

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Montana Secretary of State v. Forward Montana No. COPP 2022-CFP-022	DISMISSAL
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On October 20, 2022, the Montana Secretary of State's office filed a campaign practices complaint against Forward Montana. The complaint alleged that Forward Montana mailed and advised applicants to mail voter registration applications to an address other than the county election administrator.

SUBSTANTIVE ISSUES ADDRESSED

Proper return by mail of a voter registration form to the appropriate county election administrator as required by Mont. Code Ann. § 13-35-604.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Forward Montana is a nonprofit organization that describes itself as "the largest youth civic engagement organization in Montana, with year-round staff in Billings, Bozeman, Missoula, and the Flathead Valley".¹ (Commissioner's Records.)

Finding of Fact No. 2: As part of this complaint, the Montana Secretary of State's office included a picture of a business card for Forward Montana's Billings Field Manager, as well as a picture of a deposit box set up by Forward Montana to deposit completed

¹ <https://forwardmontana.org/about/>

voter registration applications. As available from the photograph, Forward Montana's drop box does not encourage applicants to mail completed voter registration forms to any address. (Commissioner's Records.)

Finding of Fact No. 3: On October 21, 2022, Forward Montana, through Upper Seven Law, emailed COPP a formal response to this complaint. In its formal response, Forward Montana writes that:

Over the last decade, Forward Montana Foundation has, consistent with applicable law, operated drop boxes to collect voter registration applications across Montana. Forward Montana Foundation staff and volunteers monitor these drop boxes and either mail or hand-deliver applications to correct county election offices. For each drop box, Forward Montana Foundation staff tracks the number of applications received and the date they are delivered to election offices. Drop boxes are removed when the regular registration period has elapsed.

The response goes on to state that, in this case, Forward Montana "removed the drop boxes pictures on October 11, 2022, to avoid receiving any voter registration applications after the regular registration period had elapsed. The Secretary has made no attempt to reach out to Forward Montana Foundation to express concern or provide instruction relating to the drop boxes in question". (Commissioner's Records.)

DISCUSSION

In this matter, the Montana Secretary of State's office ("the Office") alleges that Forward Montana mailed and advised applicants to mail completed voter registration applications to an address other than that of the county election administrator. COPP considers the allegation in full.

Mont. Code Ann. § 13-35-604, the specific statute referenced by the Office in this matter, states that:

"A third-party registrar may not mail or advise an applicant to mail a voter registration or absentee ballot application to any address other than the county election administrator's address in the applicant's county of residence"

In filing this complaint, the SOS Office references a drop box photo operated by Forward Montana where individuals could place completed voter registration forms (FOF No. 2). As available from the photograph, Forward Montana's drop box does not encourage applicants to mail completed voter registration forms to any address.

In responding to this complaint, Forward Montana asserts that all drop boxes are monitored by Forward Montana staff, and completed voter registration applications are delivered by mail or in-person directly to the proper county election office (FOF No. 3). Forward Montana goes on to assert that, despite having been operating drop boxes like this in previous election years, nobody in the SOS Office has ever reached out to Forward Montana "to express concern" about the practice or provide instructions or guidance.

The COPP is unable to identify a single specific instance where Forward Montana encouraged individuals to mail a voter registration application to any address other than the individual's county elections office.

PROCESS

Following the Respondent's response in this matter, the SOS Office hand delivered a letter addressed to the Commissioner (Exhibit A). In this letter, the SOS Office describes what can only be considered its new process for handling what they describe as complaints. As an example, in this matter, the SOS Office referred a photo of a box and a photo of a business card it had received from an unnamed source to the Commissioner of Political Practices as a formal Campaign Finance and Practices (CFP) Complaint. The SOS Office additionally

submitted two related 'complaints' that were received by the SOS Election and Voter Services Division to the Commissioner of Political Practices as formal CFP Complaints. The SOS Office states this new process is necessary "in order for the State to formally document and log the allegations and disposition".

