



# FACT

FOUNDATION FOR  
ACCOUNTABILITY  
AND CIVIC TRUST

August 31, 2020

Commissioner of Political Practices  
1209 Eighth Avenue  
P.O. Box 202401  
Helena, MT 59620

Email: [cppcompliance@mt.gov](mailto:cppcompliance@mt.gov)

Dear Commissioner Mangan,

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. We submit this complaint seeking an investigation into Lt. Governor Mike Cooney, who is currently running for Governor, and the Democratic Governors Association (DGA), which is a registered independent committee, for prohibited coordinated communications.<sup>1</sup>

**I. FACTS.** Cooney and the Democratic Governors Association have been working together on campaign strategy, which is evident from a prior ethics case against Cooney. On April 13, 2020, Cooney participated in a Zoom conference call with the DGA while he was located in his state office.<sup>2</sup> The call was approximately 30 minutes in length on the topic of “campaign strategy,” which Cooney later described as a “briefing from DGA to participants about it’s recent work.”<sup>3</sup> Because Cooney engaged in the campaign activity from state facilities, the Commission found Cooney had violated the Code of Ethics.<sup>4</sup>

Following the ethics case, both Cooney and the DGA released advertising communications on identical subject matter within two days of one another. On August 4, 2020, Cooney posted a campaign video on Facebook, Twitter, and YouTube, which used the slogan “Greg GianforTax” and attacked his opponent on the issue of taxes.<sup>5</sup> The video used the phrase

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<sup>1</sup> Montana Campaign Electronic Reporting System, accessed Aug. 25, 2020.

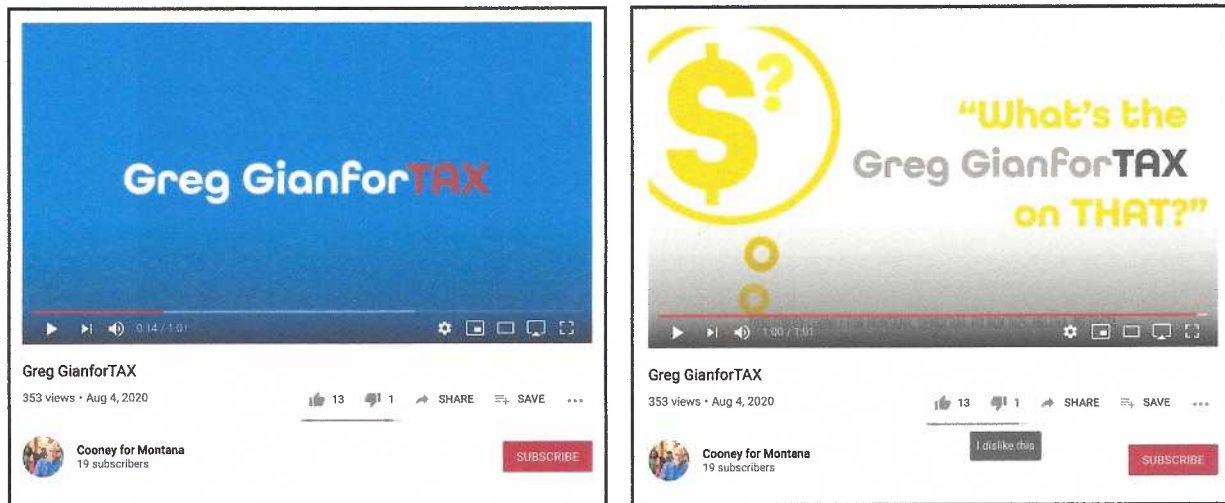
<sup>2</sup> *Merwin v. Cooney*, COPP-2020-ETH-007 (July 8, 2020); Mike Dennison, *Lt. Gov. Cooney Used Capitol Office During Campaign-Related Call*, KTVH, May 18, 2020.

<sup>3</sup> *Merwin v. Cooney*, COPP-2020-ETH-007 (July 8, 2020).

<sup>4</sup> *Merwin v. Cooney*, COPP-2020-ETH-007 (July 8, 2020).

<sup>5</sup> Mike Cooney, Facebook, <https://www.facebook.com/CooneyForMT/posts/779437729478188>; Mike Cooney, Twitter, <https://twitter.com/CooneyforMT/status/1290662105901826050>; Cooney for Montana, YouTube, <https://www.youtube.com/watch?v=p791RJdR9u8>.

