



UPPER SEVEN LAW
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HOLD THE POWERFUL ACCOUNTABLE

October 21, 2022

VIA CERTIFIED MAIL AND EMAIL

Jeffrey A. Mangan
Commissioner of Political Practices
1209 Eighth Avenue
P.O. Box 202401
Helena, MT 59620-2401

Re: *Secretary of State v. Forward Montana*, COPP-2022-CFP-022;
complaint received October 21, 2022

Dear Commissioner Mangan,

The undersigned counsel submits this response on behalf of Forward Montana and Forward Montana Foundation in connection with *Secretary of State v. Forward Montana*, COPP-2022-CFP-022.

Though the complaint names Forward Montana, attachments to the complaint show 1) voter registration application drop boxes operated by Forward Montana Foundation and 2) the business card of Billings field manager Pari Kemmick, which refers to the Forward Montana Foundation website. Forward Montana Foundation is a 503(c)(3) organization that educates, engages, and organizes young Montanans to shape their democracy to improve their lives and the lives of their fellow Montanans. 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 Secretary's complaint is meritless. Forward Montana has not, at any time, "mailed and advised applicants to mail a voter registration to an address other than the county election administrator's address" in violation of § 13-25-604, MCA. The Secretary's complaint offers no evidence to support such an allegation. The photo attachments accompanying the Secretary's complaint contain no address, let alone an incorrect mailing address.

In failing to identify any even plausible violation of § 13-25-604, the Secretary's complaint describes no facts that could give rise to a violation. Indeed, the complaint fails to give notice of the particular conduct that is or could be the subject of the complaint, leaving Forward Montana and Forward Montana Foundation guessing as to whether any concern exists that they could address.

Beyond dismissing the Secretary's complaint, you should assess fees against the Secretary.

The Secretary does not appear to have made any effort to clarify the issue about which she now complains. Consistent with its usual practices statewide, Forward Montana Foundation removed the drop boxes pictured 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.

Moreover, Forward Montana Foundation is currently a party in a lawsuit against the Secretary of State's Office, challenging the constitutionality of several laws passed during the 2021 legislative session that restrict access to ballots and stifle voting. The Secretary filed her complaint against Forward Montana and Forward Montana Foundation on the same day that she filed complaints against co-plaintiffs Montana Public Interest Research Group ("MontPIRG") and the ACLU of Montana and the ACLU of Montana Foundation ("ACLU").

On September 21, 2022, the Montana Supreme Court upheld a preliminary injunction that prevented enforcement of the challenged laws while the case remained pending before the district court. Shortly thereafter, on September 30, 2022, the Yellowstone County District Court issued a final decision declaring four election laws unconstitutional and permanently enjoining them. Two of these four laws were particular priorities of the Secretary's Office. In the last two weeks, Forward Montana Foundation has, alongside its co-plaintiffs, advocated for enforcement of the court's order. While the Secretary ultimately agreed to update her website with accurate information about the availability of Election Day Registration and accurate summaries of identification that can be used at the polls, these changes were made only under threat of a temporary restraining order. The Secretary also distributed similar misinformation in the Voter Information Packet that was distributed to all registered voters—and their households—on October 11.

The contents of the Secretary's complaint against Forward Montana cannot justify investigation. And the complaint appears to be an attempt to punish or retaliate against Forward Montana Foundation for its participation in the recent lawsuit. The Secretary should not be allowed to abuse the complaint process in this manner. This office has admonished complainants who abuse the complaint process in the past.

Even meritless complaints that are resolved quickly expend taxpayer time and resources and undermine the legitimacy of the process.

Forward Montana and Forward Montana Foundation look forward to your prompt resolution of this matter. Please do not hesitate to be in touch with any questions.

Many thanks,



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COMMISSIONER OF
POLITICAL PRACTICES

October 21, 2022

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Jeff.mangan@mt.gov

Re: *Secretary of State v. ACLU of Montana*, COPP-2022-CFP-021

Dear Commissioner Mangan:

This office represents the ACLU of Montana and the ACLU of Montana Foundation (together, "ACLU") in connection with *Secretary of State v. ACLU of Montana*, COPP-2022-CFP-021 ("Complaint").

The Complaint has no merit and should be dismissed. 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 of residence." Section 13-35-604, MCA.

The ACLU has an established commitment to ensuring that indigenous communities in Montana are not excluded from the franchise. Consistent with this commitment, the ACLU of Montana Foundation sent two mailings to Montanans eligible to register to vote. The mailings advise recipients of the upcoming general election and urge recipients to register to vote. They include voter registration forms and blank envelopes.

The registration forms included in each mailing are clear:

Please place completed registration application and related documents in an envelope, affix postage, and send to your county Election Administrator office.

Registration Cards at 2 (emphasis added). Below this language, the registration forms list the mailing address for each county election administrator.

The ACLU cover letters contain the same instructions:

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.

ACLU Letter 1 at 1; ACLU Letter 2 at 1 (emphasis added). Nothing in the mailings—not the registration forms, the cover letters, or the blank return envelopes—instructs applicants to send registration forms to the ACLU.

Commissioner Mangan
October 21, 2022

I have attached complete copies of both mailings to this letter, including the outgoing envelopes, letters, blank return envelopes, and registration cards.

Because the mailings did not contravene the requirements of § 13-35-604, MCA, the Complaint should be dismissed.

In addition to dismissing the Complaint, you should assess fees against the Secretary.