As described by the SOS Office, this process is unworkable. In all three cases referred by the SOS Office, the formal complaints filed with the Commissioner were based entirely on concerns raised and reported to the SOS of possible election information and security issues. Both the SOS Office and the COPP receive similar concerns, issues, and allegations daily, via email and phone calls. The COPP addresses such concerns informally, by providing education and guidance where appropriate, referring the matter to the appropriate state or local agency, including the formal complaint process when necessary. The COPP receives hundreds of such inquiries prior to every election, and most are easily and immediately resolved informally. COPP would note that any unique concern, issue, or allegation raised informally and any communications, guidance, or referrals made by COPP are documented by COPP staff.

A formal CFP Complaint filed with the Commissioner, however, must be handled according to the process provided for by Montana law and rule. "...Upon the submission of a written complaint by any individual, the commissioner **shall investigate** any other alleged violation of the provisions of chapter 35 of this title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter". At a minimum, this process required COPP

staff to process the formal Complaint and make it available on the agency website, requires the Commissioner request a formal written response from the subject of the complaint and make this response available on the agency's website, and requires the Commissioner to issue a final agency decision.

In this matter, the SOS Office filed a formal CFP Complaint with COPP, delaying resolution of the issues. Had the issues been referred to the Commissioner by the SOS Office informally, via email message or telephone call, they could have been easily & immediately addressed through the informal process. Instead, because the SOS Office filed a formal CFP Complaint on an issue that did not rise to a level of a potential violation, COPP was required process the formal CFP Complaint, request Forward Montana provide a formal written response, and issue a formal agency decision, a much more time consuming process.

FINDINGS

In this matter, the Commissioner examines dismissing the Complaint as as frivolous under under *Landsqaard v. Peterson, et al.*, COPP-2014-CFP-008. "Complaints identified as frivolous will be swiftly dismissed so as to lessen the burden on participants (contributors, candidates, ballot committees and others) frivolously accused of campaign practice violations", *id.* at page 3, Mont. Admin. R. 44.11.106(4) (formerly Mont. Admin R. 44.10.307(3)(2014).

"Most COPP complaints raise a campaign practice issue and initiate a valuable civic debate that justifies the social cost. Some complaints, however (labeled frivolous by this Decision) do not raise a legitimate issue and still assess a social cost. The targets of a frivolous complaint (legislators, contributors and others) bear the monetary cost of defending against a COPP complaint and the

social cost associated with the stigma of being accused of wrong doing. The Commissioner's staff (and the public) bear the cost of applying limited public resources to less worthy complaint issues rather than prosecution of serious campaign violations. The Commissioner should, and hereafter will, reduce the effect of such frivolous complaints."

Landsgaard, p. 5.

As articulated in law and rule, should the Commissioner receive a complaint that does not provide evidentiary support for the allegations presented or that does not make sufficient allegations to state a potential violation under the Commissioner's jurisdiction, the Commissioner may dismiss the complaint as a frivolous, Mont. Admin. R. 44.11.106(4). This administrative rule has been in place in Montana campaigns since the implementation of the laws and rules establishing the Commissioner's office in 1976.

In its Complaint, the SOS Office argues that the COPP must handle the issue with alacrity because:

'[w]ith the proximity to the election, the activity ongoing, and the number of violations continue to increase, it is of paramount importance that your office issue a sufficiency finding and sufficiency determination documenting regarding [sic] Forward Montana's illegal voter registration activities".

Even this statement is frivolous, unsupported and untrue. The underlying allegation in this matter lacks any evidentiary or legal support, much less allegations of "activity ongoing", "the number of violations continue to increase" concerning "illegal voter activities".

The SOS also alleges that "[o]ur department and county election offices fielded numerous complaints from voters concerned about their privacy related

to the [Forward Montana's] illegal voter registration activity". To this point, COPP would note that the SOS's Complaint refers to two photos received by the SOS without reference to a date, time, or other information. The formal CFP Complaint was not filed by the SOS Office until October 20, 2022. In September of 2022, a similar issue involving potential voter registration activity² was forwarded to the COPP and immediately reviewed and remedied informally, including follow up with both the SOS Office and local election office.