“What’s the Greg GianforTAX on THAT?” It contained a disclaimer the video was paid for by Cooney for Montana.<sup>6</sup> Portions of the video are shown in the following images:<sup>7</sup>



On August 6, 2020, the DGA launched a website, <https://www.greggianfortax.com>, which used the exact same slogan as Cooney’s video.<sup>8</sup> The domain name for the website had been created and registered on July 8, 2020, before Cooney’s video released.<sup>9</sup> Similar to Cooney’s video posted two days before, the website’s header was “What’s the GianforTax on THAT?” and included the disclaimer “Paid for by the Democratic Governor’s Association,” as shown below:<sup>10</sup>

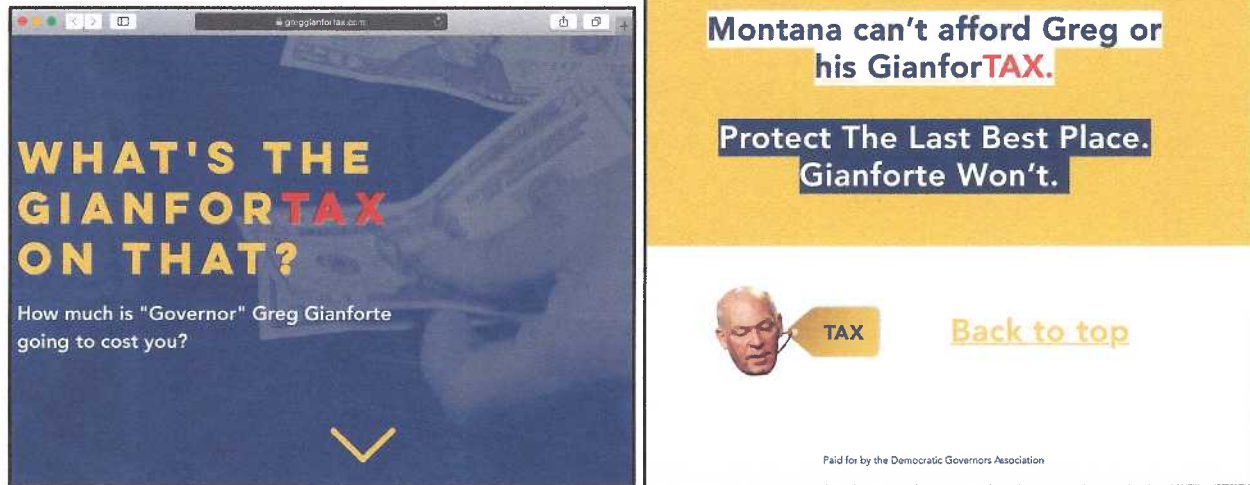
<sup>6</sup> Cooney for Montana, YouTube, <https://www.youtube.com/watch?v=p791RJdR9u8>.

<sup>7</sup> Cooney for Montana, YouTube, <https://www.youtube.com/watch?v=p791RJdR9u8>.

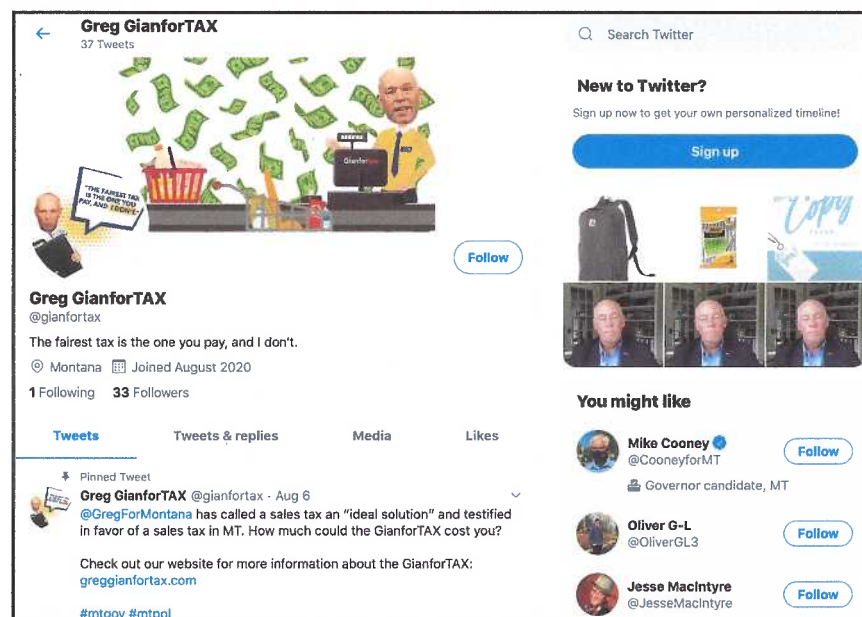
<sup>8</sup> Democratic Governors Assn., *DGA Launches “Greg GianforTax” Website*, Aug. 6, 2020, available at <https://democraticgovernors.org/news/dga-launches-greg-gianfortax-website/> (“The Democratic Governors Association launched a new website today highlighting Gianforte’s support for a statewide sales tax. The “GianforTAX” website shows how much money Greg Gianforte could cost working families if he were elected governor.”)

<sup>9</sup> GoDaddy.com, available at <https://www.godaddy.com/whois/results.aspx?domain=greggianfortax.com>, accessed Aug 25, 2020.

