STATE ADMINISTRATION
Exhibit No. 10
Date 4-20-2015
Bill No. SR53

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES
STATE OF MONTANA

In the Matter of the Complaint Against Mont-PIRG, Montana Common Cause, the League of Women Voters of Montana and Other Entities and Political Committees Supporting I-125 and I-121	))))	**SUMMARY OF FACTS AND STATEMENT OF FINDINGS**

Complainant Brad Griffin, Executive Director of the Montana Restaurant Association and the Montana Retail Association, filed a complaint against Mont-PIRG, Montana Common Cause ("MCC"), the League of Women Voters of Montana ("LWVM") and other entities and political committees supporting I-125 and I-121 on October 31, 2000. Mr. Griffin's complaint alleges that Mont-PIRG, MCC, LWVM, and other entities and political committees supporting I-125 and I-121 during the 1996 election failed to properly report certain contributions and expenditures under Montana's Campaign Finance and Practices Act. Mr. Griffin's complaint contains the following basic allegations:

I. I-125 CLAIMS

Claim 1: The initial principal political committee created to support I-125, Citizens to Qualify I-125, violated the naming and labeling statute (Section 13-37-210, Montana Code Annotated (MCA)) by failing to properly identify the economic or other special interest of a majority of its contributors.

Claim 2: The initial C-6 report filed by Citizens to Qualify I-125 failed to accurately report in-kind contributions made by Mont-PIRG, LWVM, Green Corps, the law firm of Reynolds, Motl and Sherwood, and other entities as required by Section 13-37-228(1), MCA.

Claim 3: Citizens to Qualify I-125 failed to timely file its first C-6 report. Citizens to Qualify I-125 filed its initial C-6 report on June 10, 1996. Mr. Griffin alleges the committee's initial report should have been filed on March 10, 1996 as required by Sections 13-37-226(2), 13-37-229, and 13-37-230, MCA.

Claim 4: Citizens to Qualify I-125, Mont-PIRG and LWVM failed to report two grants totaling $5,000 made by Mont-PIRG to LWVM for I-125 activities in September of 1996.

Claim 5: Mont-PIRF, Citizens to Qualify I-125 and its successor principal committee, League of Women Voters of Montana, Montana Common Cause, Mont-PIRG, 2030 Fund, Inc. and Citizens for I-125 ("LWVM and Others for I-125") failed to report expenditures made for the Mont-PIRF study entitled "Big Money and Montana's Ballot Campaigns." In addition, the I-125 principal committees failed to report expenditures for

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polling during the 1996 campaign.

Claim 6: Citizens to Qualify I-125 and LWVM and Others for I-125 failed to report I-125 signature gathering efforts by students in a University of Montana Environmental Organizing Semester ("EOS") class taught by C.B. Pearson. Mr. Pearson also served as the campaign manager for I-125 and as treasurer for both Citizens to Qualify I-125 and LWVM and Others for I-125.

II. I-121 CLAIMS

Claim 1: The following entities and political committees failed to accurately and timely report contributions and expenditures supporting I-121 during the 1996 election:

A. Committee for a Livable Wage by 2000 Campaign ("Livable Wage Committee");
B. Montana People's Action ("MPA");
C. Montana Alliance for Progressive Policy ("MAPP");
D. Montanans for an Effective Legislature ("Mont-CEL");
E. A Territory Resource ("ATR"); and
F. Western States Center ("WSC").

Claim 2: The Livable Wage Committee violated the naming and labeling statute (Section 13-37-210, MCA) by failing to properly identify the economic or other special interest of a majority of its contributors.

III. INTRODUCTION AND BACKGROUND

I-125 and I-121 appeared on the November 5, 1996 general election ballot.

I-125 prohibited direct corporate spending on ballot issues, except by non-profit corporations not controlled by for-profit companies. I-125 was approved by Montana's voters but was subsequently declared unconstitutional. See Montana Chamber of Commerce, et al. v. Ed Argenbright, 28 F. Supp. 593 (D. Mont. 1998), 226 F. 3d 1049 (9TH Cir. 2000), cert. denied, __ U.S.__, 122 S. Ct. 46 (2001).

I-121 would have gradually raised Montana's minimum hourly wage to $6.25 by the year 2000 unless a higher minimum wage was required by federal law. Montana's voters rejected I-121.

Mr. Griffin's complaint in this matter was filed, in part, as a response to an earlier complaint filed by MCC against the Montana Chamber of Commerce and others. In a June 20, 2000 decision, *In the Matter of the Complaint Against the Montana Chamber of Commerce Regarding its Activities in Opposition to I-121 and I-125* (hereinafter "June 20, 2000 Chamber Decision"), it was determined that the Montana Chamber of Commerce, the

Montana Retail Association, the Montana Restaurant Association, and others had failed to accurately and timely report certain expenditures and contributions opposing I-121 and I-125. The matter ultimately was settled on August 9, 2000 when the I-121 and I-125 opponents agreed to pay a $28,000 civil penalty contingent on an agreement that payment of the civil penalty was not an admission of liability or wrongdoing. Less than three months later, Mr. Griffin filed this complaint relying on findings made in the June 20, 2000 Chamber Decision.

IV. THE STATUTE OF LIMITATIONS ISSUE

The I-125 and I-121 opponents, including Mr. Griffin, raised the Section 13-37-130, MCA, statute of limitations issue during the investigation and settlement of the violations identified in the June 20, 2000 Chamber Decision. The supporters of I-125 and I-121 targeted in Mr. Griffin's complaint have repeatedly raised the same statute of limitations issue during this investigation. It is necessary to address Section 13-37-130, MCA, because participants in Montana's most controversial and bitter ballot issue campaigns have recently been filing belated complaints several years after the voters have spoken. The belated filing of complaints, in turn, has encouraged respondents to delay providing necessary information to the Commissioner's office, apparently for the purpose of enhancing Section 13-37-130, MCA, statute of limitations claims. It took 13 months to complete the June 20, 2000 Chamber Decision investigation and 21 months to complete this investigation. These lengthy delays will not be tolerated in the future, and my office will implement procedures to expedite future investigations.

MCC filed its I-121 and I-125 complaints against the Montana Chamber of Commerce and Mr. Griffin's employers almost two years and four months after the November 5, 1996 general election. Mr. Griffin waited almost four years after the November 5, 1996 vote on I-125 and I-121 to reciprocate with a complaint against MCC and the other parties discussed in this decision. Mr. Griffin and the Montana Chamber of Commerce were researching the allegations raised in the Griffin complaint in May of 1998, culminating in a report made available to the Chamber several months later. Even when MCC filed its I-121 and I-125 complaints against the Chamber on March 3, 1999, Mr. Griffin waited almost 20 months before filing the complaint in this matter.

The belated filing of complaints several years after an election raises enforcement issues for the Commissioner's office under Section 13-37-130, MCA, which reads, in pertinent part, as follows:

> **13-37-130. Limitation of action.** An action may not be brought under 13-37-128 and 13-37-129 more than 4 years after the occurrence of the facts that give rise to the action. No more than one judgment against a particular defendant may be had on a single state of facts. The civil action created in 13-37-128 and 13-37-129 is the exclusive remedy for violation of the contribution, expenditure, and reporting provisions of this chapter....

Mr. Griffin's October 31, 2000 complaint involves a host of complex allegations about two controversial 1996 ballot issue campaigns. The belated filing of the complaint immediately created statute of limitations issues for the Commissioner, because it was filed just a few days before the four-year anniversary date of the 1996 November general election. For example, civil penalty actions based on allegations that pre-general election reports were not timely filed by the I-125 and I-121 committees were already barred by Section 13-37-130, MCA. These and other related statute of limitations issues are discussed in the following paragraphs.

The belated filing of Mr. Griffin's complaint also created practical problems that only lengthened this investigation. Mont-PIRG, for example, changed executive directors and moved its offices before Mr. Griffin's complaint was filed on October 31, 2000. Mr. Pearson also moved his offices during this same period. Because the constitutional challenge to I-125 occurred during this same four-year period, the respondents' records were dispersed among several individuals. EOS class students, most of whom were from out-of-state, have long since left the Missoula area. While these events do not excuse the conduct described in Part V of this decision, it is clear that the late filing of the Griffin complaint made it more difficult for the respondents and the Commissioner to gather documents and information pertaining to this investigation.

The respondents in this investigation have asserted that all allegations in Mr. Griffin's complaint are time barred under Section 13-37-130, MCA. The I-125 and I-121 proponents assert that any enforcement action would be based on "facts" or events that occurred more than four (4) years ago. In particular, the proponents of I-125 urge an interpretation of Montana's Campaign Finance and Practices Act that would eviscerate the full disclosure mandate of the Act. The I-125 proponents assert that:

1. Citizens to Qualify I-125 closed its books on September 24, 1996 and its treasurer, campaign manager, and campaign officials cannot be the subjects of enforcement action because the committee's books were closed more than four (4) years before Mr. Griffin's complaint was filed.

2. The decision by LWVM and Others for I-125 to continue its existence and delay filing a closing report until March 29, 1999 cannot subject the committee, its treasurer, officers, or campaign manager to enforcement action under the Act because campaign activities described in Mr. Griffin's complaint occurred more than four (4) years ago. LWVM and Others for I-125 also specifically assert that they have no responsibility or liability for the predecessor principal committee, Citizens to Qualify I-125.

I will first put to rest the suggestion that individuals and groups that organize, control, and spearhead a ballot issue campaign from beginning to end can insulate themselves from enforcement action under the Act by filing a closing report and creating a new principal committee that differs in name only. Citizens to Qualify I-125 and LWVM and Others for I-125 were organized, controlled, and operated by the same individuals from the inception of I-125 until the initiative was finally declared unconstitutional, as illustrated by the following:

When Citizens to Qualify I-125 closed its books, it transferred its remaining cash to LWVM and Others for I-125. Both I-125 committees used the same mailing address and bank for its campaign activities. The mailing addresses for both I-125 committees were the same as the mailing address for C.B. Pearson.

C.B. Pearson was the treasurer and campaign manager for both principal I-125 committees. Mr. Pearson coordinated the I-125 signature gathering effort, wrote the study relied on by the proponents of I-125 to support the initiative, and managed virtually every aspect of the successful I-125 campaign for both principal committees. Mr. Pearson testified as MCC's expert witness and as a witness for LWVM and Others for I-125 during the post-election I-125 litigation.

Jon Motl was the architect, draftsman, and chief defender of I-125 before, during, and after the I-125 campaign. Mr. Motl wrote I-125, secured its approval by the Secretary of State and Attorney General, volunteered many hours to Citizens to Qualify I-125, was paid by LWVM and Others for I-125 for his campaign work and served as the deputy treasurer for LWVM and Others for I-125. Mr. Motl's law firm also made an in-kind contribution to Citizens to Qualify I-125. Mr. Motl defended I-125 as legal counsel for LWVM and Others for I-125 in the post-election litigation.

Mont-PIRG made substantial in-kind and monetary contributions to both principal I-125 committees. Chris Newbold, Mont-PIRG's executive director, publicly touted the organization's efforts to qualify and pass I-125 (see, e.g., September 25 and October 17, 1996 *Montana Kaimin*). Mr. Newbold served as a "Committee Member" for LWVM and Others for I-125. Mr. Newbold testified about his I-125 campaign activities during the I-125 litigation.

Mont-PIRF's Board of Directors was comprised of Mr. Motl, Mr. Pearson, Mr. Newbold, and Linda Lee. Mont-PIRF commissioned and paid C.B. Pearson to research and write the report on corporate contributions to Montana ballot issue campaigns that became the centerpiece of the I-125 campaign.

LWVM signed on early to support the I-125 campaign. In May of 1996, LWVM President Barbara Seekins agreed to serve with Mr. Motl and Mr. Pearson on the Voter Information Pamphlet committee writing arguments in favor of I-125. Ms. Seekins collected signatures to place I-125 on the ballot. Mr. Pearson wrote fund-raising letters in early June of 1996 representing that LWVM had agreed to support I-125. Ms. Seekins served as a "Committee Member" for LWVM and Others for I-125 and appeared in I-125 radio advertisements paid for by the committee.

MCC was involved in the I-125 campaign from its inception. Mr. Pearson and Mr. Motl were both MCC Board members in 1996 and have historically been MCC's public spokesmen on campaign reform issues. John Heffernan, President of MCC in 1996, volunteered time to collect I-125 petition signatures in 1996 and also was an active participant in public news conferences supporting I-125. MCC made significant in-kind and

monetary contributions to LWVM and Others for I-125.

The preceding facts, and the Summary of Facts in Part VI of this decision establish beyond any doubt that the two principal I-125 campaign committees were controlled and run by the same individuals. The I-125 proponents have urged this Commissioner to adopt an interpretation of the law that would encourage the sham filing of closing reports in an effort to limit the accountability and liability of political committees and their campaign officials. Full disclosure requires that when the same people run a ballot issue campaign from beginning to end, those campaign officials have a continuing obligation to report accurately all contributions and expenditures even if the predecessor committees have filed closing reports and the names of the successor committees have been changed once or twenty times.

Montana's Campaign Finance and Practices Act requires the "full disclosure and reporting of the sources and disposition of funds used... to support or oppose candidates, political committees or issues..." (Section 1, Chapter 480, Laws of 1975). My predecessor and I have consistently ruled that full disclosure of campaign finances and practices requires that contributions and expenditures be timely and accurately reported. See the June 20, 2000 *Chamber Decision*; the April 30, 1998 *Montanans for Common Sense Water Laws/Against I-122 Summary of Facts and Statement of Findings* (hereinafter "April 30, 1998 *MCSWL Decision*"); the April 29, 1997 *Montanans for Clean Water Summary of Facts and Statement of Findings* (hereinafter "April 29, 1997 *MCW Decision*"); and the February 27, 1997 *Montanans for Clean Water and the Orvis Company Summary of Facts and Statement of Findings* (hereinafter "February 27, 1997 *MCW/Orvis Decision*"). Montana's unequivocal commitment to full disclosure and reporting of campaign contributions and expenditures requires that all contributions previously received or expenditures previously made be reported accurately in each report. If, for whatever reason, a contribution or expenditure was omitted from or inaccurately reported in previous reports, a political committee has a duty to file an amended report or include the omitted contribution or expenditure in the next report (see schedule D of the C-6 report form). The duty to report accurately all contributions previously received or expenditures previously made does not end on the date of the election. The duty to report accurately all contributions and expenditures continues until the political committee ceases to function and closes its books by filing a closing report with the Commissioner's office.