A complaint against Forward Montana was not provided to the COPP by the SOS until October 20, 2022, and we were unable to ascertain a date or time the complaint was received by the SOS. The complaint against Forward Montana contains undated material received by the SOS from an unnamed source. As discussed in *Montana Secretary of State vs. MontPIRG*, 2022-CFP-023, in time proximity, a similar issue involving potential voter registration activity³ was forwarded to the COPP and immediately reviewed and remedied, including follow up with both the SOS and local election office.

Nothing in the complaint against Forward Montana evidences a violation of Mont. Code Ann. § 13-35-604. The attachments contain undated pictures of a drop box and a business card of a Forward Montana field manager. Neither reference an address to return the forms to, or a form itself, and the complaint

² MontPIRG, see *SOS v. MontPIRG*, 2022-CFP-023

³ MontPIRG – see *SOS v. MontPIRG* 2022-CFP-023

fails to allege facts that would give rise to a potential violation of Mont. Code Ann. § 13-35-604.

In this matter, upon receipt of the Complaint, Forward Montana confirmed its voter registration process as indicated by the undated photo ended on October 11, 2022, and at no time did any materials or process descriptions include references to mailing to anyone other than the local election office.

The allegations against Forward Montana are unsupported by evidence of a potential factual violation, are indefinite, unsubstantiated and therefore dismissed as “frivolous”, Mont. Admin R. 44 11.106(4).

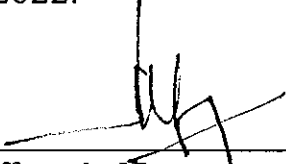
COSTS

The COPP’s campaign finance and practice complaint process is free and accessible to anyone alleging a genuine violation of the laws. As discussed above, the cost of COPP staff time in addressing and investigating allegations, and the Commissioner in making a determination are public costs; as are the costs to the group herein defending against the frivolous complaint. That being said, there is no provision in Montana law which allows the Commissioner to assess the costs of frivolous complaints or proceedings in campaign finance complaints. Therefore, although the relief was requested by the Respondent Forward Montana, the Commissioner must dismiss the request for relief as it is beyond the office’s grant of authority.

DECISION

The Commissioner hereby dismisses the Complaint as frivolous and dismisses the Respondent's request for relief in this matter.

DATED this 27th day of October 2022.



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BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Montana Secretary of State v. ACLU of Montana No. COPP 2022-CFP-021	DISMISSAL
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On October 20, 2022, the Montana Secretary of State’s office filed a campaign practices complaint against ACLU of Montana. The complaint alleged that ACLU of Montana mailed and advised applicants to mail voter registration applications to an address other than the county election administrator.

SUBSTANTIVE ISSUES ADDRESSED

Proper return by mail of a voter registration form to the appropriate county election administrator as required by Mont. Code Ann. § 13-35-604.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: ACLU of Montana is an affiliate of the national ACLU organization.¹ ACLU of Montana’s main office is located in Missoula, however the organization is active across the state of Montana. (Commissioner’s Records.)

Finding of Fact No. 2: As part of this complaint, the Montana Secretary of State’s office included an email message its Elections department received from Big Horn County election administrator Dulcie Bear Don’t Walk. Dated September 27, 2022, the email message states that “Just a quick mention I have had a few voters

¹ <https://www.aclumontana.org/en/about/about-us>

come in the morning in a huff about getting voter registration cards from the ACLU and that the ACLU wants them to send the cards to them. They were going on about a breach of privacy why do they want the card back with all their info instead of the counties". The email message did not state any specific name/s of applicant/s ACLU of Montana had advised to return voter registration applications to the organization instead of the Big Horn County elections officer or election administrator Bear Don't Walk, or otherwise provide or refer to specific correspondence sent by ACLU of Montana encouraging applicants to return a voter registration application to an address other than that of the applicant's county elections office. (Commissioner's Records.)

Finding of Fact No. 3: On October 21, 2022, ACLU of Montana, through Graybill Law Firm, PC, provided a formal response to this complaint to COPP. In its response, ACLU of Montana states that "The ACLU did not, at any time, "mail or advise an applicant to mail a voter registration or absentee ballot application to any address other than the county election administrator's address" in the applicant's county. ACLU of Montana did confirm that it had mailed blank voter registration forms and blank envelopes to recipients in Montana but stated that all forms and associated correspondence noted that completed forms needed to be returned to the applicant's county election office.

