

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

AARON J LEAS and ROBYN MOHS v. JOHN REPKE (Montana State Auditor candidate)	COPP-2024-CFP's-040 and 043 DECLARATION OF MERIT OF COMPLAINT RESOLUTION AND DISMISSAL OF COMPLAINTS BY PROMPT REMEDIAL ACTION BY THE RESPONSIBLE PARTY
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COMPLAINT

On October 4, 2024, Aaron James Leas of East Helena, MT filed a campaign practices complaint against Montana State Auditor candidate John Repke. On October 10, 2024, Robyn Mohs of East Helena, MT filed a similar campaign practices complaint against Mr. Repke. Each complaint alleged that Mr. Repke failed to include the full 'paid for by' attribution statement or partisan affiliation on campaign communications as required.

ISSUES

Attribution and partisan affiliation on campaign communications, Montana Code Annotated (MCA) § 13-35-225(1) and (2).

FINDING OF FACTS

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

Finding of Fact No. 1: On March 7, 2024, John Repke of Whitefish, MT filed a C-1 Statement of Candidate as a candidate seeking election to the position of Montana State Auditor with COPP. On the C-1, candidate Repke indicated he was a Democratic party candidate. Candidate Repke also indicated partisan affiliation as a Democratic party candidate when formally filing with Montana's Secretary of State's office. (Commissioner's Records).

Finding of Fact No. 2: On October 4, 2024, COPP received the original signed and notarized copy of complainant Leas' complaint. In reviewing the complaint, Commissioner Gallus determined it was merited, as the campaign communications referenced in the complaint- billboards and campaign yard signs supporting candidate Repke did not include the "paid for by" component of the attribution statement and/or candidate Repke's partisan affiliation as a Democrat. (Commissioner's Records).

Finding of Fact No. 2.1: On October 7, 2024, via both email and telephone call,

COPP notified the Repke campaign of this formal attribution complaint, providing both a copy of the complaint and written correspondence from Commissioner Gallus explaining that it was merited. The Commissioner's written correspondence notified candidate Repke that "[y]ou will need to add the full "paid for by" attribution statement, including the words "paid for by" and the appropriate partisan affiliation, to all materials lacking this, and provide photographic notice to COPP showing this addition has been made" within 2 business days. (Commissioner's Records).

Finding of Fact No. 2.2: On October 9, 2024, the Repke campaign provided an initial formal response to the Leas complaint. This response stated that candidate Repke was "working with Lamar outdoor advertising, which placed the billboards, to have a D inserted onto all billboards that are standing, and I have asked Lamar to send me pictures of the billboards with the changes." It also states that "I have ceased distribution of all yard signs that do not have a D in the "Paid for by" on the bottom of the signs. Since my campaign did not place all the yard signs in yards, it is simply not possible for me to add the "D" to all that are displayed". (Commissioner's Records).

Finding of Fact No. 2.3: After reviewing this initial response on October 9, 2024, COPP followed-up with the Repke campaign later in the day via email and telephone call to notify them that the billboards required "addition of both the words "paid for by" **and** Mr. Repke's partisan affiliation to meet" Montana's attribution requirements. (Commissioner's Records).

Finding of Fact No. 2.4: On October 11, 2024, the Repke campaign provided a secondary written response to the Leas complaint. This response noted that "We have contracted with Lamar (see attached) to update the billboards with 'Paid for by' and 'D' after the zip codes...Lamar will have the additions produced and installed within several days". (Commissioner's Records).

Finding of Fact No. 2.5: On October 21, 2024, in response to requests made by COPP, the Repke campaign, via email message, provided pictures of the campaign yard sign material relevant to this complaint that had a "D" added to the existing "Paid for by John Repke for Montana State Auditor, PO Box 1613, Whitefish, MT 59937" attribution statement. Subsequent phone conversations with campaign Treasurer Jennifer Miller indicated that the campaign had been working to make this addition to all copies of signs remaining in its possession or otherwise accessible by the campaign.

Finding of Fact No. 2.6: On October 22, 2024, in response to requests made by COPP, the Repke campaign, via email message, provided COPP pictures of copies of the campaign billboard relevant to this complaint that had the words "Paid for by" and a "D" added to the existing "Repke for Montana, PO Box 1613, Whitefish, MT 59937" attribution statement.

Finding of Fact No. 3: On October 10, 2024, COPP received the original signed and notarized copy of complainant Mohs' complaint. In reviewing the complaint, Commissioner Gallus determined it was merited, as the campaign communications referenced in the complaint- social media advertisements or similar paid posts supporting candidate Repke- did not include his partisan affiliation as a Democrat. (Commissioner's Records).

Finding of Fact No. 3.1: On October 11, 2024, via both email and telephone call, COPP notified the Repke campaign of this formal attribution complaint, providing both a copy of the complaint and written correspondence from Commissioner Gallus explaining that it was merited. The Commissioner's written correspondence notified candidate Repke that "[y]ou will need to add appropriate partisan affiliation to all materials lacking this, and provide photographic evidence or related documentation to COPP showing this addition has been made" within 2 business days. (Commissioner's Records).

