates Held or Hamm, against candidate Cabrera, or to refrain from voting at all. Nor can I conclude that any such action or promise occurred in reading Mrs. Karjala's communications with Mr. Graves.

*Coercion or undue influence of voters*

The final statute potentially relevant in this matter is MCA § 13-35-218, Coercion or undue influence of voters. This statute holds in relevant part:

(1) A person, directly or indirectly, individually or through any other person, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may not: (a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person; or (b) inflict or threaten to inflict, individually or with any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person. (2) A person may not, by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election or compel,



induce, or prevail upon any elector to give or to refrain from giving the elector's vote at any election.

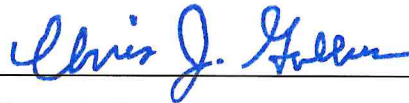
This complaint does not provide any evidence of or describe any individual circumstance where Mrs. Karjala used or threatened to use any force, coercion, violence, restraint, or undue influence against Mr. Graves or any other person or persons in order to compel they vote for candidates Held or Hamm, against candidate Cabrera, or otherwise refrain from voting. In reading Ms. Karjala's communications with individual Graves, I similarly cannot conclude that she inflicted or intended to inflict individual Graves any "temporal or spiritual injury, damage, harm, or loss." While the language, "I will keep this conversation handy for when it's needed" may present some concerns, COPP cannot conclude it meets the threshold of force, coercion, or violence, that it represents a "temporal or spiritual injury" required to invoke enforcement of this statute, or that it was intended to "compel a person to vote" in a particular manner.

None of the evidence provided is adequate to show Ms. Karjala violated Montana election law.

### CONCLUSION

Sufficient evidence has not been presented to find Ms. Karjala violated Montana election law. The complaint's allegations have been considered as described above and are hereby dismissed in full.

Dated this 9th day of September, 2024.



Chris J. Gallus

Commissioner of Political Practices  
of the State of Montana  
P.O. Box 202401  
1209 8<sup>th</sup> Avenue  
Helena, MT 59620