The response also included a copy of the letters sent by ACLU of Montana to various Montana recipients regarding voter registration information (Exhibit A). In one letter, ACLU of Montana writes "You can register to vote by filling out and returning the enclosed form via mail by October 11 or by returning it in person at your county elections office up through Election Day". It goes on to state that "If you have questions or want more information on how or where to vote, please call your county elections office". Each letter sent by ACLU of Montana additionally includes phone numbers for the elections office in Big Horn, Blaine, Daniels, Glacier, Lake, Pondera, Rosebud, Roosevelt, Sanders, Sheridan, and Valley counties. Recipients also received a blank Montana Voter Registration Application, accompanied by a list of mailing addresses for every Montana county's election administrator and a message of "Please place completed registration application and related documents in an envelope, affix postage, and send to your county Election Administrator office". (Commissioner's Records.)

Finding of Fact No. 4: On October 24, 2022, Commissioner of Political Practices Jeff Mangan contacted Big Horn County Election Administrator Dulcie Bear Don't Walk regarding the allegations

made in the SOS's complaint. In this conversation, Election Administrator Bear Don't Walk indicated she was not shown a communication, but that an individual had come in concerned about how the ACLU had received his contact information, which she replied it likely came from the publicly available voter list. She also stated she had heard from other citizens that they were concerned about their privacy, but that they did not provide or show any specific communication/s. Election Administrator Bear Don't Walk also stated she herself had been mailed voter registration information from ACLU of Montana and it did not include any direction to return to the ACLU, but just the opposite, return to the local election office. (Commissioner's Records.)

DISCUSSION

In this matter, the Montana Secretary of State's office ("the SOS Office") alleges that ACLU of Montana mailed and advised applicants to mail completed voter registration applications to an address other than that of the county election administrator. COPP considers the allegation in full.

Mont. Code Ann. § 13-35-604, the specific statute referenced by the Office in this matter, states that:

"A third-party registrar may not mail or advise an applicant to mail a voter registration or absentee ballot application to any address other than the county election administrator's address in the applicant's county of residence".

On September 27, 2022, Big Horn County Elections Administrator Dulcie Bear Don't Walk emailed the SOS Office to forward concerns her office had received potentially concerning ACLU of Montana (FOF No. 2). The SOS Office did not provide any additional information in it's complaint, including name/s of individuals specifically advised by ACLU of Montana to return voter registration applications to them or copies of any document/s or correspondence/s sent by ACLU of Montana encouraging individuals to return

voter registration applications to the organization rather than the individual's county elections office.

In responding to this complaint, ACLU of Montana disputed the Office's allegations. ACLU of Montana provided COPP with a letter and associated documents provided to potential voters regarding voter registration (FOF No. 3, Exhibit A). The information provided by ACLU of Montana in and with this letter is very clear that completed voter registration applications were to be returned to the county elections office; ACLU went so far as to include a list with the mailing address of each county's election administrator and a message of "Please place completed registration application and related documents in an envelope, affix postage, and send to your county Election Administrator office" (emphasis added) (FOF No. 3, Exhibit A). ACLU of Montana's letter makes no direct request that completed voter registration forms be sent anywhere other than the individual's county elections office.

Further, the investigation concluded no ACLU of Montana communication was shared with either Election Administrator Bear Don't Walk (FOF No. 4) or the Montana Secretary of State that included information contrary to Montana law.

The COPP is unable to identify a single specific instance where ACLU of Montana encouraged individuals to return a voter registration application to any address other than the individual's county elections office.

PROCESS

Following the Respondent's response in this matter, the SOS Office hand delivered a letter addressed to the Commissioner (Exhibit B). In this letter, the SOS Office describes what can only be considered its new process for handling what they describe as complaints. As an example, in this matter, the SOS Office referred an emailed 'complaint' it had received from an election administrator to the Commissioner of Political Practices as a formal Campaign Finance and Practices (CFP) Complaint. The SOS Office additionally submitted two related 'complaints' that were received by the SOS Election and Voter Services Division to the Commissioner of Political Practices as formal CFP Complaints. The SOS Office states this new process is necessary "in order for the State to formally document and log the allegations and disposition".