In this matter, LWVM and Others for I-125 did not finally conclude its business and file a closing report immediately after the 1996 general election. LWVM and Others for I-125 delayed filing a closing report because Mr. Motl and Mr. Pearson believed that the committee's intervention in the Federal court proceedings challenging the constitutionality of I-125 would be denied if the committee ceased to exist (see Summary of Fact 154). LWVM and Others for I-125 did not file a closing report with the Commissioner's office until March 29, 1999, more than two years and four months after the 1996 general election. The Commissioner has four (4) years from March 29, 1999 to pursue enforcement action under Section 13-37-130, MCA, if it is determined that LWVM and Others for I-125 or its treasurer, campaign staff, or officers did not report accurately all contributions and/or expenditures for

the I-125 campaign.[1] The filing of each report is a separate act that carries with it the legal obligation to report accurately all contributions previously received or expenditures previously made, including contributions and expenditures made by the predecessor committee, Citizens to Qualify I-125 (schedule D of each C-6 report form contains specific language requiring that corrections to receipts and expenditures previously reported be made). Any other interpretation would circumvent the "full disclosure and reporting" of campaign contributions and expenditures (Section 1, Chapter 480, Laws of 1975).

Section 13-37-130, MCA, does bar enforcement action based on the failure to timely report contributions and expenditures made more than four (4) years before the date of the enforcement action. For example, Mr. Griffin alleges that the initial C-6 report filed by Citizens to Qualify I-125 was not timely filed (the report should have been filed on March 10, 1996 rather than June 10, 1996; see I-125 Claim 3). This Commissioner agrees, but my predecessor apparently had a different interpretation in March of 1996 (see Summary of Fact 40). Nevertheless, Mr. Griffin filed his complaint more than four (4) years after March 10, 1996 and enforcement action based on the timeliness of the initial report filed by Citizens to Quality I-125 is barred by Section 13-37-130, MCA. Accordingly, this portion of I-125 Claim 3 is dismissed and will not be discussed further in this decision. The issue of whether all contributions and expenditures were reported accurately in the September 11, 1998 and March 29, 1999 closing reports filed by LWVM and Others for I-125 is addressed on pages 41-55 of this decision.

Based on the preceding interpretation of Section 13-37-130, MCA, the following additional claims in Mr. Griffin's complaint are dismissed for the following reasons:

Citizens to Qualify I-125 filed a closing report on September 24, 1996. For the reasons stated on pages 4-7 of this decision, the successor principal I-125 committee, LWVM and Others for I-125, became responsible for the obligations and liabilities of the initial principal I-125 committee; however, the alleged violations of the naming and labeling statute (13-37-210, MCA) occurred only during the period that Citizens to Qualify I-125 was the principal I-125 committee (Mr. Griffin does not allege the LWVM and Others for I-125 violated the naming and labeling statute nor does it appear that a violation occurred). Compliance with the naming and labeling statute is driven by whether a majority of contributors on any particular reporting date in a campaign require the principal committee to change its name to reflect a common economic interest or employer of a majority of its contributors. A committee can be in or out of compliance on any given reporting date,

1 LWVM and Others for I-125 also filed post-election reports in 1997 and 1998 (see Summary of Fact 154). LWVM and Others for I-125 had a continuing duty to report accurately all contributions received and expenditures made in those reports. The committee's September 11, 1998 report also falls within the four-year period for initiating enforcement action under Section 13-37-130, MCA.

depending on the employment or economic interests of a majority of a committee's contributors. There is no evidence that a violation of the naming and labeling statute occurred after September 24, 1996, the date Citizens to Qualify I-125 filed its closing report. Enforcement action must be initiated not more than four (4) years after the date that Citizens to Qualify I-125 was violating the naming and labeling statute (not more than four (4) years after September 24, 1996). Mr. Griffin's complaint alleging a violation of the naming and labeling statute was filed more than four (4) years after September 24, 1996 and the successor principal committee operated the committee in compliance with the naming and labeling statute.

I-125 Claim 4 is dismissed to the extent that it alleges that Citizens to Qualify I-125, LWVM and Others for I-125, Mont-PIRG, or LWVM failed to timely report grants of $5,000 for I-125 campaign activities. These alleged contributions/expenditures occurred in September and November of 1996, and the timely reporting of such expenditures/ contributions would have been necessary more than four (4) years ago. The issue of whether these contributions/expenditures were made and accurately reported in the September 11, 1998 and March 29, 1999 closing reports filed by LWVM and Others for I-125 is addressed on pages 51 and 52 of this decision.

I-125 Claim 5 is dismissed to the extent that it alleges that expenditures made for the Mont-PIRF funded study of corporate contributions to Montana's ballot issue campaigns and polling were not timely reported. Expenditures for the document described in Claim 5 were made in April through September of 1996, and the timely reporting of such expenditures would have been necessary more than four (4) years ago. The I-125 principal committees spent no money on polling (see page 52 of this decision). The issue of whether expenditures for the Mont-PIRF study were reportable and accurately reported in the September 11, 1998 and March 29, 1999 closing reports filed by LWVM and Others for I-125 is addressed on pages 52-54 of this decision.

I-125 Claim 6 is dismissed to the extent that it alleges that Citizens to Qualify I-125 and LWVM and Others for I-125 failed to timely report I-125 signature gathering efforts by C.B. Pearson's University of Montana EOS class. This alleged in-kind contribution/ expenditure occurred in the spring of 1996 and the timely reporting of this contribution/expenditure would have been necessary more than four (4) years ago. The issue of whether this activity was a contribution/expenditure and reportable in the September 11, 1998 and March 29, 1999 closing reports filed by LWVM and Others for I-125 is addressed on pages 54 and 55 of this decision.

I-121 Claim 1 is dismissed in its entirety for the following reasons:

A. The Livable Wage Committee was the principal committee supporting I-121. It was primarily responsible for timely and accurately reporting all monetary and in-kind contributions by individuals and incidental political committees that were coordinating campaign activities with the Livable Wage Committee.

The Livable Wage Committee filed its closing report on November 25, 1996. The four-year deadline for commencing enforcement action against the Livable Wage Committee under 13-37-130, MCA, expired just twenty-six days after Mr. Griffin filed his complaint on October 31, 2000. Mr. Griffin alleges that the initial report filed by the Livable Wage Committee in February of 1996 was late-filed and inaccurate. The filing of the Livable Wage Committee's initial report occurred more than four and one-half years before Mr. Griffin's complaint was filed. The alleged violations described in I-121 Claim 1, including the filing of the closing report on November 25, 1996, occurred more than four (4) years ago. Mr. Griffin waited too long to challenge both the accuracy and the timeliness of C-6 reports filed by the Livable Wage Committee.

B. The alleged contributions or expenditures by the AFL-CIO, MPA, ATR, WSC, MAPP and Mont-CEL would constitute coordinated expenditures by incidental committees supporting the Livable Wage Committee's efforts to increase the minimum wage. As stated in the preceding paragraph, the Livable Wage Committee had the primary obligation to report timely and accurately coordinated in-kind and monetary contributions by incidental committees. Incidental committees did have an independent obligation to report contributions and expenditures in 1996, but the confusion surrounding incidental committee reporting obligations in 1996 has been well documented in the June 20, 2000 *Chamber Decision*, at pp. 40 and 41; the April 30, 1998 *MCSWL Decision*, at pp. 4-8 and 69-71; the April 29, 1997 *MCW Decision*, at pp. 4-7; and the February 27, 1997 *MCW/Orvis Decision*, at pp. 4-7. These decisions correctly determined that the only enforceable reporting requirement applicable to incidental political committees in the 1996 election was the obligation to file a C-4 report twelve days before the 1996 November general election. The Griffin complaint was filed more than four (4) years after the 1996 incidental political committee reporting deadline, and all of the alleged in-kind or monetary contributions referenced in I-121 Claim 1 were made during the 1996 I-121 campaign (more than five (5) years ago).

I-121 Claim 2 is dismissed because the alleged violation of the naming and labeling statute by the Livable Wage Committee occurred more than four (4) years ago and the committee ceased operating and filed its closing report more than five (5) years ago (November 25, 1996).

V. THE LENGTH OF THIS INVESTIGATION

It has taken 21 months to complete this investigation and issue this decision. While my office accepts some responsibility for not addressing the serious allegations in Mr. Griffin's complaint sooner[2], the respondents in this investigation are primarily responsible

[2] My office has experienced a significant increase in the number of campaign finance and practices complaints against local candidates and local ballot issue committees in the past year. In addition, my office has spent the last 18 months investigating the first lobbyist reporting complaint ever filed and revising lobbying reporting rules.

for the delays in issuing this decision. In particular, the two key players in the I-125 campaign, Jon Motl and C.B. Pearson, have, until recent months, resisted and delayed providing crucial information related to this investigation. The following conduct and actions by Mr. Motl, Mr. Pearson, and other respondents illustrate why this investigation has taken so long to complete:

My office submitted initial written requests for information to C.B. Pearson, Mr. Motl, Mont-PIRG and the LWVM on January 23, 2001.[3] Mr. Motl promised responses to the January 23, 2001 letters from himself, Mr. Pearson and Mont-PIRG on May 15, 2001 and June 18, 2001. The June 18, 2001 communication was a letter from Mr. Motl promising responses from himself, Mr. Pearson, and Mont-PIRG the first week of July 2001. When no responses were received as promised, Mr. Motl was sent a letter on September 10, 2001 reminding him that he, Mr. Pearson, and Mont-PIRG had not responded to my office's January 23, 2001 letters. On October 15, 2001 Mr. Motl apologized for not responding to my office's requests for information, but no formal written responses were received from Mr. Motl until October 17, 2001 and November 15, 2001 (this latter response was presumably submitted on behalf of Mont-PIRG). After Mr. Motl was repeatedly advised that the October and November, 2001 responses were inadequate and incomplete, Mr. Motl, Mr. Pearson, and Mont-PIRG finally produced several boxes of crucial documents involving the I-125 campaign on January 4, 2002, almost a year after specific written requests for information were submitted. Mr. Motl and Mont-PIRG were still submitting critical documents in June of 2002.

The documentary information ultimately submitted by Mr. Motl, Mr. Pearson, Mont-PIRG, Mont-PIRF and MCC, while voluminous, is still incomplete. For example, critical documents concerning Green Corps' funding for Mr. Pearson's EOS class and board meeting minutes for Mont-PIRF, the non-profit corporation that funded the key I-125 study of corporate contributions in Montana ballot issue campaigns, either do not exist, can't be located, or have been misplaced. Mont-PIRG's Executive Director, Chris Newbold, testified in an I-125 trial deposition that the Mont-PIRG Board met monthly in 1996. Mont-PIRG's January 27, 1996 Board retreat minutes confirm Mr. Newbold's deposition testimony, yet 1996 board meeting minutes produced on March 7, 2002 do not contain meeting minutes for the key months of March, April, and May of 1996. Montana's non-profit corporations, including Mont-PIRG and Mont-PIRF, are required to keep as permanent records "minutes of all meetings of its members and board of directors" and a record of <u>all</u> actions taken by its members or board (Section 35-2-906, MCA). Despite this affirmative legal duty, minutes of crucial 1995 and 1996 Mont-PIRG and Mont-PIRF board meetings that most certainly would have involved discussions of I-125 activities and issues were either never prepared or have

3 The LWVM coordinated its responses to my office's written requests for information with Mr. Motl but submitted its own timely and complete responses. The LWVM responded to the January 23, 2001 letter from my office on May 5, 2001 and answered a supplemental request for information on October 4, 2001.

been lost.

Misleading and evasive information provided by Mr. Motl, Mr. Pearson and others during this investigation also delayed issuance of a final decision. All written responses by Mr. Pearson, MCC, Mont-PIRG, Mont-PIRF, and LWVM were being coordinated by Mr. Motl. Yet, in several instances, material information provided was contrary to other express evidence provided in other legal proceedings. For example, Mont-PIRG stated that it "never paid employees to collect signatures" for I-125 in an October 31, 2001 letter. Three years earlier, Mont-PIRG's Executive Director, Chris Newbold, had testified in an I-125 trial deposition that Mont-PIRG had paid its 1996 interns to collect I-125 signatures. Only after Mont-PIRG produced its 1996 financial records in April, May and June of 2002 was it determined that the Fund for Public Interest Research ("FFPIR"), not Mont-PIRG, paid canvassers to collect I-125 signatures in May and June 1996 (see Summary of Facts 13 and 14).

A June 7, 1996 letter and attachment from Mr. Pearson to the Stern Family Fund requested a contribution to the I-125 campaign. The attachment represented that LWVM had already made a financial contribution to the I-125 campaign. Neither principal I-125 committee reported an in-kind or monetary contribution from LWVM. When asked about this discrepancy, Mr. Pearson responded by stating that the representation in the Stern Family Fund attachment "was not meant to be taken literally" and that as a fund-raising letter "it had 'puff' in it" but "was within acceptable bounds of honesty." Subsequent investigation confirmed that the LWVM never did make an in-kind or monetary contribution to either principal I-125 committee.

Respondents' answers to requests for copies of the 1995 and 1996 Mont-PIRF Board meeting minutes further illustrate how evasive and inconsistent responses prolonged this investigation. Mr. Motl initially advised that Mont-PIRF meeting minutes could not be found. When pressed further, Mr. Motl subsequently advised that Mont-PIRF minutes were never prepared and did not exist. Ultimately, Mr. Motl advised that C.B. Pearson remembered preparing or least seeing Mont-PIRF minutes, but Mr. Pearson could not find them. Mr. Motl does not recall ever seeing Mont-PIRF Board minutes but advised that he would ask Chris Newbold if he had retained minutes for Mont-PIRF's 1995 and 1996 Board meetings. Linda Lee does not remember if formal minutes of Mont-PIRF Board meetings were prepared but does recall seeing notes for some meetings. Neither Ms. Lee, Mr. Motl, Mr. Pearson, nor Mr. Newbold could locate copies of any notes or Mont-PIRF Board meeting minutes for 1995 or 1996.