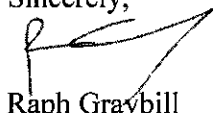
The only basis for the Complaint appears to be an email the Secretary received from a county clerk on September 27, 2022. The Secretary does not appear to have undertaken any informal clarification or verification of the matters described in the clerk's email. She does not provide any follow up communications she had with the clerk, despite her statutory responsibilities for election administration. And the Secretary did not contact the ACLU for clarification before filing; if she had, she would quickly have learned that the ACLU's mailings are entirely consistent with Montana law.

Instead, the Secretary waited nearly a month to file her Complaint on the same day she filed complaints against the Montana Public Interest Research Group ("MontPIRG") and Forward Montana. The ACLU, MontPIRG, and Forward Montana all recently defeated the Secretary in a voting rights trial challenging a bevy of new voter suppression laws in Montana. It recently came to light that the Secretary was broadcasting voter registration information inconsistent with the Court's determination in that trial. The three groups presented the Secretary with this information and threatened to seek a Temporary Restraining Order to enforce the Court's order. Though the Secretary appears to have had the Big Horn County clerk's email for nearly a month, it was only on the heels of these developments in the voter suppression litigation that the Secretary filed her Complaint.

This office has previously admonished complainants who abuse the complaint process. Even meritless complaints that are quickly resolved expend taxpayer time and resources, and undermine the legitimacy of the process. The Secretary should be held to the same, or a higher, standard as other complainants.

The ACLU looks forward to your prompt resolution of this matter. Please do not hesitate to contact me with any questions.

Sincerely,



Raph Graybill
GRAYBILL LAW FIRM, P.C.

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Jeffrey A. Mangan
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1209 Eighth Avenue
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Helena, MT 59620-2401

Re: *Montana Secretary of State v. MontPIRG*, COPP-2022-CFP-023;
complaint received October 21, 2022

Dear Commissioner Mangan,

The undersigned counsel submits this response on behalf of Montana Public Interest Research Group (“MontPIRG”) in connection with *Montana Secretary of State v. MontPIRG*, COPP-2022-CFP-023.

MontPIRG is a student directed and funded 503(c)(4) nonpartisan organization that is dedicated to effective, tangible, positive change through education and empowering the next generation of civic leaders. MontPIRG has, consistent with applicable law, operated drop boxes to collect voter registration applications and often works with other nonprofit entities to host drop boxes at their locations across Montana.

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 acted swiftly to remedy the situation by contacting its partners to correct that language and clarify that any completed voter registrations must be sent to their local County Elections Office—not to MontPIRG. In fact, only one drop box was affected by the inaccuracy and the entity hosting the drop box confirmed that no registration forms had been deposited into the drop box, and none were mailed to an improper address. At no time did any voter mail MontPIRG a voter registration form to submit on their behalf.

The Secretary’s complaint is meritless. MontPIRG has not, at any time “mailed and **advised applicants** to mail a voter registration to an address other than the county election administrator’s address” (emphasis added) in violation of § 13-25-604, MCA. MontPIRG’s minor miscommunication, captured in the attachment to the Secretary’s

complaint, did not result in any applicant being misadvised as to the proper procedure for returning a voter registration application and does not support any allegation that an applicant was improperly advised. In other words, the complaint does not reach the level of materiality that would justify investigation or enforcement.

Beyond dismissing the Secretary's complaint, you should assess fees against the Secretary.

The Secretary appears to have ignored facts known to it before making this complaint. Namely, as the attached communications make clear, on September 28, 2022, the Commissioner informed MontPIRG about a potential complaint regarding the inaccurate language that had been communicated related to the use of drop boxes by partner organizations. On the same day that MontPIRG became aware of the inaccurate language, it contacted its partners and corrected the inaccuracy and specifically reached out to the organization hosting the sole drop box that had been affected to ensure that voter registration applications would be returned not to MontPIRG but to the local county election office. The Commissioner then communicated to the Secretary of State's Office that MontPIRG had remedied the concern. The Secretary made no attempt to reach out to MontPIRG to express concern or to otherwise indicate any other issue associated with the miscommunication.

Moreover, MontPIRG is currently a party in a lawsuit against the Secretary of State's Office, challenging the constitutionality of several laws passed during the 2021 legislative session that restrict access to ballots and stifle voting. The Secretary filed her complaint against MontPIRG on the same day that she filed complaints against co-plaintiffs Forward Montana Foundation and the ACLU of Montana and the ACLU of Montana Foundation ("ACLU").

On September 21, 2022, the Montana Supreme Court upheld a preliminary injunction that prevented enforcement of the challenged laws while the case remained pending before the district court. Shortly thereafter, on September 30, 2022, the Yellowstone County District Court issued a final decision declaring four election laws unconstitutional and permanently enjoining them. Two of these four laws were particular priorities of the Secretary's Office. In the last two weeks, MontPIRG has, alongside its co-plaintiffs, advocated for enforcement of the court's order. While the Secretary ultimately agreed to update her website with accurate information about the availability of Election Day Registration and accurate summaries of identification that can be used at the polls, these changes were made only under threat of a temporary restraining order. The Secretary also distributed similar misinformation in the Voter Information Packet that was distributed to all registered voters—and their households—on October 11.

The contents of the Secretary's complaint against MontPIRG do not reach the level of materiality that would justify investigation or enforcement. And the complaint appears to be an attempt to punish or retaliate against MontPIRG for its participation in the recent lawsuit. The Secretary should not be allowed to abuse the complaint process in this manner. This office has admonished complainants who abuse the complaint process in the past. Even meritless complaints that are resolved quickly expend taxpayer time and resources and undermine the legitimacy of the process.

MontPIRG looks forward to your prompt resolution of this matter. Please do not hesitate to be in touch with any questions.

Many thanks,



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