As described by the SOS Office, this process is unworkable. In all three cases referred by the SOS Office, the formal complaints filed with the Commissioner were based entirely on concerns raised and reported to the SOS of possible election information and security issues. Both the SOS Office and the COPP receive similar concerns, issues, and allegations daily, via email and phone calls. The COPP addresses such concerns informally, by providing education and guidance where appropriate, referring the matter to the appropriate state or local agency, including the formal complaint process when necessary. The COPP receives hundreds of such inquiries prior to every election, and most are easily and immediately resolved informally. COPP would note that any unique concern, issue, or allegation raised informally and any

communications, guidance, or referrals made by COPP are documented by COPP staff.

A formal CFP Complaint filed with the Commissioner, however, must be handled according to the process provided for by Montana law and rule.

“...Upon the submission of a written complaint by any individual, the commissioner **shall investigate** any other alleged violation of the provisions of chapter 35 of this title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter”. At a minimum, this process required COPP staff to process the formal Complaint and make it available on the agency website, requires the Commissioner request a formal written response from the subject of the complaint and make this response available on the agency’s website, and requires the Commissioner to issue a final agency decision.

In this matter, the SOS Office filed a formal CFP Complaint with COPP, delaying resolution of the issues. Had the issues been referred to the Commissioner by the SOS Office informally, via email message or telephone call, they could have been easily & immediately addressed through the informal process. Instead, because the SOS Office filed a formal CFP Complaint on an issue that never rose to a level of a potential violation, COPP was required process the formal CFP Complaint, request ACLU of Montana provide a formal written response, and issue a formal agency decision, a much more time consuming process.

FINDINGS

In this matter, the Commissioner examines dismissing the Complaint as frivolous under *Landsgaard v. Peterson, et al.*, COPP-2014-CFP-008.

“Complaints identified as frivolous will be swiftly dismissed so as to lessen the burden on participants (contributors, candidates, ballot committees and others) frivolously accused of campaign practice violations”, *id.* at page 3, Mont. Admin. R. 44.11.106(4) (formerly Mont. Admin R. 44.10.307(3)(2014).

“Most COPP complaints raise a campaign practice issue and initiate a valuable civic debate that justifies the social cost. Some complaints, however (labeled frivolous by this Decision) do not raise a legitimate issue and still assess a social cost. The targets of a frivolous complaint (legislators, contributors and others) bear the monetary cost of defending against a COPP complaint and the social cost associated with the stigma of being accused of wrong doing. The Commissioner’s staff (and the public) bear the cost of applying limited public resources to less worthy complaint issues rather than prosecution of serious campaign violations. The Commissioner should, and hereafter will, reduce the effect of such frivolous complaints.”

Landsgaard, p. 5.

As articulated in law and rule, should the Commissioner receive a complaint that does not provide evidentiary support for the allegations presented or that does not make sufficient allegations to state a potential violation under the Commissioner’s jurisdiction, the Commissioner *may* dismiss the complaint as a frivolous, Mont. Admin. R. 44.11.106(4). This administrative rule has been in place in Montana campaigns since the implementation of the laws and rules establishing the Commissioner’s office in 1976.

In its Complaint, the SOS Office argues that the COPP must handle the issue with alacrity because:

‘[w]ith the proximity to the election, the activity ongoing, and the number of violations continue to increase, it is of paramount importance that your office issue a sufficiency finding and sufficiency determination documenting regarding [sic] [ACLU’s] illegal voter registration activities’.

Even this statement is frivolous, unsupported and untrue. The underlying allegation in this matter lacks any evidentiary or legal support, much less allegations of “activity ongoing”, “the number of violations continue to increase” concerning “illegal voter activities”.

The SOS also alleges that “[o]ur department and county election offices fielded numerous complaints from voters concerned about their privacy related to the [ACLU’s] illegal voter registration activity”. To this point, COPP would note that the SOS’s Complaint refers to an email message from a county election administrator received by the SOS on September 27, 2022. The formal CFP Complaint was not filed by the Office until October 20, 2022. At the very same time, a similar issue involving potential voter registration activity² was forwarded to the COPP and immediately reviewed and remedied informally, including follow up with both the Office and local election office.