Mr. Pearson, Mr. Motl, and Ms. Lee do not remember when Mont-PIRF agreed to pay C.B. Pearson to write "Big Money and Montana's Ballot Campaigns" or whether I-125 campaign issues were discussed during 1995 or 1996 board meetings. The absence of crucial Mont-PIRF decision-making records and the corresponding memory lapses of the three key people in the I-125 campaign exemplifies a lack of candor not expected from the public advocates of full disclosure of campaign finances and practices.

VI. SUMMARY OF FACTS

A. The Key Participants in the I-125 Campaign

1. The individuals primarily responsible for the development, implementation and management of the I-125 campaign in 1995 and 1996 were Jon Motl, C.B. Pearson and Chris Newbold. Barbara Seekins, President of LWVM in 1996, was a "Committee Member" of LWVM and Others for I-125 but her involvement in the I-125 campaign was limited. Likewise, Linda Lee was a member of the Mont-PIRF Board, but her involvement in the I-125 campaign was also limited.

2. C.B. Pearson is a Missoula consultant long active in public interest issues involving campaign finance reform, environmental issues, lobbying reporting reform, public interest organizing and consulting services for nonprofit organizations. Mr. Pearson's involvement in the I-125 campaign and interaction with other individuals and organizations supporting I-125 included:

A. Mr. Pearson was the campaign manager and treasurer for both Citizens to Qualify I-125 and LWVM and Others for I-125. Mr. Pearson, along with Jon Motl, was responsible for naming both principal I-125 committees. Mr. Pearson was involved in virtually every aspect of the I-125 campaign from its inception. Mr. Pearson's major I-125 campaign duties included coordination of signature gathering, fund-raising, radio advertising, research, preparation of fact sheets, completion of campaign finance reports, and participation in public debates as a supporter of I-125.

B. Mr. Pearson managed and promoted I-118, a 1994 campaign reform ballot issue that was approved by the electorate. The same coalition of groups (Mont-PIRG, LWVM and MCC) were involved in the I-118 campaign.

C. Mr. Pearson and Mr. Motl were organizers for PIRGS (Public Interest Research Groups) and Ralph Nader in the late 1970's and 1980's. They jointly developed "organizers schools" which were condensed into training sessions for use throughout the nation.

D. Mr. Pearson's consulting business clients in 1995 included Green Corps, Mont-PIRG, Mont-PIRF, and MCC.

E. Mr. Pearson was MCC's Executive Director from 1988 through 1992 and served as treasurer and a member of the MCC Board in 1995 and 1996.

F. Mr. Pearson was secretary and a member of the Mont-PIRF Board in 1995 and 1996.

G. Mr. Pearson was a citizen member of Mont-PIRG in 1995 and 1996. Mont-PIRG's Board listed Mr. Pearson as an advisor to Mont-PIRG in 1995 and 1996. He served

as Mont-PIRG's Executive Director from 1982 through 1985.

H. Mr. Pearson was a member of LWVM in 1995 and 1996 and also served as assistant editor of LWVM's newsletter beginning in 1997.

I. Mr. Pearson was paid by Mont-PIRF to write "Big Money and Montana's Ballot Issue Campaigns" during the spring and summer of 1996. When Mr. Pearson's study was printed and published in September of 1996, it became a key document in the I-125 debate.

J. Mr. Pearson created and developed the EOS course that was taught at the University of Montana for the first time in the spring of 1996. Mr. Pearson was paid by Green Corps (see Summary of Fact 67 for a description of Green Corps) to present and prepare the course for consideration and ultimate approval by the University of Montana. Mr. Pearson taught the spring 1996 EOS course.

3. Jon Motl is a Helena attorney who specializes in public interest law. Mr. Motl has been involved in ballot issue campaigns on a variety of subjects since the 1980's. Mr. Motl's involvement in the I-125 campaign and interaction with other individuals and organizations supporting I-125 includes:

A. Mr. Motl wrote I-125. He, along with Mr. Pearson, was responsible for naming both principal I-125 committees. Mr. Motl was involved in virtually every aspect of the I-125 campaign from its inception. He collected signatures, served as pro-bono legal counsel for Citizens to Qualify I-125, provided paid legal services to LWVM and Others for I-125, raised funds for the I-125 campaign, monitored the I-125 opponents, developed TV ads, participated in I-125 debates, and performed a host of other tasks.

B. Mr. Motl was deputy treasurer and a "Committee Member" of LWVM and Others for I-125.

C. Mr. Motl was a key player in the 1994 I-118 campaign. The same coalition of groups (Mont-PIRG, LWVM and MCC) were involved in the I-118 campaign.

D. Mr. Motl has worked with Mr. Pearson on public interest organizing and Ralph Nader activities since the late 1970's (see Summary of Fact 2(C)).

E. Mr. Motl was pro-bono legal counsel for Mont-PIRG in 1995 and 1996.

F. Mr. Motl was a member for the Mont-PIRF Board in 1995 and 1996.

G. Mr. Motl served on the MCC Board in 1995 and 1996 and has been a frequent public spokesperson for MCC. Mr. Motl served as MCC's legal counsel on numerous occasions since 1995. Mr. Motl was also a member of National Common Cause's governing board in 1996.

4. Chris Newbold was Mont-PIRG's Executive Director in 1995 and 1996. In that capacity, Mr. Newbold did the following to promote the passage of I-125:

A. Mr. Newbold solicited contributions from Mont-PIRG members and nonmembers for the I-125 campaign.

B. Mr. Newbold used Mont-PIRG volunteers and FFPIR funded canvassers to collect signatures for I-125.

C. Mr. Newbold was a member of the Mont-PIRF Board.

D. Mr. Newbold was a "Committee Member" of LWVM and Others for I-125.

E. Mr. Newbold's principal I-125 campaign responsibility from September through November of 1996 was to coordinate grassroots citizen support for I-125.

F. Mr. Newbold consulted with Mr. Pearson and Mr. Motl regarding I-125 campaign strategy.

G. Mr. Newbold personally volunteered a portion of his time to collect I-125 signatures.

5. Mont-PIRG is a Montana nonprofit corporation engaged in public advocacy for environmental, social and governmental issues of interest to University of Montana students and Mont-PIRG's non-student members. Mont-PIRG is governed by a Board of Directors comprised of University of Montana students elected annually. Board members are elected in May each year and serve until the following April. The Mont-PIRG Board met at least once a month in 1995 and 1996.

6. Mont-PIRG's funding in 1996 came primarily from the $3 per semester fee charged to participating University of Montana students, $35 family membership fees, individual contributions, and FFPIR canvass payments. Mont-PIRG spent approximately $58,000 in 1996. Of this amount, approximately $13,000 came from UM student fees and $27,000 from FFPIR canvass payments.

7. Mont-PIRG's only full-time employee is its Executive Director. Linda Lee was Mont-PIRG's Executive Director for three years before August of 1995. Mr. Newbold was hired as her replacement in the summer of 1995, and Mr. Newbold served as Mont-PIRG's Executive Director until the summer of 2000. Mr. Newbold's 1996 salary was approximately $16,500. He received payments from Mont-PIRG of $8,633.87, another $3,594.00 from Mont-PIRF, and the remainder from FFPIR for his canvass fund-raising work.

8. Mr. Pearson and Mr. Motl served as advisors to the Mont-PIRG Board in 1995 and 1996. Mr. Motl also served as Mont-PIRG's pro bono legal counsel in 1995 and 1996.

9. Mont-PIRG's offices are located in Corbin Hall on the University of Montana campus. Mont-PIRG pays rent to UM for the office space. Mont-PIRG purchased its own office equipment.

10. FFPIR was founded in 1982 to provide professional support and technical assistance to "progressive organizations" such as the Sierra Club, state PIRGs, the Human Rights Campaign, and Greenpeace. These organizations hire FFPIR to build membership, generate political support for issues, or raise funds. FFPIR, in turn, hires a staff of canvass directors, telephone outreach directors, donor staff, canvassers, callers, and others to carry out assigned tasks. FFPIR is a nonprofit corporation with offices located in California and Boston, Massachusetts.

11. In 1995 and 1996, Mont-PIRG hired FFPIR to conduct a fund-raising and public education campaign. FFPIR and Mont-PIRG agreed to jointly establish and maintain a "door-to-door canvass" in Montana to educate the public about Mont-PIRG issues, build support for Mont-PIRG's position on these issues, build Mont-PIRG's membership and public visibility, raise money for Mont-PIRG, and provide canvassing jobs through which Mont-PIRG supporters could "be involved in the organization and learn civic skills." The canvass was called the "Mont-PIRG Citizen Outreach Canvass" (hereinafter the "canvass"). The canvass was conducted in May through August in each year.

12. FFPIR paid Chris Newbold to direct the 1996 canvass and also paid the canvassers who went door-to-door to conduct the canvass. All funds collected by the FFPIR canvassers were deposited in an FFPIR account in a Missoula bank. FFPIR agreed to transfer funds to Mont-PIRG on request after deducting all canvass expenses, including FFPIR administrative expenses such as overhead, salary, transportation, and other expenses attributable to FFPIR's performance under the agreement. FFPIR retained authority to make all decisions relating to the canvass. All materials and information developed as part of the canvass became the property of FFPIR.

13. The 1995 FFPIR canvass raised $23,135.40 on behalf of Mont-PIRG. From this amount, FFPIR deducted canvass worker expenses of $15,130.57 and FFPIR administrative expenses of $4,340.10. Mont-PIRG had $3,664.73 remaining to spend on its activities, but it chose not to use these funds in 1995.

14. The 1996 FFPIR canvass raised $30,657.02 on behalf of Mont-PIRG. From this amount, FFPIR deducted canvass worker expenses of $15,157.49 and FFPIR administrative expenses of $5,096.81. Mont-PIRG had $10,402.72 of 1996 funds to use in its activities.

15. The combined amount available to Mont-PIRG from 1995 and 1996 canvass fund-raising, after deducting all FFPIR expenses, was $14,067,45; however, FFPIR ultimately contributed back to Mont-PIRG the $9,436.90 in FFPIR administrative expenses deducted by FFPIR for 1995-96 canvass expenses, and more. FFPIR paid a total of $27,500 to Mont-PIRG in 1996, and all of this amount was ultimately contributed by Mont-PIRG to the I-125 campaign. Only $14,067.45 of the cash contributed by Mont-PIRG to the

two principal I-125 committees was Mont-PIRG's canvass money.

16. FFPIR's 1996 canvassers collected I-125 signatures as part of their door-to-door canvassing duties. See Summary of Fact 48.

17. Mont-PIRF is the educational arm of Mont-PIRG. Mont-PIRF is a Montana nonprofit corporation created to seek grant money for educating the public about environmental, social, and governmental issues. Mont-PIRF shares office space and equipment with Mont-PIRG. Mont-PIRF pays for its telephone service but otherwise does not pay rent to Mont-PIRG or UM.

18. Mont-PIRF maintains separate and distinct programmatic, fiscal, and decision-making operations. Mont-PIRF's Board in 1995 and 1996 was comprised of C.B. Pearson (secretary), Jon Motl, Chris Newbold (Vice President/Treasurer), and Linda Lee (President). The Board met three or four times a year (often by telephone conference call) in 1995 and 1996 but no meeting minutes could be found. None of Mont-PIRF's Board members can recall whether I-125 or I-125 campaign strategy was discussed during the 1995 and 1996 Board meetings.

19. Mont-PIRF did not have regular staff in 1996 although it did contract with Mont-PIRG for performance of certain educational work. Financial records indicate that Chris Newbold, Anais Wayciechowica, and Brian Page received payments from Mont-PIRF for work performed in 1996. Payments to Mr. Newbold from Mont-PIRF in 1996 totaled $3,594.

20. Mont-PIRF raised and spent approximately $20,000 in 1996. Included in this amount was a $2,500 grant from the Stern Family Fund for preparation of C.B. Pearson's study on corporate contributions to Montana's ballot issue campaigns.

21. Mont-PIRF paid the following amounts to the following individuals for the study entitled "Big Money and Montana's Ballot Campaigns:"

A.	C.B. Pearson	$ 1,816.70
B.	Hilary Doyscher	750.00
C.	Linda Lee	90.00
	Total	$ 2,656.70

22. MCC was an unincorporated committee of National Common Cause in 1995 and 1996 (National Common Cause is a nonprofit corporation organized under the laws of the District of Columbia). National Common Cause drastically cut funding for state affiliates like MCC in late 1995. After several resignations from the MCC Board in January of 1996, Kim Wilson (Mr. Motl's law partner) was elected chair and C.B. Pearson was added to the Board. Mr. Motl was a member of MCC's Board in 1995 and 1996. Another member of the MCC Board in 1996, John Heffernan, was also involved in the I-125 campaign.

23. MCC had a budget of $22,600 for 1995. In 1996, the budget was reduced to

$17,000 based on an anticipated reduction in payments from National Common Cause.

24. MCC had no paid staff in 1995 and 1996.

25. LWVM is a Montana nonprofit, public benefit corporation with members. LWVM is devoted to studying public policy issues and informing the public and public officials about policy issues. LWVM does not have a paid staff and its officers and Board members volunteer their services. Barb Seekins was the League's President in 1996 and served as a committee member of LWVM and Others for I-125. Ms. Seekins was featured in I-125 radio ads paid for by LWVM and Others for I-125. Mr. Pearson was a LWVM member in 1995 and 1996. Although the League endorsed I-125 and allowed its name to be used by the principal committee created in September of 1996 to support I-125, LWVM made no monetary or in-kind contributions to either principal I-125 committee. Ms. Seekins and other LWVM members participated in I-125 activities as volunteers.

B. In the Beginning -- the Creation of I-125

26. Mont-PIRG's Board discussed possible issues for the 1995-96 school year at its September 9, 1995 summer retreat. A document entitled "Mont-PIRG Program for 1995-96" listed at least 18 possible issues under such general topics as consumer issues, environmental program, good government program, and other possible projects. Under the category of "Good Government Program," Mont-PIRG listed "Campaign Finance Reform" as the top priority and suggested the following possible course of action:

> MontPIRG, through its success on I-118, has leaped to be a leader on government reform here in Montana. Questions are now arising as to what voters actually voted for in I-118. MontPIRG advisors C.B. Pearson and Jon Motl will be monitoring the situation. Kjersten will be taking on a 4-6 credit internship to work on CFR-not only dealing with defending I-118 but also exploring new reforms in CFR. A possible reform would be taking big money out of the ballot initiative process. Kjersten will be doing the research and preparing position papers with C.B. and Jon in making the decision as to whether we run an initiative next year on this issue.