<sup>10</sup> Democratic Governors Assn., [greggianfortax.com](https://www.greggianfortax.com), last accessed Aug. 24, 2020.



Additionally, on August 6, the Twitter account @gianfortax began tweeting and shared links to “our website” <https://www.greggianfortax.com>.<sup>11</sup> The account is shown below:



The account @gianfortax has also shared tweets from Cooney’s campaign Twitter account and remains active.<sup>12</sup>

<sup>11</sup> Greg GianforTAX, Twitter Feed, available at <https://twitter.com/gianfortax/status/1291426651104919552>, Aug. 6, 2020.

<sup>12</sup> Greg GianforTAX, Twitter Feed, available at <https://twitter.com/gianfortax/status/1295108470522277888>, Aug. 16, 2020; Greg GianforTAX, Twitter Feed, available at <https://twitter.com/gianfortax/status/1296580163820351488>, Aug. 20, 2020.

**II. LAW.** Under Montana law, candidates are subject to regulations that limit or prohibit contributions from individuals, groups, or organizations. In this case, the DGA is prohibited from contributing more than \$710 to a gubernatorial candidate.<sup>13</sup> A contribution is broadly defined and includes:

- (i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit, payment, or distribution of money or **anything of value** to support or oppose a candidate or a ballot issue;
- (ii) **an expenditure, including an in-kind expenditure, that is made in coordination with a candidate** or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution . . . .<sup>14</sup>

Under subsection (ii), coordination is defined as “made in cooperation with, in consultation with, at the request of, or with the express prior consent of a candidate or political committee or an agent of a candidate or political committee.”<sup>15</sup> A “coordinated expenditure” is further defined as

any election communication, electioneering communication, or reportable election activity that is made by a person in cooperation with, in consultation with, under the control of, or at the direction of, in concert with, at the request or suggestion of, or with the express prior consent of a candidate or an agent of the candidate. The coordination of an expenditure need not require agreement, cooperation, consultation, request, or consent on every term necessary for the particular coordinated expenditure, but only requires proof of one element, such as content, price, or timing, to be met as a fact of a coordinated expenditure.<sup>16</sup>

When determining whether coordination occurred, two factors to consider are whether:

- (a) it is based on information that is provided by the candidate or agent of the candidate directly or indirectly to the person funding or facilitating the communication or activity, or any person involved in creating, producing, or disseminating it.
- . . . .
- (e) the candidate or the candidate's agent has made or participated in any discussion or in making any decision regarding the content, timing, location, media, intended audience, volume of distribution, or frequency of placement of the communication or activity.<sup>17</sup>

<sup>13</sup> Mont. Code Ann. § 13-37-216(1) (2019); Commissioner of Pol. Practices, Contribution Limits, available at <http://politicalpractices.mt.gov/contributionlimits>.

<sup>14</sup> Mont. Code Ann. § 13-1-101(9)(a) (emphasis added).

<sup>15</sup> Mont. Code Ann. § 13-1-101(10).

<sup>16</sup> Mont. Admin. R. 44.11.602(1).

<sup>17</sup> Mont. Admin. R. 44.11.602(2).



**III. Cause of Action.** Based upon Cooney's own statements to the Commission, it is clear Cooney and the DGA have been communicating on campaign strategy. Then in August 2020, Cooney and the DGA released campaign advertising materials—a video and website—that appear to be coordinated communications. Both the Cooney campaign and the DGA would have incurred expenses to create the ads, such as video production, website domain registration cost, and website production, along with the staffing of the Twitter account. Those expenses likely far exceeded the permitted contribution of \$710.

The timing and content of Cooney and the DGA's campaign advertising indicate they were created "in consultation" or "in concert" with one another.<sup>18</sup> On August 4, Cooney released his campaign video advertisement using a new slogan "Greg GianforTax." However, the DGA had already purchased and registered the domain name using this precise slogan the prior month. Then just two days after Cooney released his video, the DGA released its website, using the same slogan and content as Cooney's video. Both the video and website have extremely similar content and use the same types of phrases, and both were likely created at the same time in the weeks before they were released. The DGA also began a Twitter account directing viewers to the website and retweeting Cooney's account.

Under the law, Cooney and the DGA do not need to act in concert on every element of the communications. Rather there only needs to be proof of one element, such as content, price, or timing, to be a coordinated expenditure.<sup>19</sup> The facts seem to demonstrate Cooney and the DGA clearly communicated about content and timing—they released the advertisements on an identical subject matter within two days of one another.

**IV. Conclusion.** We ask the Commission to immediately investigate Cooney and the Democratic Governors Association for a prohibited coordinated communication and if found, impose appropriate sanctions to ensure Cooney does not continue violating ethics rules.

Sincerely,



Kendra Arnold  
Executive Director, Foundation for Accountability & Civic Trust

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<sup>18</sup> Mont. Admin. R. 44.11.602(1).

<sup>19</sup> Mont. Admin. R. 44.11.602(1).