Upon receipt of the CFP Complaint some 20+ days after sending the original email message to the SOS, the election administrator in this matter confirmed to the COPP that the complaints she had received were privacy concerns over public access to the voter registration mailing list (available by

² MontPIRG, *SOS v. MontPIRG*, 2022-CFP-023

purchase through the Montana Secretary of State), and that she herself had received the ACLU of Montana mailer which contained explicit instruction to return any completed voter registration form to the local election administrators.

The Complaint itself does not reference an address to return the forms to, and the complaint fails to allege facts that would give rise to a potential violation of Mont. Code Ann. § 13-35-604.

The allegations against the ACLU of Montana are unsupported by evidence of a potential factual violation, are indefinite, unsubstantiated and therefore dismissed as “frivolous”, Mont. Admin R. 44 11.106(4).

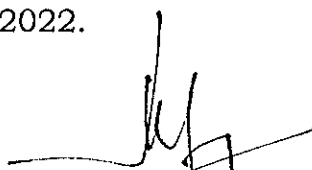
COSTS

The COPP’s campaign finance and practice complaint process is free and accessible to anyone alleging a genuine violation of the laws. As discussed above, the cost of COPP staff time in addressing and investigating allegations, and the Commissioner in making a determination are public costs; as are the costs to the group herein defending against the frivolous complaint. That being said, there is no provision in Montana law which allows the Commissioner to assess the costs of frivolous complaints or proceedings in campaign finance complaints. Therefore, although the relief was requested by the Respondent ACLU of Montana, the Commissioner must dismiss the request for relief as it is beyond the office’s grant of authority.

DECISION

The Commissioner hereby dismisses the Complaint as frivolous and dismisses the Respondent's request for relief in this matter.

DATED this 27th day of October 2022.



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BEFORE THE COMMISSIONER OF
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Montana Secretary of State v. MontPIRG No. COPP 2022-CFP-023	DISMISSAL
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On October 20, 2022, the Montana Secretary of State's office filed a campaign practices complaint against MontPIRG. The complaint alleged that MontPIRG mailed and advised applicants to mail voter registration applications to an address other than the county election administrator.

SUBSTANTIVE ISSUES ADDRESSED

Proper return by mail of a voter registration form to the appropriate county election administrator as required by Mont. Code Ann. § 13-35-604.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: MontPIRG, based out of the University of Montana in Missoula, is a "student directed and funded non-partisan organization dedicated to affecting tangible, positive change through educating and empowering the next generation of civic leaders... Our goal is to help students become informed and equipped with the knowledge, skills, and confidence to advocate for the public interest".¹ (Commissioner's Records.)

Finding of Fact No. 2: As part of this complaint, the Montana Secretary of State's office included an internet screenshot of a

¹ <https://www.mtpirg.org/mission>

“Nonprofit Voter Registration Kit signup” that notes kits include “prepaid envelopes to return forms to MontPIRG on a monthly basis”. (Commissioner’s Records.)

Finding of Fact No. 2A: On September 28, 2022, Commissioner of Political Practices Jeff Mangan contacted MontPIRG Executive Director Hunter Losing to discuss the “Nonprofit Voter Registration Kit”. In an email that day to other MontPIRG staff, Executive Director Losing writes “I just spoke with the Commissioner of Political Practices, Jeff Mangan (cc’d here) about our voter registration kits...I misspoke when speaking to you about the process for getting those registrations turned in to Elections Offices. We are not actually providing prepaid postage envelopes to mail registrations to us prior to submitting... I apologize for the miscommunication and am asking you to remove the statement about prepaid envelopes from any publications about the registration kits”. (Commissioner’s Records.)