27. Mont-PIRG's September 20, 1995 and October 16, 1995 meeting minutes do not indicate that campaign finance reform issues were discussed.

28. Mont-PIRG's Board meeting minutes for December 4, 1995 indicate that Board Chair Kjersten Forseth was giving a workshop on "money in politics" at the University Center, and Mont-PIRG members were encouraged to attend.

29. When Chris Newbold assumed his duties as Mont-PIRG's Executive Director in August of 1995, he was required to take a six-month training program (one hour per day, five days per week) from C.B. Pearson.

30. Either C.B. Pearson or Chris Newbold mailed letters dated December 20, 1995

to approximately 36 Montana environmental, public health, labor, and public interest groups stating that the "same coalition of people and groups (League of Women Voters, Common Cause and Mont-PIRG) appears likely to come together again to offer another campaign/political reform related initiative as we did with I-118 in 1994." The letters listed general topics such as campaign finance reform, ethics, initiative and referendum and lobbying reform as possible initiatives. The following three topics were listed under "Initiative and Referenda:"

Ban Direct Corporate Contributions
Voluntary Spending Limits
Labeling/Advertisement Disclosure

31. Mr. Pearson does not recall if he signed and sent the letters described in the preceding paragraph; however, notes made by Mr. Pearson on the letter sent to the Northern Plains Resource Council ("NPRC") indicate that Teresa Erickson, NPRC's Executive Director, was on sabbatical and that he spoke with Dennis Olson of NPRC. Mr. Pearson's notes indicate that NPRC wanted to "know all the implications" and that Mr. Olson was concerned about "competition for the water initiative [I-122]." Mr. Olson also advised Mr. Pearson that "the demos [the Montana Democratic Party] had produced a fact sheet on CFR [campaign finance reform]."

32. At Mont-PIRG's January 27, 1996 Board retreat, it was noted that the Board was required to meet once a month under Mont-PIRG's bylaws. A motion was adopted requiring that the Mont-PIRG Board meet every week until Mont-PIRG's "general interest meeting."

33. Mont-PIRG's Board meeting minutes for January and February 1996 do not indicate that campaign finance reform issues were discussed. The focus during these meetings was attracting new Board members.

34. Meeting minutes for Mont-PIRG Board meetings in March, April, and May of 1996, the key period for planning and collecting I-125 signatures, could not be found and were not produced. Mont-PIRG's Board does not meet during the summer months.

35. Jon Motl wrote I-125 in early 1996. The language of I-125 was based on the text of a similar initiative he prepared in 1994 (I-120, the 1994 initiative, was approved for petition signatures but failed to qualify because insufficient signatures were collected).

36. C.B. Pearson reviewed and suggested revisions to the proposed language for I-125 before the language was submitted for review by state officials. Neither Mr. Motl nor Mr. Pearson were paid by any individual or group to write I-125.

37. Mr. Motl did not circulate I-125 for review by other individuals or groups because the initiative language had previously been approved for signature gathering in 1994. Donna Edwards of the Center for New Democracy played a major role in developing I-120 in 1994, but Mr. Motl denies that she was involved in developing the language of I-125.

38. Mr. Motl submitted the proposed text of I-125 to the Legislative Council for review on March 20, 1996. The initiative was submitted by Mr. Motl to the Montana Secretary of State on April 4, 1996.

C. Qualifying I-125 for the Ballot

39. Mr. Motl submitted a Statement of Organization (form C-2) to the Commissioner of Political Practices on March 26, 1996. The C-2 submittal was for a "Campaign Finance Reform Exploratory Committee" and listed Jon Motl as Treasurer. The C-2 form stated that the filing was for an "as yet unnumbered" ballot issue and that Mr. Motl's office had "worked on and redrafted Initiative 120 from the '94 election cycle." The C-2 statement also indicated that Mr. Motl's law office had "incurred staff costs" and the C-2 needed to be filed. The C-2 stated that the exploratory committee would be "replaced by the group which takes the issue to the ballot."

40. By letter dated March 26, 1996, Commissioner Ed Argenbright returned Mr. Motl's C-2 filing and stated that the filing was premature because the ballot issue had not been approved by the Secretary of State. Mr. Argenbright also advised Mr. Motl that it would be "appropriate" to report Mr. Motl's office staff expenses already incurred when the ballot issue committee was properly formed.

41. Mont-PIRF made an initial payment of $250 to C.B. Pearson on April 17, 1996, for work related to the study entitled "Big Money and Montana's Ballot Campaigns."

42. Mont-PIRG held a campaign finance reform meeting on April 22, 1996 at 7 p.m. Mont-PIRG members, EOS students in Mr. Pearson's UM class and "all others" were invited. The meeting discussed timelines for gathering I-125 signatures and established a goal of 135 volunteer hours.

43. I-125 was approved by the Attorney General on April 23, 1996.

44. The Secretary of State advised Mr. Motl of necessary corrections to I-125 on April 24, 1996. The final language of I-125 was approved by the Secretary of State on April 30, 1996.

45. Mr. Motl wrote National Common Cause on April 30, 1996 and May 1, 1996 requesting permission for MCC to support I-125. The May 1, 1996 letter indicates that MCC Board members C.B. Pearson, Kim Wilson, John Heffernan, and Mr. Motl had already worked on I-125. National Common Cause was initially opposed to I-125 and would not allow MCC to support I-125. National Common Cause ultimately relented and allowed MCC to support I-125 in the fall of 1996.

46. Citizens to Qualify I-125 filed its C-2 statement with the Commissioner's office on May 8, 1996.

47. Signature gathering for I-125 began in early May 1996. The first I-125 petitions were submitted to the Montana Secretary of State on May 23, 1996. Signature gathering efforts by individuals paid by Citizens to Qualify I-125 began on or about May 21, 1996. The vast majority of I-125 signatures were obtained on primary election day, June 4, 1996. Most of the petitions were submitted after primary election day and on or before the June 21, 1996 filing deadline.

48. Approximately 25,000 signatures were collected to place I-125 on the 1996 ballot. The signatures were gathered by the following individuals and groups:

A. C.B. Pearson personally collected about 100 signatures as a volunteer. Mr. Pearson collected these signatures while he was training signature gatherers at petitioning sites.

B. FFPIR paid its canvassers (15 to 25 people) to collect signatures for I-125 as part of its Mont-PIRG canvass program. FFPIR's canvass involved sending the canvassers door-to-door for the primary purpose of soliciting memberships in Mont-PIRG and raising money for Mont-PIRG. The canvassers also carried petitions for I-125 and I-122 in late May through mid-June of 1996. The interns were paid a base salary of $180 per week based on a nightly minimum fund-raising standard. C.B. Pearson believes FFPIR's paid canvassers collected approximately 3,000 signatures for I-125. Mr. Newbold believes the FFPIR canvassers only collected about 1,500 I-125 signatures.

C. Chris Newbold spent a minimal amount of time personally collecting I-125 signatures, but he did coordinate FFPIR's Missoula and Ravalli County signature gathering efforts. Most of Mr. Newbold's time in May and June of 1996 was devoted to FFPIR's canvass. C.B. Pearson does not recall that Mr. Newbold collected any I-125 signatures.

D. Jon Motl volunteered time to collect I-125 signatures, but the signatures he personally collected in Lewis and Clark County were submitted by Pat Judge, who was paid for his signature-gathering efforts by Citizens to Qualify I-125.

E. Students in C.B. Pearson's EOS class collected approximately 500 signatures for I-125.

F. The signature gatherers paid by Citizens to Qualify I-125 collected more than 20,000 signatures; however, paid signature gatherers did not personally collect the 20,000 plus signatures. Each paid signature gatherer was required to recruit three or four volunteers to assist in petitioning efforts.

G. C.B. Pearson believes Barbara Seekins and her daughter collected fewer than 500 I-125 signatures as volunteers.

49. C.B. Pearson was primarily responsible for supervising and coordinating the I-

125 signature gathering effort. Mr. Pearson performed the following duties:

A. He trained the signature gatherers and those who were delegated responsibility for training the signature gatherers. For example, Kjersten Forseth, a Mont-PIRG Board member, was trained by Mr. Pearson and became responsible for the signature gathering effort in Yellowstone County. Ms. Forseth then trained those who worked for her in the Yellowstone County effort.

B. Mr. Pearson wrote detailed instructions for gathering I-125 petition signatures. The instructions included advice on the legal rights of petitioners, tips on how to collect the most signatures, signature gathering etiquette, and arguments for I-125. The instructions specifically indicated that petition gatherers should contact Mr. Pearson if questions arose about signature gathering efforts or I-125. The instructions provided Mr. Pearson's home telephone number, his EOS office phone number, and the Mont-PIRG office telephone number.

C. Mr. Pearson was ultimately responsible for tabulating and tracking I-125 signature gathering efforts throughout Montana. In some instances, the original petitions were submitted to Mr. Pearson and he signed the affidavits attesting that the signatures were valid and collected in compliance with Montana Law. If the original petitions were submitted directly to the local election administrators by the field petitioners, copies were forwarded to Mr. Pearson so that he could tabulate the progress of signature gathering efforts in each legislative district.

D. Mr. Pearson established the target number of signatures to be collected in legislative districts and determined which districts would be the focus of I-125 signature gathering efforts.

50. On May 28, 1996, Mr. Pearson and Ms. Seekins agreed to join Jon Motl to write arguments in favor of I-125 for the Secretary of State's Voter Information Pamphlet.

51. FFPIR made a $7,500 wire transfer to Mont-PIRG on May 30, 1996. Mont-PIRG made a $7,500 cash contribution to Citizens to Qualify I-125 on May 31, 1996.

52. C.B. Pearson sent the Stern Family Fund a fund-raising letter for I-125 on June 7, 1996. The letter advised the Stern Fund that Mr. Pearson was "the campaign manager for the petition drive to qualify I-125" and that he would also manage the fall campaign. Mr. Pearson's letter stated that he was "active" with Mont-PIRF, Mont-PIRG, LWVM, and MCC to pass I-125. The four-page enclosure with Mr. Pearson's solicitation letter was entitled "A Proposal To Get Corporate Money Out Of Montana's Initiative Process" and contained the following:

A. The enclosure described the I-125 campaign effort and the coalition that is supporting the initiative. As of June 7, 1996, the date of the Stern Family solicitation, Mr. Pearson indicated that "only Mont-PIRG, Common Cause and the League have made a

financial commitment to the initiative." Other funding, according to Mr. Pearson, is "uncertain."

B. Mr. Pearson described coalition-building efforts in the enclosure. Before I-125 was submitted for approval, "the initiative draft was circulated to a number of key groups in Montana and to a national group of experts for review and critique." Among the groups listed as possible future I-125 coalition members were the Montana Trial Lawyers Association ("MTLA"), the Montana Lung Association, AARP, United We Stand, labor groups, environmental groups, and senior citizen groups. Mr. Pearson indicated that most of the coalition building "will begin in July."

C. Mr. Pearson told the Stern Family Fund about the campaign strategy that would be used to pass I-125. Part of the campaign strategy included "completing a comprehensive study on the role of corporate money in the Montana initiative process" and indicated that the campaign "could benefit from more research over the course of the 1996 campaign."

D. The proposed "(c)(3) Budget" in the enclosure included $3,000 for "study of Corporate Money in the Montana Initiative Process, Research, publishing and publicity."

E. Mr. Pearson expressed optimism about I-125 in the enclosure because the "timing for proposing I-125 could not be better." He explained that I-121 and I-122 would draw "large direct corporate contributions" and that the I-122 opponents have "made it clear that they will raise as much money as necessary to defeat" I-122.

53. Citizens to Qualify I-125 filed its first C-4 report on June 10, 1996 for the period ending June 5, 1996. The report listed cash contributions of $8,500 from Mont-PIRG (the $7,500 contribution described in Summary of Fact 51 and two $500 cash contributions made on May 7 and May 28, 1996). In-kind contributions from Mont-PIRG and the Reynolds, Motl & Sherwood Law Firm of $1,218.20 and $97.50, respectively, were also reported. The in-kind contribution from Mont-PIRG included:

A. Thirty (30) hours of Chris Newbold's time at $7.70/hour ($231.00 total). This in-kind contribution was for Mr. Newbold's supervision of the FFPIR canvass. Mr. Newbold was being paid for his canvass work by FFPIR, not Mont-PIRG.

B. An allocation of a portion of the time (10%) spent by FFPIR's paid canvassers for collecting signatures for I-125. This in-kind contribution was incorrectly reported as a contribution by Mont-PIRG, not FFPIR ($515.20 total).

C. The amount paid by FFPIR to 12 people to collect I-125 signatures on June 4, 1996, primary election day. The amount paid to these 12 individuals varied from $36 to $46 for the day. The total amount paid and reported was $472. This in-kind contribution should have been reported as a contribution by FFPIR, not Mont-PIRG.

54. The June 10, 1996 C-6 report filed by Citizens to Qualify I-125 listed expenditures of $6,185.17. Most of the expenditures were for payments to C.B. Pearson and other individuals involved in the I-125 signature gathering effort, including four students from Mr. Pearson's EOS class. The payments to the EOS students were all made after the class had ended. Payments made to Mr. Pearson during this reporting period totaled $973.53 (all payments were for reimbursed expenses).

55. Mont-PIRF paid Hilary Doyscher $375 on June 12, 1996 for "consulting" services related to preparation of the study entitled "Big Money and Montana's Ballot Issue Campaigns."

56. FFPIR made a $10,000 wire transfer to Mont-PIRG on June 13, 1996. The next day, Mont-PIRG made a $10,000 cash contribution to Citizens to Qualify I-125.

57. Mont-PIRF paid C.B. Pearson $274.81 on July 5, 1996 for "CFR [Campaign Finance Reform] expenses" related to preparation of the study entitled "Big Money and Montana's Ballot Campaigns."