Finding of Fact No. 3.2: On October 11, 2024, the Repke campaign provided an initial written response to the Mohs complaint. This response stated that "Social media posts have been updated to reflect the 'D' and 'Paid for by' attributions." No photographic evidence of this correction was included in the response. (Commissioner's Records).

Finding of Fact No. 3.3: On October 15, 2024, in response to a request sent earlier that day via email by COPP, the Repke campaign emailed photographic evidence of relevant partisan affiliation being added to posts made on social media, including those specifically referenced in the Mohs complaint. (Commissioner's Records).

Finding of Fact No. 4: On October 31, 2024, in response to the Repke campaign's earlier assertion that "[s]ince my campaign did not place all the yard signs in yards, it is simply not possible for me to add the 'D' to all that are displayed," (FOF 2.2) COPP contacted the Repke campaign and requested they provide additional information regarding the number of signs which may have been distributed prior to receipt of this complaint. (Commissioner's Records).

Finding of Fact No. 4.1: On November 5, 2024, the Repke campaign contact COPP via email stating that partisan affiliation had been added to all yard signs they were able to locate and would consult their records to determine the number of yard signs distributed prior to the addition of partisan affiliation. (Commissioner's Records).

Finding of Fact No. 4.2: On November 15, 2024, the Repke campaign provided COPP with photographic evidence that the affiliation had been added to the implicated yard signs, and a copy of a campaign materials audit indicating the

number of remaining signs. The Repke campaign estimated approximately 200 signs may have been distributed absent the required attribution. (Commissioner's Records).

DISCUSSION

Under Montana law "all election communications, electioneering communications, and independent expenditures must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication." Montana Code Annotated (MCA) § 13-35-225(1). In partisan elections, communications must also "state the candidate's party affiliation or include the party symbol", MCA § 13-35-225(2). Administrative Rule of Montana (ARM) 44.11.601(4)(a) allows candidates to meet this partisan affiliation requirement by stating the full name of the political party (Democrat, Libertarian, or Republican), the capitalized first letter ("D", "L", or "R", or the recognized party symbol (donkey symbol, Statue of Liberty symbol, or elephant symbol).

Both the Leas and Mohs complaints reference election communications financed by Montana State Auditor candidate John Repke that failed to fully conform to these requirements. Montana law requires an accelerated review ("as soon as practicable") of a campaign practice complaint alleging an attribution violation, MCA § 13-35-225(5). In these matters, COPP immediately reviewed the complaint and determined the allegations were merited, as materials were missing either the required "paid for by" statement itself and/or Mr. Repke's partisan affiliation (FOF Nos. 2, 3). Consequently, agency staff contacted the Repke campaign via both telephone and email message "as soon as practicable" to provide notification of the attribution deficiencies (FOF Nos. 2.1, 3.1). The Repke campaign was immediately responsive regarding these attribution deficiencies, first by ceasing new distribution of unattributed material- the campaign yard signs- and second by working to fully attribute each communication as appropriate (FOF Nos. 2.2, 2.3, 2.4, 2.5, 2.6 and 3.2, 3.3).

The law governing complaints of failure to properly attribute political communications provides precise directions to the Commissioner:

1. The Commissioner is to immediately assess the merits of the attribution complaint, MCA § 13-35-225(5). The Commissioner found merit to these attribution complaints and hereby memorializes that finding.
2. The Commissioner shall notify the individual of the merit finding, requiring the individual to bring the material into compliance, MCA § 13-35-225(6)(a). In this matter, COPP notified the Repke

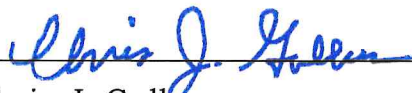
campaign of the attribution deficiency via email and telephone correspondence on October 7, 2024 and October 11, 2024, respectively.

3. The individual financing the material is provided 2 business days to bring the material into attribution compliance, MCA § 13-35-225(6)(a)(i). In this matter, the Repke campaign immediately ceased new distribution of unattributed material (campaign yard signs) and began taking appropriate actions to fully attribute the material (billboards, social media posts) within this two business day period.

Under Montana law a candidate with an attribution deficiency is relieved of a campaign practice violation, provided they promptly carry out the attribution correction. I determine that Mr. Repke has met this duty by accepting responsibility for the unattributed material and working to remedy or remove unattributed communications as appropriate. While ultimately correction did take longer than two (2) business days, Mr. Repke and his campaign were immediately responsive to this matter, accepted responsibility for the initial omissions, and took appropriate action to bring all material into compliance. Based on these factors Mr. Repke is therefore relieved of a campaign practice violation under MCA §13-35-225(6). Each complaint is dismissed.

Normally, the Commissioner first provides decisions to the parties and then the public on the following day. The Legislature, however, has set very tight timelines on this sort of attribution complaint. Accordingly, the Commissioner provides this decision to the parties and public on the day issued.

DATED this 14th day of January, 2025,


Chris J. Gallus
Commissioner of Political Practices
Of the State of Montana
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