Finding of Fact No. 3: On October 21, 2022, MontPIRG, through Upper Seven Law, emailed the COPP a formal response to this complaint. In its response, MontPIRG states that “Earlier this year, a miscommunication between MontPIRG and one of its partners led the partner to share an inaccurate statement about how voter registration forms collected in the drop boxes were to be returned. Upon being alerted to the inaccuracy, MontPIRG worked swiftly to remedy the situation...to correct the language and clarify that any voter registration forms must be sent to their local County Elections Office-not to MontPIRG”. The response adds that only one drop box “was affected by the inaccuracy” and that “at no time did any voter mail MontPIRG a voter registration form to submit on their behalf”. (Commissioner’s Records.)

DISCUSSION

In this matter, the Montana Secretary of State’s office (“the SOS Office”) alleges that MontPIRG mailed and advised applicants to mail completed voter registration applications to an address other than that of the county election administrator. COPP considers the allegation in full.

Mont. Code Ann. § 13-35-604, the specific statute referenced by the SOS Office in this matter, states that:

“A third-party registrar may not mail or advise an applicant to mail a voter registration or absentee ballot application to any address other than the county election administrator's address in the applicant's county of residence”

In making this complaint, the SOS Office references a picture from an internet website stating that MontPIRG would include “prepaid envelopes to return” voter registration applications “to MontPIRG” (FOF No. 2). Prior to COPP’s receipt of this Complaint, the Commissioner had been notified that a website containing MontPIRG information stated it would provide prepaid postage on envelopes to return voter registration forms to them and had already spoken with the organization to explain Mont. Code Ann. § 13-35-604’s prohibition on mailing voter registration forms to an address other than the county elections office (FOF No. 2). Following these discussions, the Commissioner worked with MontPIRG to rectify any issues (FOF No. 2A). MontPIRG has since apologized, and further notes that no pre paid envelopes were ever provided or any completed voter registration forms ever mailed to the organization instead of the individual’s county elections office (FOF Nos. 2A, 3).

The Commissioner notes that COPP was able to work with MontPIRG to resolve this issue on September 28-29, 2022, almost a month prior to the filing of this complaint.

PROCESS

Following the Respondent’s response in this matter, the SOS Office hand delivered a letter addressed to the Commissioner (Exhibit A). In this letter, the Office describes what can only be considered its new process for handling what they describe as complaints. As an example, in this matter, the SOS Office

referred screenshot of an unknown website it had received from an unnamed source to the Commissioner of Political Practices as a formal Campaign Finance and Practices (CFP) Complaint. The SOS Office additionally submitted two related 'complaints' that were received by the SOS Election and Voter Services Division to the Commissioner of Political Practices as formal CFP Complaints. The SOS Office states this new process is necessary "in order for the State to formally document and log the allegations and disposition".

As described by the SOS Office, this process is unworkable. In all three cases referred by the SOS Office, the formal complaints filed with the Commissioner were based entirely on concerns raised and reported to the SOS of possible election information and security issues. Both the SOS Office and the COPP receive similar concerns, issues, and allegations daily, via email and phone calls. The COPP addresses such concerns informally, by providing education and guidance where appropriate, referring the matter to the appropriate state or local agency, including the formal complaint process when necessary. The COPP receives hundreds of such inquiries prior to every election, and most are easily and immediately resolved informally. COPP would note that any unique concern, issue, or allegation raised informally and any communications, guidance, or referrals made by COPP are documented by COPP staff.

A formal CFP Complaint filed with the Commissioner, however, must be handled according to the process provided for by Montana law and rule. "...Upon the submission of a written complaint by any individual, the

commissioner **shall investigate** any other alleged violation of the provisions of chapter 35 of this title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter”. At a minimum, this process required COPP staff to process the formal Complaint and make it available on the agency website, requires the Commissioner request a formal written response from the subject of the complaint and make this response available on the agency’s website, and requires the Commissioner to issue a final agency decision.

In this matter, the SOS Office filed a formal CFP Complaint with COPP, delaying resolution of the issues. This particular complaint addressed an issue the SOS Office had previously referred to the Commissioner informally, via email message, and was easily addressed and rectified through that process. Instead, the SOS Office filed a formal CFP Complaint on a concern that never rose to the level of a potential violation, was previously addressed by the COPP, and the SOS was, in turn, notified of the resolution.