58. On July 9, 1996, Montana's Secretary of State advised Citizens to Qualify I-125 and the Governor that sufficient signatures had been gathered to place I-125 on the November general election ballot.

59. FFPIR made a $5,000 wire transfer to Mont-PIRG on July 9, 1996. Mont-PIRG made a $1,700 cash contribution to Citizens to Qualify I-125 on July 25, 1996.

60. The Stern Family Fund contributed $2,500 to Mont-PIRF on July 10, 1996 for "education around CFR [Campaign Finance Reform]." The Stern Family Fund money was used to pay for preparation of the study entitled "Big Money and Montana's Ballot Campaigns."

61. Citizens to Qualify I-125 filed its second C-6 report on July 10, 1996 for the period ending July 5, 1996. The report listed cash and in-kind contributions from Mont-PIRG of $12,500 and $772.10, respectively (no other contributions were reported). Through the July 5, 1996 reporting period, Citizens to Qualify I-125 reported total contributions of $23,087.80 and all but $97.50 of that amount was contributed by Mont-PIRG. Mont-PIRG's in-kind contributions in the July 10, 1996 report included the following:

A. Twenty-five (25) hours of Chris Newbold's time at $7.70/ hour ($192.50 total). This in-kind contribution was for Mr. Newbold's supervision of the FFPIR canvass. Mr. Newbold was being paid for his canvass work by FFPIR, not Mont-PIRG.

B. An allocation of a portion of the time (10%) spent by FFPIR's paid canvassers for collecting signatures for I-125 ($579.60 total).

62. The July 10, 1996 C-6 report filed by Citizens to Qualify I-125 listed

expenditures of $13,400.98. Most of the expenditures were for payments to C.B. Pearson and other individuals involved in the I-125 signature gathering effort, including six (6) EOS students. Payments made to Mr. Pearson during this reporting period totaled $3,166.47 ($2,000 for campaign management and $1,166.47 for reimbursement of expenses, including $100 for "rent").

63. Citizens to Qualify I-125 paid six EOS students a total of $5,436.98 for signature gathering "stipends" and expenses from May 25, 1996 through June 18, 1996 (see the June 10 and July 10, 1996 C-6 reports filed by Citizens to Qualify I-125).

D. C.B. Pearson's EOS Class at the University of Montana

64. The EOS course was conceived by C.B. Pearson. Mr. Pearson consulted Jon Motl about course concepts and issues, but Mr. Pearson was ultimately responsible for EOS course design, development, organization, and content.

65. Mr. Pearson was being paid by Green Corps (see Summary of Fact 67) to develop the EOS course when he began presenting the EOS course concept to the UM Environmental Studies Department in February of 1995. Mr. Pearson's early correspondence with Tom Roy, Chair of the UM Environmental Studies Program, was written on Green Corps stationery. Mr. Pearson's fall 1996 Master's Thesis at UM was based on his design and development of the EOS course. Mr. Pearson's Thesis was approved by Mr. Roy and the Dean of the Graduate School on December 11, 1996.

66. The University of Montana approved the EOS course in August of 1995. The first EOS class was offered spring semester (January - May) of 1996. Mr. Pearson continued to teach the EOS course in a format similar to the spring 1996 class for several semesters. UM ultimately terminated Mr. Pearson's involvement in the EOS class and substantially revised the course content and scope.[4]

67. Green Corps is a 501(c)(3) nonprofit, tax deductible, educational organization with offices located in Boston, Massachusetts. Green Corps was jointly founded in 1992 by current Director Leslie Samuelrich and Lois Gibbs, who led the Love Canal environmental fight in the 1970's and now heads the Center for Health, Environment and Justice. Green Corps operates on an annual budget of approximately $400,000, raising half its money from environmental groups that work with Green Corps. Green Corps' mission is to "teach the next generation of environmental leaders the strategies and skills they'll need to win tomorrow's environmental battles while providing critical field support for today's pressing environmental problems." Green Corps lists U.S.-PIRG and FFPIR as two of the 50 "partners" it has worked with since 1992. The services provided by Green Corps include

[4] Mr. Pearson, Green Corps and UM apparently parted company on less than friendly terms. Mr. Pearson is "very upset" that he is not still teaching the EOS class. Green Corps also apparently failed to pay UM several thousands of dollars in administrative expenses.

custom designing local campaigns, generating media coverage, building new constituencies and coalitions, and building volunteer and membership bases.

68. Mr. Pearson's UM Master's Thesis states that the mission of Green Corps "is to increase the number of young people involved in saving the environment as a vocation and to form a pool of uniquely skilled environment organizers who will provide leadership in solving the world's environmental problems into the next century."

69. UM and Green Corps jointly sponsored the EOS course under the following terms and agreements:

A. The 12 credit EOS course was offered as part of the Extended Studies Program (continuing education and summer program classes), not as part of the regular curriculum.

B. Students who enrolled in the course paid tuition to Green Corps. The in-state student tuition for the first EOS course offered in January of 1996 was approximately $1,230 per student. Tuition for out-of-state students was $3,325 per student. Total tuition paid for the spring 1996 EOS class was approximately $70,000.

C. UM provided office space, desk, file cabinet, phone, phone number, voice mail, e-mail, and mailing address. Mr. Pearson's first EOS class office was in the space allotted to graduate students. UM also provided classroom space, but the EOS class sometimes met off-campus.

D. Green Corps paid UM a fee for administrative expenses. The administrative fee paid by Green Corps to UM for the spring 1996 EOS course was $1,757.

E. Green Corps agreed to pay for EOS course expenses such as office supplies, postage, telephone expenses, a computer and printer, stationery, copying, fees and expenses paid to guest lecturers, and other costs incurred in running the program.

F. In addition to the administrative fee paid by Green Corps, each student who enrolled in the EOS course paid UM a $70 registration fee.

G. Green Corps paid C.B. Pearson a salary to teach the EOS course. Mr. Pearson was paid $18,000 by Green Corps to teach the 1996 spring EOS class, which included payment for the summer months.

70. The foundation of Mr. Pearson's EOS course was teaching students about the organizing of citizens to address environmental problems based on readings on environmental issues, lectures, and training by recognized environmental leaders. Mr. Pearson concludes in his Master's Thesis that colleges and universities "have failed to adequately prepare students to work within the civic structure of the United States to meet the challenge of a healthy environment" and that there is a need for an EOS course.

71. Mr. Pearson recruited junior and senior college students from environmental programs, PIRGs, peace groups, and environmental study faculty at other universities and colleges throughout the United States during the fall of 1995. He distributed approximately 8,000 brochures to individuals, colleges, and universities. The brochures and solicitation letters stated that the EOS course "seeks to bring together some of today's most promising environmental students for a 16-week intensive program...." Student applicants had to submit a 300 word essay describing their objectives in applying and what they "hope to give to the environmental community."

72. Mr. Pearson also spent the fall of 1995 recruiting environmental leaders and experts to speak to the spring 1996 EOS class. Approximately 30 guest lecturers spoke to the spring 1996 EOS class, including Dr. Helen Caldicott, co-Founder of Physicians for Social Responsibility; Donna Edwards, Center for New Democracy; Lois Gibbs, Founder and Director, Citizens' Clearinghouse for Hazardous Wastes; Howie Wolke, co-Founder of Earth First! and Big Wild Advocates; Bill Yellowtail, EPA Regional Administrator; and Patricia Waak, population specialist, National Audobon Society. Among the Montanans who spoke to the class were Missoula Mayor Dan Kemmis, NPRC's Teresa Erickson, Anne Hedges of MEIC, Byrony Schwann, Executive Director of Women's Voices for the Earth, and Chris Newbold.

73. Jon Motl was a guest lecturer for the 1996 spring semester EOS course. He taught at least three days and was paid approximately $1,000 for his appearance and expenses. Mr. Motl spent one day discussing petition-gathering issues but denies that he discussed I-125. The syllabus for the spring 1996 EOS course listed Mr. Motl as a "special consultant" and indicated that he would assist with the investigative and "petition portions of the course."

74. None of the guest speakers for the spring 1996 EOS class represented business or economic development interests. Following public criticism of the EOS course in the fall of 1996, Mr. Pearson did invite Bruce Vincent, an advocate of increased timber harvests on public lands, and David Owen, the Montana Chamber of Commerce's Executive Director, to address the EOS course in 1997.

75. Weeks 12 through 14 of the EOS course were devoted to petition gathering. This portion of the class followed a week of lectures on initiatives and organizing petition drives. On Friday, April 19, 1996, the presentation centered on "on-going campaigns" and listed clean water and "campaign finance issues" as "possibilities."

76. The EOS syllabus for spring 1996 stated that weeks 12 through 14 "will focus on the planning and execution of a petition drive" with emphasis on one-on-one "interaction with the public on an issue, interpersonal communication abilities and understanding the stamina necessary to complete a project of this nature."

77. Fourteen (14) students enrolled in the spring 1996 EOS course. They were graded and evaluated based "on their participation in the projects and in the classroom

work." Participation comprised 50% of a student's grade. Keeping a journal, preparing three (3) papers, and the final exam comprised the other 50% of a student's grade.

78. Participation in signature gathering, one of the EOS course projects, appeared to be mandatory in the 1996 spring syllabus. Following public criticism of the EOS course in the fall of 1996, syllabus language was amended to specify that:

> No student is required to participate in the projects. A student is required to at least observe the project work and participate in the planning.

The 1996 spring syllabus did not contain similar participation exemption language.

79. Mr. Pearson's Master's Thesis does not indicate that the spring 1996 students could opt out of participating in the projects, including signature gathering. Mr. Pearson's Thesis stressed that the "focus of the course and the evaluation was of the group work and therefore, the bulk of the evaluation was for that work."

80. EOS students split into groups of three or four individuals for all phases of the course, including petition gathering. The students chose to circulate petitions for I-122, I-125, and Ralph Nader's attempt to qualify for the presidential ballot in Montana. Each subgroup then set goals and decided which petition drive would be a priority. All of the subgroups circulated I-122 petitions and that initiative sparked the most interest. Based on some public confrontations over the I-122 petition, some of the subgroups tired of petition gathering and did not circulate I-125 petitions. Mr. Pearson estimates that the EOS class collected fewer than 500 I-125 signatures. Signature gathering for I-122, I-125, and Mr. Nader's presidential petition as part of the EOS class occurred from April 19 through May 10, 1996.

81. The EOS web page included the following report on the efforts by the spring 1996 EOS class to "Plan and Execute a Petition Drive:"

> The final project was a three week petitioning drive to gather signatures for Montana Initiatives 122 and 125. We hit the streets and positioned ourselves in front of local favorite lunch spots and the post offices to ask Missoulians for their signatures for the first week. The faithful and persevering petitioners also traveled to Whitefish, Kalispell, and Columbia Falls, MT (in the rain and hail) to help qualify these initiatives for the ballot in November. We learned the "canvassing" technique of going door to door to get signatures, as well as standing in busy locations. We also fine tuned our skills of carrying two different initiatives at once. Initiative 122, the Clean Water Initiative, would require new and expanded metal mines to treat their waste water before discharging it into Montana's streams or groundwater. Initiative 125 dealt with eliminating direct corporate contributions to initiative campaigns in Montana. Both initiatives have gathered enough signatures (20,392) to make it on the ballot.

82. The final exam in the spring 1996 EOS course was given on May 16, 1996, and graduation occurred on May 17, 1996.

83. Six of the 1996 spring EOS students (Stefanie Sekich, Lisa Hahn, Marlo Mithcem, Lindsey Close, Bryan Franz and Kay Schumpert) ultimately agreed to collect signatures for Citizens to Qualify I-125 after their graduation and were paid for their signature gathering work. See Summary of Facts 62 and 63.

E. Preparing for the Fall Campaign

84. Mr. Pearson, Mr. Motl and Ms. Seekins submitted arguments in favor of I-125 for inclusion in the Secretary of State's Voter Information Pamphlet on July 23, 1996. The Pearson/Motl/Seekins Voter Information Pamphlet arguments included the following statements borrowed almost verbatim from the C.B. Pearson study "Big Money and Montana's Ballot Campaigns," which was not released to the public until September 5, 1996:

A. The "Findings: The Case For Reform" section of C.B. Pearson's "Big Money" study begins by stating:

> There is too much money spent on politics in Montana. And nowhere is so much spent by so few than in ballot campaigns.

The July 23, 1996 Pearson/Motl/Seekins Voter Information Pamphlet arguments in favor of I-125 begin with:

> There is too much money spent on politics in Montana. And, no where else is it spent by so few in such large amounts as in ballot campaigns.

B. The introductory paragraph of the "Findings: The Case For Reform" section of C.B. Pearson's study also contains the following:

> Montanans think of initiative campaigns as the place where the people speak out directly and pass laws. Sometimes it works that way. All too often the voice of the people is drowned by the voice of corporations spending huge sums of money to present one side of the story, slanted to preserve some corporate benefit.

The Pearson/Motl/Seekins Voter Information Pamphlet arguments for I-125 state:

> Montanans think of initiatives and ballot campaigns as being the way the "people" can speak out directly and pass laws. Too often, though, the voice of the people is drowned out by the voice of corporations spending huge sums of corporate money to present a side of the story slanted to preserve

some corporate benefit.

C. The second paragraph of the "Findings: The Case For Reform" section of Mr. Pearson's "Big Money" study begins with:

> Corporations are not people. They "live" by artificial charter, not by flesh, blood and conscience. Because they are different, corporations generally are treated differently in regard to the role they play in politics in Montana.

The Pearson/Motl/Seekins Voter Information Pamphlet arguments for I-125 contain the following:

> Corporations are not people. They "live" by artificial charter, not by flesh, blood and conscience. Because they are eternal and have more money, corporations generally are treated differently than people in regard to the role they play in Montana politics.

85. Mont-PIRF paid Hilary Doyscher $375 on July 25, 1996 for "consulting" services related to preparation of the Mont-PIRF study.

86. Mr. Pearson recalls that there was some "dead time" during the summer of 1996 and there was little I-125 campaign activity.

87. Mr. Pearson, Mr. Motl and Ms. Seekins submitted rebuttal arguments in favor of I-125 for inclusion in the Secretary of State's Voter Information Pamphlet on August 1, 1996.

88. Mont-PIRF paid Linda Lee $90 on August 1, 1996 for "consulting" services related to preparation of the Mont-PIRF study.

89. Citizens to Qualify I-125 filed its third C-6 report with the Commissioner on August 13, 1996 for the reporting period ending August 5, 1996. The only contribution reported for the period was the July 26, 1996 cash contribution of $1,700 from Mont-PIRG. Total cash and in-kind contributions reported by Citizens to Qualify I-125 through the August 5, 1996 reporting period were $24,787.80, and all but $97.50 of that amount was contributed by Mont-PIRG.

90. The August 13, 1996 C-6 report filed by Citizens to Qualify I-25 reported expenditures of $3,402.06. Most of the expenditures made during this reporting period were for payments to C.B. Pearson. Mr. Pearson received total payments of $2,592.82 for the reporting period ($2,166.00 for campaign management and the rest for reimbursement of expenses).

91. Mont-PIRF made two payments to C.B. Pearson on September 9, 1996. A payment of $291.89 was described as a payment for "campaign expenses." A second

payment of $1,000 was described as a "consulting fee." Both payments were made to Mr. Pearson for his work on the Mont-PIRF study of corporate contributions to Montana ballot issue campaigns. The total Mont-PIRF payments made to Mr. Pearson for writing "Big Money and Montana's Ballot Campaign" were $1,816.70.

92. Neither Citizens to Qualify I-125 nor LWVM and Others for I-125 reported the $2,566.70 cost of preparing the Mont-PIRF study as an in-kind expenditure by Mont-PIRF.

93. On August 26, 1996, the Executive Director of MTLA, Russell Hill, sent Jon Motl a fax that included a copy of a legal analysis of I-125 by the opposition committee. The fax was sent on MTLA stationery and originated from MTLA's fax number.

94. Mr. Hill sent Mr. Motl a fax on MTLA letterhead on September 4, 1996. The fax from Mr. Hill included the I-125 opposition committee's one-page analysis of I-125 and included the following handwritten admonition to Mr. Motl:

> If you use/distribute copies, please make sure they aren't traceable to me via fax heading, etc. I want to keep getting this kind of mailing.

Mr. Hill concludes by telling Mr. Motl that the opposition committee's campaign manager, Bill Leary, does not "have a 'full' legal opinion yet."

95. C.B. Pearson issued a press release distributing the Mont-PIRF corporate contribution study to the media and the public on September 5, 1996. A copy of the Mont-PIRF study was also hand-delivered to the opposition I-125 committee on that same date. Montana's major daily newspapers ran news articles discussing the findings of the Mont-PIRF study and quoting the executive director of the opposition committee on September 6, 1996.

96. The Mont-PIRF study written by Mr. Pearson said the following about I-125:

> It is time to reestablish the ban on direct corporate money for initiatives and other ballot campaigns....
>
> Today's proposal, Initiative 125, links Montanans to their 1912 peers. It is the best restoration of the law which stood in Montana for over 60 years prior to the Buckley decision. While we can no longer ban corporate spending in initiatives, we can still regulate the manner of corporate spending. I-125 does this, and, as was the case in 1912, it will be up to Montanans to act through initiative to regulate the power of the corporate dollar in Montana politics.

97. The Mont-PIRF study became the key document in the proponents' arguments for I-125. Mr. Pearson believes the study was "the most widely distributed and used piece of work" he has ever written.

98. Jon Motl, Chris Newbold, and Linda Lee reviewed and approved the Mont-PIRF study before it was released on September 5, 1996. The study also acknowledges that MCC "provided a portion of the cost of producing this report."

99. FFPIR made a $5,000 wire transfer to Mont-PIRG on September 6, 1996.

100. Citizens to Qualify I-125 filed its fourth C-6 report with the Commissioner on September 10, 1996 for the period ending September 5, 1996. The report listed no contributions or expenditures and indicated the committee had a cash balance of $86.84.

101. Mr. Hill wrote Bill Leary, the I-125 opposition committee's campaign manager, on September 11, 1996. Mr. Hill's handwritten letter on MTLA "EXECUTIVE OFFICE" stationery thanked Mr. Leary "for being so open w/ me about opponents and opposition to I-125." Mr. Hill promised to "reciprocate" and "respect any agreement we have (re: limited circulation of survey report, etc.)." The bottom of Mr. Hill's letter indicates a copy was being sent to MTLA's President; however, a blind copy of the letter was also sent to Mr. Motl.

102. Mr. Hill's September 11, 1996 letter to the opposition I-125 committee states that MTLA "has neither endorsed nor opposed I-125 but has determined it's important to challenge mischaracterizations of the constitutional/legal effect of I-125." Mr. Hill characterized statements by Dennis Burr opposing I-125 as "preposterous" and offered to share Mr. Hill's legal analysis of I-125 with Mr. Leary. Mr. Hill indicated that MTLA would focus on whether corporations have an inalienable right to free speech "even if it makes the task of opponents [to I-125] more difficult."

103. Russ Hill also wrote a letter on MTLA stationery to Don Judge, Montana AFL-CIO, and Matt Levin, Montana Community-Labor Alliance, on September 11, 1996. Mr. Hill's letter to these Montana labor leaders states, in pertinent part, that:

A. Mr. Hill wanted to be sure that labor was aware of the "anti-labor themes" that the opponents of I-125 would use during their campaign;

B. Mr. Hill acknowledged that labor, like MTLA, did not "intend to devote scarce resources to the I-125 debate...;"

C. Mr. Hill did not expect I-125 to pass after "$500,000 of advertising by opponents;" and

D. Mr. Hill hoped labor would help define "I-125 as a debate over whether corporate treasuries do have an inalienable right to dominate public speech on ballot initiatives."

104. Jon Motl sent Donna Edwards, Center for New Democracy, a letter on September 13, 1996 describing I-125 campaign strategy and proposing a budget to run a successful I-125 campaign. The letter confirmed a conversation the previous day with Craig McDonald of Texans for Public Justice. Mr. McDonald asked Mr. Motl to summarize the

discussion and present a "two level budget" for review by Mr. McDonald, Ms. Edwards, and Doug Phelps. The letter, in pertinent part, described the following I-125 campaign strategy and budget:

A. The letter described the I-125 opposition. Mr. Motl predicted the opposition would spend $300,000 opposing I-125 but also indicated that the opponents were busy fighting I-122. Mr. Motl advised that the opposition will be "slow (they have already proved to be very slow) clumsy and inefficient" unlike earlier efforts to defeat the bottle bill and the cigarette tax.

B. Mr. Motl predicted that the I-125 proponents could win even if the opposition spent $300,000.

C. Mr. Motl proposed a $25,000 proactive advertising piece using radio ads running on 34 stations in 16 cities for one week. C.B. Pearson was in charge of producing and arranging the radio ads.

D. Mr. Motl suggested that $9,000 be spent on a "reactive person" who would "initiate strikes designed to place a 'corporate money' identity" on the opposition leaders. Mr. Motl proposed that he would be in charge of the reactive campaign and that he would charge $50 per hour and provide "his own support base and office with the funding purchasing 180 hours of his time."

E. Miscellaneous costs of $5,000 (travel, phone, copy, and production) would be incurred in undertaking the early radio campaign and the reactive person funding.

F. The last week of the campaign would feature $50,000 spent on radio and limited TV ads, plus another $5,000 for overhead.

G. Mr. Motl and Mr. Pearson recommended an immediate commitment of $39,000 and a further commitment of $55,000 by October 1, 1996.

H. Mr. Motl indicated that "poll results (as shared by the pollster at the September 6 meeting in Helena) are consistent with our own experiences." Mr. Motl stated that "we win 2 to 1 if there is no extensive work by any party."

105. Mr. Motl does not recall the September 6, 1996 meeting referenced in his letter to Donna Edwards (see Summary of Fact 104(H)). Mr. Motl also does not recall the pollster who provided the I-125 polling information. Mr. Motl, Mr. Pearson and Mr. Newbold deny that the I-125 proponents spent any money for polling.

106. There is no evidence that the Center for New Democracy made a contribution to either principal I-125 committee. According to Mr. Motl, the Center for New Democracy had no money to contribute to the I-125 campaign, but Ms. Edwards was a valuable asset because of her knowledge of I-125 issues and her influence with other potential I-125

contributors such as the 2030 Fund and U.S.-PIRG.

107. C.B. Pearson filed a Statement of Organization for LWVM and Others for I-125 on September 17, 1996. This C-2 form named C.B. Pearson Treasurer, Jon Motl Deputy Treasurer, and Chris Newbold and Barbara Seekins as "Committee Members."

108. The Mont-PIRF corporate contribution study written by C.B. Pearson and funded by Mont-PIRF was mailed to "friends" of the I-125 campaign on September 18, 1996. A cover letter from Mr. Pearson that accompanied the study was written on stationery with the letterhead of LWVM and Others for I-125. Mr. Pearson's letter asserted that the study "'Big Money in Montana's Ballot Campaigns' shows the need for reform of the campaign finance laws for ballot issues." Mr. Pearson's letter also asserted that "I-125 is a reasonable, timely and legally permissible way to address the problem of big corporate money in Montana's ballot issue campaigns."

109. Mont-PIRG made a $3,000 cash contribution to LWVM and Others for I-125 on September 19, 1996.

110. Citizens to Qualify I-125 filed its closing report on September 24, 1996 for the period ending September 23, 1996. The report listed no contributions and two expenditures -- a bank service charge of $8 and a contribution to its successor committee (LWVM and Others for I-125) in the amount of $78.44.

111. Mr. Pearson denies that Citizens to Qualify I-125 closed its books out of concern that the committee was violating the naming and labeling statute. Instead, Mr. Pearson asserts that Citizens to Qualify I-125 disbanded because its purpose (qualifying I-125 for the November ballot) had been completed.

F. The 1996 Fall Campaign

112. Jon Motl wrote C.B. Pearson on September 25, 1996 expressing concern about not being paid for his I-125 work (the letter makes it clear that Motl had previously been volunteering his services to the I-125 campaign). Mr. Motl indicated that he believed his I-125 work would become "quite time consuming" and thanked Mr. Pearson for his efforts to find money to pay Mr. Motl for his services. Mr. Motl agreed to accept $50 an hour (half his normal fee) and $20 per hour for paralegal services if LWVM and Others for I-125 found money to pay for Mr. Motl's services.

113. Mr. Motl established a case file for I-125 work on September 26, 1996. Mr. Motl indicated that billing should be sent to C.B. Pearson and the work involved is described as "INITIATIVE WORK."

114. Mr. Motl was responsible for monitoring the two principal committees established to oppose I-125. Mr. Motl personally inspected the records of the opposition committees and wrote numerous letters to those committees.

115. C.B. Pearson was primarily responsible for developing the radio ads paid for by LWVM and Others for I-125. Jon Motl worked with the media advisor hired by LWVM and Others for I-125 to develop the proponents' TV ads. Mr. Motl was also involved in reviewing and approving the radio ads developed by Mr. Pearson.

116. Mr. Pearson used his UM office equipment to send proposed radio ads for I-125 to Jon Motl. A September 27, 1996 fax from Mr. Pearson contains the logo for and reference to "Environmental Organizing Semester" and the phone number for Mr. Pearson's EOS office (406-243-6185).

117. Mr. Motl and Mr. Pearson shared I-125 fund-raising responsibilities. Mr. Motl and Mr. Pearson were jointly responsible for obtaining the Mont-PIRG and MCC contributions; however, Mr. Motl had primary responsibility for convincing National Common Cause to allow MCC to support I-125. Mr. Motl was also responsible for obtaining the contributions from the 2030 Fund and U.S.-PIRG. The contribution from the Hollywood Women's Political Committee was unsolicited.

118. Mr. Motl sent Mr. Pearson a bill for legal services on October 3, 1996. Mr. Motl's bill sought payment for paralegal services in the amount of $444 and Mr. Motl's services in the amount of $1,060 (total bill, $1,504). The billing was at the rates specified in Mr. Motl's September 25, 1996 letter (see Summary of Fact 112).

119. Mr. Motl's October 3, 1996 letter also advised Mr. Pearson that LWVM and Others for I-125 would have to report the cost of an MCC fund-raising letter as an in-kind contribution along with copying and telephone costs. The October 22, 1996 C-6 report filed by LWVM and Others for I-125 reported an in-kind contribution of $1,708.20 for the MCC fund-raising letter.

120. C.B. Pearson wrote Mr. Motl on October 3, 1996 and indicated that LWVM and Others for I-125 had received a $40,000 contribution from the 2030 Fund. Mr. Pearson indicated that receipt of the 2030 Fund contribution would allow LWVM and Others for I-125 to pay "roughly $9,000" to Mr. Motl for the fees charged by Mr. Motl's office. The rest of the 2030 Fund contribution would be spent on radio advertising ($25,000) and other costs ($6,000) according to Mr. Pearson.

121. Mr. Pearson filed an amended C-2 Statement of Organization for LWVM and Others for I-125 on October 3, 1996. The amended C-2 added the 2030 Fund to the committee's name.

122. On or about October 3, 1996, MTLA's Executive Director, Russell Hill, sent Mr. Motl a proposed 60-second radio advertisement supporting I-125. The proposed radio ad was written by Mr. Hill.

123. Jon Motl faxed the I-125 radio ads prepared by C.B. Pearson to Russell Hill on

October 3, 1996. The fax from Mr. Motl was sent to Mr. Hill at MTLA's fax number.

124. Jon Motl sent Donna Edwards (Center for New Democracy), Craig McDonald (Texans for Public Justice), and Gene Karpinski (U.S.-PIRG) a fax on October 3, 1996. The fax advised that the media poll being released in a few days did not include I-125 results because I-125 "hadn't been high profile enough" to do polling. Mr. Motl indicated this would be his last report for a few days but that C.B. Pearson would be sending them "a report on media buy work" and "an update on Monday...."

125. Chris Newbold, on behalf of Mont-PIRG, wrote former Colorado Governor Richard Lamm on October 4, 1996 asking Governor Lamm to play "an active role" in the I-125 campaign. Mr. Lamm was a Reform Party candidate for President and a Professor of Public Policy at the University of Denver in 1996. Mr. Newbold prepared proposed 865 word and 600 word op-ed pieces supporting I-125 that Mr. Lamm ultimately adopted. Mr. Newbold, in turn, distributed Governor Lamm's endorsement of I-125 to "friends" and the news media.