FINDINGS

In this matter, the Commissioner examines dismissing the Complaint as as frivolous under *Landsgaard v. Peterson, et al.*, COPP-2014-CFP-008.

“Complaints identified as frivolous will be swiftly dismissed so as to lessen the burden on participants (contributors, candidates, ballot committees and others) frivolously accused of campaign practice violations”, *id.* at page 3, Mont. Admin. R. 44.11.106(4) (formerly Mont. Admin R. 44.10.307(3)(2014).

“Most COPP complaints raise a campaign practice issue and initiate a valuable civic debate that justifies the social cost. Some complaints, however (labeled frivolous by this Decision) do not raise a legitimate issue and still assess a social cost. The targets

of a frivolous complaint (legislators, contributors and others) bear the monetary cost of defending against a COPP complaint and the social cost associated with the stigma of being accused of wrong doing. The Commissioner's staff (and the public) bear the cost of applying limited public resources to less worthy complaint issues rather than prosecution of serious campaign violations. The Commissioner should, and hereafter will, reduce the effect of such frivolous complaints."

Landsgaard, p. 5.

A formal complaint was forwarded that directed to a previously referred and corrected activity. As articulated in law and rule, should the Commissioner receive a complaint that does not provide evidentiary support for the allegations presented or that does not make sufficient allegations to state a potential violation under the Commissioner's jurisdiction, the Commissioner may dismiss the complaint as a frivolous, Mont. Admin. R. 44.11.106(4).

The SOS complaint against MontPIRG involves allegations that were not performed by MontPIRG, and additionally concerns involving the allegation having been corrected for almost a month upon a referral from the SOS Office.

In its Complaint, the SOS Office argues that the COPP must handle the issue with alacrity because:

'[w]ith the proximity to the election, the activity ongoing, and the number of violations continue to increase, it is of paramount importance that your office issue a sufficiency finding and sufficiency determination documenting regarding [sic] MontPIRG's illegal voter registration activities'.

Even this statement is frivolous, unsupported and untrue. The underlying allegation in this matter lacks any evidentiary or legal support, much less allegations of "activity ongoing", "the number of violations continue to increase" concerning "illegal voter activities".

The SOS also alleges that “[o]ur department and county election offices fielded numerous complaints from voters concerned about their privacy related to the [MontPIRG’s] illegal voter registration activity”. To this point, COPP would note that the SOS’s Complaint refers to a screenshot image of an unknown website. The formal CFP Complaint was not filed by the Office until October 20, 2022. Ironically, this very issue involving potential voter registration activity was forwarded to the COPP by the SOS and immediately reviewed and remedied, including follow up with both the SOS Office and local election office.

Upon receipt of the SOS Office CFP Complaint some 20+ days following the informal resolution of the issue by the COPP following a referral from the very same SOS Office.

The Complaint itself does not reference an address to return the forms to or a pre addressed form itself, and the complaint fails to allege facts that would give rise to a potential violation of Mont. Code Ann. § 13-35-604.

The allegations against MontPIRG are unsupported by evidence of a potential factual violation, are indefinite, unsubstantiated and therefore dismissed as “frivolous”, Mont. Admin R. 44 11.106(4).

COSTS

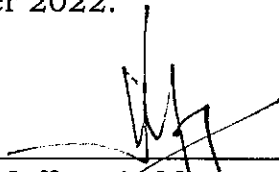
The COPP’s campaign finance and practice complaint process is free and accessible to anyone alleging a genuine violation of the laws. As discussed above, the cost of COPP staff time in addressing and investigating allegations, and the Commissioner in making a determination are public costs; as are the

costs to the group herein defending against the frivolous complaint. That being said, there is no provision in Montana law which allows the Commissioner to assess the costs of frivolous complaints or proceedings in campaign finance complaints. Therefore, although the relief was requested by the Respondent MontPIRG, the Commissioner must dismiss the request for relief as it is beyond the office's grant of authority.

DECISION

The Commissioner hereby dismisses the Complaint as frivolous and dismisses the Respondent's request for relief in this matter.

DATED this 27th day of October 2022.



Jeffrey A. Mangan
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