126. The proponents of I-125 also received an endorsement of the initiative from Rev. Jesse Jackson and the Rainbow Coalition. Rev. Jackson's endorsement was written on National Rainbow Coalition stationery and was addressed "To the Voters of Montana." Rev. Jackson declared that "I-125 is a concrete and necessary step in returning the power of the initiative to its rightful owners--the people of Montana." He "strongly" encouraged the Rainbow Coalition's supporters in Montana to vote yes on I-125. Chris Newbold does not believe that the Rainbow Coalition's endorsement of I-125 was ultimately used in the campaign.

127. Jon Motl sent a fax to Craig McDonald, Texans for Public Justice, Gene Karpinski, Executive Director of U.S.-PIRG, and Donna Edwards, Center for New Democracy, on October 5, 1996. The fax described the second opposition committee to enter the I-125 debate. Mr. Motl indicated "Steve Browning is the head of the 'black hat' law firm" heading the second principal committee opposing I-125. Mr. Motl stated that Steve Browning "led the fight against the bottle bill and is on the wrong side of virtually every good issue." Mr. Motl also advised that:

A. The opponents to I-125 would likely spend $300,000 and spend more on radio because of the "crowded TV field...;" and

B. C.B. Pearson and Mr. Motl would assess the situation and report back "with a recommendation as [to] whether to spend more money or not."

128. Russell Hill sent Jon Motl a seven-page fax on MTLA letterhead on October 9, 1996. The fax included a proposed MTLA press release, legal citations and a letter to the editor supporting I-125. The fax cover sheet asked Mr. Motl if he had any comments and asked Mr. Motl to call Mr. Hill before Mr. Motl left town. The proposed press release stated "TRIAL LAWYERS ENDORSE CORPORATE-CONTRIBUTION INITIATIVE" and listed

Russ Hill as the contact if there were questions.

129. Jon Motl wrote Doug Phelps, FFPIR, on October 15, 1996. The memo described the current status of the opponents' campaign (they would spend only $200,000-$225,000 on media) and current poll results (I-125 was winning). Mr. Motl recommended "that an additional $50,000 be committed and used for a radio and print media campaign" to be run "the last week of the election." Mr. Motl stated that he understood "the responsibility tied to seeking more money." Mr. Motl also advised that the I-125 "opponents field group is still the farm team" and that the "'A' team" is tied up on I-122 and I-121. Copies of the fax memo were sent to Mr. Karpinski of U.S.-PIRG, Ms. Edwards of the Center for New Democracy, and Craig McDonald of Texans for Public Justice.

130. Doug Phelps was the "idea man" for FFPIR and was also involved in approving the contribution ultimately made by U.S.-PIRG to the I-125 campaign. In 1995-96, he was the Chair of U.S.-PIRG and a member of the Green Corps Board (he is currently the Chair of the Green Corps Board). According to Jon Motl, Mr. Phelps was the "originator" of I-120 in 1994, and its progeny, I-125 in 1996.

131. Mr. Motl sent Mr. Pearson a bill for I-125 services on October 16, 1996 (for services rendered through October 16, 1996). Mr. Motl's bill sought reimbursement for the following:

A. 93.7 hours of I-125 time by Mr. Motl at $50/hour ($4,685.00 total);

B. Paralegal services, 60.5 hours at $20/hour, plus mileage of $1.50 ($1,210.00 total); and

C. Office copying and postage costs of $438.01.

132. LWVM and Others for I-125 did not spend any money on polling. The I-125 proponents relied on public polls done by the Lee Newspapers, the *Great Falls Tribune*, the University of Montana Bureau of Business and Economic Research, and Montana State University-Billings. The public polls conducted by these entities generally showed public approval of I-125 throughout the 1996 campaign. For example, the late October 1996 poll conducted by MSU-Billings showed public approval of I-125 by a margin of 50.7% to 33.1%.

133. On October 19, 1996, Mr. Motl sent Doug Phelps, FFPIR, a follow-up memo to Mr. Motl's October 15, 1996 memo (see Summary of Fact 129). Mr. Motl again asked that Mr. Phelps consider spending up to $50,000 on I-125. Mr. Motl described the looming opposition campaign and indicated that $25,000 would be spent on radio ads and the other half for "accompanying news ads," including support costs and further use of Mr. Motl's office.

134. Mr. Motl asked that National Common Cause send a contribution of $1,500 to C.B. Pearson on October 19, 1996. Mr. Motl indicated that this amount constituted "funds

contributed by Montana Common Cause members in support of I-125."

135. On October 21, 1996, Mr. Motl sent a copy of his October 19, 1996 memo to Doug Phelps to Mr. McDonald, Ms. Edwards, and Mr. Karpinski. Mr. Motl indicated that if any of them wanted "to weigh in" on the requested $50,000 contribution from Mr. Phelps, they needed to do so by tomorrow morning "as we need a decision in order to use the money right." Mr. Motl indicates that he sent copies of his Phelps memo to Mr. McDonald, Ms. Edwards, and Mr. Karpinski because he believed these individuals would help persuade Mr. Phelps to make the requested contribution from U.S.-PIRG.

136. John Heffernan sent Jon Motl a fax on October 22, 1996 on Heffernan Consulting, Inc. stationery. Mr. Heffernan reported that Dan Kemmis and Mike Kadas had agreed to endorse I-125 and do a news release. Mr. Heffernan asked Mr. Motl to review and edit the news release. Also, Mr. Heffernan asked Mr. Motl if he would be interested in writing a guest editorial for Mr. Kemmis' signature.

137. LWVM and Others for I-125 filed its first C-6 report with the Commissioner on October 22, 1996 for the reporting period from September 10 through October 16, 1996. The report lists total contributions of $51,484.86 for the reporting period from the following:

Contributor	**Amount/Type**	
A. 2030 Fund, Inc.	$ 40,000.00 cash	
B. Mont-PIRG	$ 3,000.00 cash	
	1,708.20 in-kind	
Mont-PIRG Subtotal:		$ 4,708.20
C. MCC	$ 5,500.00 cash	
	1,197.82 in-kind	
MCC Subtotal:		$ 6,697.82
D. Citizens to Qualify I-125	$ 78.74	

138. The October 22, 1996 C-6 report listed total expenditures of $37,381.95 for the reporting period, leaving a cash balance of $11,536.89. The major expenditures made by LWVM and Others for I-125 during the reporting period were:

A. Radio ads, $23,940.00;

B. Payments to Jon Motl for services, $7,838.51; and

C. Payments to C.B. Pearson for campaign management, $4,723.24 (includes $723.24 in expense reimbursement).

139. The 2030 Fund, Inc., was a fund run by the senior staff of FFPIR. Mr. Motl believes the 2030 Fund included some or all of the money collected by FFPIR as administrative expenses from the fund-raising canvasses by FFPIR. Doug Phelps had the "final say" about the 2030 Fund contribution according to Jon Motl. The 2030 Fund is now "defunct."

140. Jon Motl wrote Steve Browning, treasurer of the second principal committee opposing I-125, on October 22, 1996. Mr. Motl alleged that an ad run by Mr. Browning's committee falsely represented that a non-profit group, Montana Women's Vote '96, opposed I-125. On that same date, Mr. Motl wrote TV stations running the ad and asked that they stop running the advertisement. Mr. Motl advised the television stations that Montana Women's Vote '96 had not taken a position on I-125 and that the spokesperson featured in the ad had agreed to withdraw the ad.

141. Linda Stoll-Anderson, coordinator for Montana Women's Vote '96, wrote my predecessor, Commissioner Ed Argenbright, about the television advertisement on October 22, 1996. Ms. Anderson advised Commissioner Argenbright that the Montana Women's Vote '96 was not organized to support or oppose initiatives or candidates and the ads being run by Steve Browning's committee misrepresented the position of the organization. Ms. Anderson confirmed that the spokesperson in the TV ad had agreed to notify Mr. Browning's committee and request that the ad be pulled.

142. Jon Motl sent C.B. Pearson a bill for I-125 services on October 26, 1996 (for the period ending October 26, 1996). The bill was for the following services:

A. 62.6 hours of I-125 time for Mr. Motl at $50/hour ($3,130 total);

B. Paralegal services, 11 hours at $20/hour ($220 total); and

C. Office copying and postage costs of $41.00.

143. Mr. Motl advised Mr. Pearson via letter on October 26, 1996 to report $99 in telephone, fax and copying costs as an in-kind contribution by MCC to LWVM and Others for I-125.

144. Mr. Motl and Mr. Pearson were either reimbursed for or reported as in-kind I-125 contributions telephone calls or faxes to the following organizations during the period of September 23, 1996 through October 31, 1996:

A. U.S.-PIRG, 26 telephone calls/faxes;

B. Texans for Public Justice, Austin, Texas, 19 telephone calls/faxes;

C. The Center for New Democracy, Washington, D.C., 12 telephone calls/faxes; and

D. American Lung Association of Montana, Helena, Montana, 17 phone calls/faxes.

145. Mr. Motl submitted his final bill for I-125 services on November 1, 1996. Mr. Motl asked for reimbursement from LWVM and Others for I-125 as follows:

A. 31.1 hours of I-125 time for Mr. Motl and Kim Wilson at $50/hour ($1,555);

B. Paralegal services, 8 hours at $20/hour ($160); and

C. Office copying costs of $21.60.

146. LWVM and Others for I-125 filed its second C-6 report with the Commissioner on November 1, 1996 for the reporting period ending October 26, 1996. The report lists total contributions of $341.31 and pledges of $36,000 for the reporting period as follows:

A. MCC and Mont-PIRG made in-kind contributions of $99 and $242.31, respectively;

B. U.S.-PIRG made a pledge to contribute $35,000 on October 26, 1996 and the contribution was received on October 28, 1996; and

C. The Hollywood Women's Political Committee made a pledge to contribute $1,000 on October 26, 1996 and the contribution was received on October 29, 1996.

147. The November 1, 1996 C-6 report listed total expenditures of $6,318.51 for the reporting period, leaving a cash balance of $6,318.51. The major expenditures made during the reporting period were:

A. Payments to Mr. Motl, $3,391.00; and

B. Payments to Mr. Pearson, $2,915.92 (includes $415.92 of expense reimbursement).

148. Montana voters approved I-125 in the November 5, 1996 general election.

149. The day after I-125 was approved by Montanan's voters, the Center for New Democracy issued a press release from its Washington, D.C. offices touting campaign finance reform initiatives passed in five states, including Montana. The press release described I-125 and announced that the prohibition on corporate contributions from a corporation's general treasury funds was "the first of its kind in the nation." Donna Edwards was listed as the contact person for the Center for New Democracy. C.B. Pearson was listed as the I-125 contact and the Mont-PIRG office number was listed in the press release.

150. LWVM and Others for I-125 filed its third C-6 report on November 27, 1996 for the reporting period ending November 22, 1996. The report listed total contributions of

$38,000 for the reporting period as follows:

A. U.S.-PIRG contributed $35,000 cash;

B. Hollywood Women's Political Committee contributed $1,000 cash;

C. Mont-PIRG contributed $2,000 cash ($6,950.51 total); and

D. Individual contributions of $105.

151. The November 27, 1996 C-6 report listed total expenditures of $42,823.45 for the reporting period, leaving a cash balance of $499.93. The major expenditures made during the reporting period were:

A. Payment for television ads, $25,000;

B. Payment for radio ads, $14,050.00;

C. Payment to C.B. Pearson for reimbursement of expenses, $981.85;

D. Payment to Chris Newbold for travel, room and food, $306.91; and

E. Payment to Jon Motl for I-125 services, $1,736.60.

152. Citizens to Qualify I-125 and LWVM and Others for I-125 reported total cash contributions of $109,723.84 and total in-kind contributions of $5,335.13 for the I-125 campaign. Total cash and in-kind contributions reported were $115,058.97. More than 99% of the reported I-125 contributions came from the following five organizations and in the following amounts:

Contributor	Cash	In-kind	Total
Mont-PIRG	$ 27,700	$3,940.81	$ 31,640.81
U.S.-PIRG	35,000	0.00	35,000.00
2030 Fund, Inc.	40,000	0.00	40,000.00
MCC	5,500	1,296.02	6,796.02
Hollywood Women's Political Committee	1,000	0.00	1,000.00
Subtotal	$109,200	$5,236.83	$114,436.83

153. Citizens to Qualify I-125 and LWVM and Others for I-125 reported that it paid over 83% of its cash received to the following individuals and businesses for I-125 campaign activities:

A. C.B. Pearson, $15,418.43 for serving as treasurer and manager for the I-125 campaign;

B. Jon Motl, $12,966.11 for services provided to LWVM and Others for I-125;

C. Art Moore, Inc., Salt Lake City, Utah, $37,990.00 for radio ads; and

D. MacWilliams, Cosgrove and Snider, Tacoma Park, Maryland, $25,000.00 for television ads.

154. LWVM and Others for I-125 chose not to close its books and file a closing report soon after the November 1996 general election because of the on-going litigation challenging the constitutionality of I-125. Mr. Motl and Mr. Pearson believed LWVM and Others for I-125 would not have standing to be an intervener in the I-125 litigation if the committee ceased to exist and filed a closing report. LWVM and Others for I-125 continued to file C-6 reports with the Commissioner on the following dates:

A. March 11, 1997;

B. September 30, 1997;

C. March 17, 1998;

D. September 11, 1998; and

E. March 29, 1999 (closing report).

155. The C-6 reports referenced in the preceding paragraph did not include any contributions. Except for a $64.53 payment to C.B. Pearson for reimbursement of expenses in the March 11, 1997 report, the only other expenditures were bank service charges.

156. The closing report filed by LWVM and Others for I-125 on March 29, 1999 showed a cash balance of $108.99, but there is no indication to whom this cash balance was paid.

VII. STATEMENT OF FINDINGS

A. I-125 Claim 1

The allegation that Citizens to Qualify I-125 violated the naming and labeling statute (Section 13-37-210, MCA) is dismissed for the reasons set forth in Part IV, pages 7 and 8 of this decision. This allegation appears to have merit based on the failure of Citizens to Qualify I-125 to accurately disclose that FFPIR, not Mont-PIRG, contributed a significant amount of cash and in-kind services (in excess of $15,000) to the I-125 campaign. Failure to identify the common economic interest or employer of a majority of I-125's contributors

would have been deemed a serious infraction since the I-125 proponents falsely represented that Mont-PIRG's students and members were providing the cash and in-kind contributions needed to place I-125 on the 1996 ballot; however, Mr. Griffin's naming and labeling complaint was not timely filed and enforcement action based on this claim is barred by Section 13-37-130, MCA.

B. I-125 Claim 2

The allegations in Claim 2 are that the initial report filed by Citizens to Qualify I-125 failed to include certain in-kind contributions by incidental political committees such as Mont-PIRG, LWVM, Green Corps, the law firm of Reynolds, Motl and Sherwood, and others. The initial investigation of this claim raised sufficient concerns to examine how key participants in the I-125 campaign reported or did not report I-125 campaign activities. As a result, this investigation was expanded to include the various groups and individuals who were coordinating their activities with the two principal I-125 committees and whether in-kind and cash contributions were accurately reported throughout the I-125 campaign.

It is first necessary to restate the general requirements for reporting in-kind contributions under Montana law and the previous decisions of the Commissioner's office. The most comprehensive description of in-kind reporting requirements was made by Commissioner Ed Argenbright in his April 30, 1998 *MCSWL Decision*, at pp.74-77, which reads, in pertinent part, as follows:

> ...Section 13-1-101(6)(a)(iii), MCA, includes in the definition of "contribution" the "payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee." However, "services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee..." are not a contribution (Section 13-1-101(6)(b)(i), MCA). An "individual" is defined as a "human being" and does not encompass businesses, corporations, membership associations, partnerships or clubs (Section 13-1-101(15), MCA). These unambiguous statutory definitions make it clear that an employer who pays his or her employees or independent contractors to serve on campaign steering committees, stuff campaign envelopes, write campaign brochures, conduct scientific studies for the campaign or raise campaign funds is making a reportable in-kind campaign contribution.
>
> Not all in-kind contributions are as clear-cut as the examples cited in the preceding paragraph. Rules have been adopted by my predecessors to address more complex issues. ARM 44.10.321 was first adopted in 1976 and last amended in 1979. ARM 44.10.321(2) defines the term "in-kind contribution" to mean "the furnishing of services, property, or rights without charge or at a charge which is less than fair market value" to a candidate or political committee (third party payments of compensation to campaign

participants and individuals who volunteer their time are specifically excluded from the rule definition). Applying this definition and the statutory definitions cited in the preceding paragraph, the following rules apply:

1. Only an individual (a human being) may escape reporting an in-kind contribution by volunteering his or her time (Section 13-1-101(6)(b)(i), MCA). If the campaign-related work by a human being also involves the use of equipment (fax machines, telephones, etc.) or property (the use of office space), the fair market value of the equipment and property must be reported.

2. Entities, other than a human being, may not volunteer time and escape reporting in-kind contributions. If a business, corporation, membership association, partnership, club, union, committee, firm, or group makes an employee, officer, board member or independent contractor available for campaign-related services, the fair market value of those services must be reported by the entity as an in-kind contribution.

3. Entities, including a human being, who provided equipment or property for campaign-related activities, must report the fair market value of the equipment and property. For example, the fair market value of providing phones, FAX machines, membership lists and similar items for use in a campaign must be determined and reported.

4. ARM 44.10.513 and 44.10.533 define how in-kind contributions and expenditures must be valued and reported. These rules and the pertinent statutory definitions have been in place for 20 years!

This commissioner acknowledges that such factors as how an employee or independent contractor is paid (hourly fee v. annual salary) and when and where campaign-related work is performed may affect the amount of the in-kind contribution to be reported. However, the basic rules are that if an employee, officer, board member or independent contractor is paid by an employer or third party to perform campaign-related services, such services constitute an in-kind contribution to the candidate or political committee. Any work done at the employer's offices and any use of the employer's equipment or property must be reported as an in-kind contribution. If an employee or independent contractor writes a campaign report after work hours or films a campaign commercial on Sunday and receives no compensation from his or her employer or third party, then the services fall under the "volunteer" exception. There is no reportable in-kind contribution. Conversely, if an employee or independent contractor writes a campaign report after work hours but receives compensation (salary, overtime or comp time pay) for such services, it is a reportable in-kind contribution. If an employer's office or equipment is used for campaign activities, it is also reportable under Montana's definition of contribution. Allowing a candidate or political

committee to use office telephones, fax machines, copiers, paper and stamps for campaign purposes has substantial value to the candidate or political committee.

Based on the preceding, several entities and individuals made in-kind contributions to the I-125 campaign that should have been reported in incidental political committee C-4 reports and in C-6 reports filed by Citizens to Qualify I-125 and LWVM and Others for I-125; however, because Mr. Griffin's complaint was filed more than four (4) years after the deadline for the filing of C-4 reports by incidental political committees in 1996, enforcement action against these incidental political committees is barred under Section 13-37-130, MCA.

Enforcement action based on the failure of Citizens to Qualify I-125 and LWVM and Others for I-125 to accurately report the following cash and in-kind contributions in the September 11, 1998 and March 29, 1999 C-6 reports is not barred by Section 13-37-130, MCA:

1. Mont-PIRG and FFPIR. FFPIR should have been listed as making both cash and in-kind contributions to the I-125 principal committees.

FFPIR, not Mont-PIRG, was paying canvassers to collect signatures for I-125 in May and June of 1996. The $1,990.30 in-kind contributions by Mont-PIRG listed in the June 10 and July 10, 1996 C-6 reports for salaries paid to canvassers and Chris Newbold should have been reported as in-kind contributions by FFPIR, not Mont-PIRG.

The amount of the canvass salaries reported for I-125 signature gathering efforts ($1,990.30) appears reasonable. Collecting signatures for I-125 in May and June of 1996 was only an incidental part of the canvass. The primary purpose of the FFPIR canvass on behalf of Mont-PIRG was to raise money for Mont-PIRG and educate the public about Mont-PIRG's objectives and programs.

The I-125 principal committees did not accurately report other in-kind contributions by Mont-PIRG. It is clear that a major portion of the I-125 campaign was being run out of the Mont-PIRG offices. Mont-PIRG's office equipment, office space, and supplies were being used by Chris Newbold, C.B. Pearson, and others to conduct I-125 signature gathering efforts, secure endorsements, prepare campaign documents, and raise money for the I-125 campaign. Mont-PIRG pays rent to the University of Montana for its office space. The C-6 reports filed by Citizens to Qualify I-125 contain no in-kind contributions by Mont-PIRG for office space, equipment or supplies used in the I-125 campaign. LWVM and Others for I-125 listed in-kind contributions by Mont-PIRG for office equipment and supplies in its October 22, and November 1, 1996 C-6 reports, but did not report any in-kind Mont-PIRG contributions for office space used for I-125 activities. LWVM and Others for I-125 did not list any in-kind contributions from Mont-PIRG for use of Mont-PIRG's office space, equipment, and supplies during the final days of the 1996 campaign (see the November 27, 1996 C-6 report) or any subsequent C-6 report.

Some of the cash contributions made by Mont-PIRG to both principal I-125 committees were actually contributions made by FFPIR of funds it was paid as legitimate administrative expenses under the canvass agreement with Mont-PIRG. FFPIR paid a total of $27,500 cash to Mont-PIRG for I-125 campaign activities in 1996. Mont-PIRG, in turn, contributed a total of $27,700 cash to the I-125 principal committees ($22,700 of this amount was contributed to Citizens to Qualify I-125). At least $13,000 of the cash contributed to the I-125 campaign by Mont-PIRG was FFPIR cash and should have been reported as FFPIR cash contributions, not Mont-PIRG contributions.

It must be noted that the amount of cash contributed by Mont-PIRG and/or FFPIR was accurately reported by both principal I-125 committees. The inaccurate reporting of the Mont-PIRG cash contributions was limited to the source of the cash, not the amount of the cash contributed. Nevertheless, the failure of both principal I-125 committees to accurately report the source of a sizeable portion of its cash and in-kind contributions during the signature-gathering phase of the I-125 campaign is a serious violation in light of the public representations made by Citizens to Qualify I-125.

The failure to disclose both the cash and in-kind contributions made by FFPIR raises the issue of whether Mont-PIRG, FFPIR, and the two principal I-125 committees violated Section 13-37-217, MCA, which reads as follows:

> **13-37-217. Contributions in name of undisclosed principal.** No person may make a contribution of his own money or of another person's money to any other person in connection with any election in any other name than that of the person who in truth supplies such money. No person may knowingly receive such a contribution or enter or cause the same to be entered in his accounts or records in another name than that of the person of whom it was actually furnished.

Chris Newbold indicates that FFPIR did not provide monthly statements to Mont-PIRG concerning the amount of money being deducted for FFPIR expenses and the remaining amount available to Mont-PIRG from canvass fund-raising (all funds collected from the Mont-PIRG canvass were deposited in a FFPIR account controlled exclusively by FFPIR). According to Mr. Newbold, Mont-PIRG knew what gross revenues were being collected in the canvass and Mont-PIRG kept requesting money from FFPIR for use in the I-125 campaign. Mont-PIRG did not know how much FFPIR was deducting for canvasser and administrative expenses. FFPIR kept wiring Mont-PIRG the cash requested. Mr. Motl states that he was not aware of FFPIR's financial contributions and that he assumed the Mont-PIRG money was Mont-PIRG's money.

I am unable to conclude that FFPIR, Mont-PIRG, and both principal I-125 committees knowingly reported FFPIR contributions as Mont-PIRG contributions based on the evidence available at this time. Mont-PIRG's gross cash canvass fund-raising in 1995 and 1996 exceeded $53,700. Mont-PIRG's total cash and in-kind contributions to the I-125

campaign were $31,640.81. Mr. Newbold believed that if Mont-PIRG was making requests for funds from FFPIR that exceeded the amount available to Mont-PIRG after deducting FFPIR's canvass and administrative expenses, FFPIR would have refused to transfer the funds to Mont-PIRG. FFPIR never refused to transfer the funds requested by Mont-PIRG according to Mr. Newbold.

2. Jon Motl and the law firm of Reynolds, Motl and Sherwood. Jon Motl is a partner in the law firm of Reynolds, Motl and Sherwood. In 1996, Reynolds, Motl and Sherwood was a general partnership. Since 1997, the firm has been a professional limited liability partnership. A separate partnership owns the building where the law firm's offices are located.

Members of the law firm share office overhead and expenses the same today as they did in 1996. Mr. Motl keeps all revenue received and pays 40% of his gross revenue to the building partnership to pay employee, equipment and office expenses. If Mr. Motl volunteers his time, he does not receive income or a subsidy from his partners. When Mr. Motl is paid an hourly or contingent fee for his services, Mr. Motl pays his office expenses out of these payments.

Mr. Motl volunteered his services to Citizens to Qualify I-125. Section 13-1-101(6)(b)(i), MCA, clearly excludes such individual volunteer efforts from the reporting requirements of the Act and rules. Before Mr. Motl began billing LWVM and Others for I-125 for his services on October 3, 1996 there is no evidence that Mr. Motl received compensation for his I-125 services from his partners, a client, Citizens to Qualify I-125, or any other person.

Mr. Motl was paid for services provided to LWVM and Others for I-125. Mr. Motl billed LWVM and Others for I-125 at one-half his normal rate, $50 per hour rather than $100 per hour (Summary of Fact 112). ARM 44.10.321(1) defines an "in-kind contribution" as the "furnishing of services, property or rights without charge or at a charge which is less than fair market value to a person, candidate, or political committee for the purpose of supporting or opposing a ... ballot issue..." (see ARM 44.10.323(2) for a similar definition of "in-kind expenditure"). Because Mr. Motl provided both volunteer and compensated services to the I-125 principal committee, it is necessary to reconcile the definition of in-kind contribution in ARM 44.10.231(2) with the volunteer exemption in Section 13-1-101(6)(b)(i), MCA.

A lawyer, an accountant, or an individual who stuffs envelopes may volunteer time to a political committee, and such volunteer time is not reportable under Section 13-1-101(6)(b)(i), MCA. This statutory exemption applies to "services provided without compensation by individuals volunteering all or a portion of their time...." In Mr. Motl's case, he volunteered his services without compensation to Citizens to Qualify I-125 and those volunteer services were not a reportable in-kind contribution; however, once Mr. Motl began receiving compensation for his services by LWVM and Others for I-125, the principal committee and Mr. Motl were obligated to report the total fair market value of Mr. Motl's services as contributions to the I-125 campaign. The fair market value of Mr. Motl's services to LWVM and Others for I-125 was, by Mr. Motl's own admission, $100 per hour,

not his discounted billing rate of $50 per hour. LWVM and Others for I-125 timely and accurately reported $10,430 paid to Mr. Motl at his discounted billing rate of $50 per hour. Neither Mr. Motl nor LWVM and Others for I-125 reported the discounted value of the services provided by Mr. Motl as an in-kind contribution under ARM 44.10.321(2). LWVM and Others for I-125 should have reported an additional $10,430 as the full fair market value of Mr. Motl's services to the I-125 campaign.

Both principal I-125 committees also failed to report the value of Mr. Motl's office expenses, including office space, as an in-kind contribution. Only the volunteer time of a human being is not reportable under Montana's campaign finance laws and rules (see April 30, 1998 MCSWL Decision cited on pages 42-44 of this decision). If a business partnership makes office space, equipment, and supplies available to a political committee at less than fair market value, the political committee must report the fair market value of that office space, equipment, and supplies even if the space and equipment is being used by campaign volunteers (see Section 13-1-101(6)(a)(i),MCA, ARM 44.10.321, 44.10.323, 44.10.513 and 44.10.533). Similarly, Mr. Motl, as an individual, has the obligation to report the fair market value of any business equipment, business office space, or office supplies used in campaign activities.

Mr. Motl's services to the I-125 campaign were an integral part of virtually all I-125 campaign activities. Mr. Motl's correspondence on behalf of I-125 was written on Reynolds, Motl and Sherwood stationery and involved the use of office space, office equipment, and office supplies. The only in-kind contribution reported by Citizens to Qualify I-125 from the Reynolds, Motl and Sherwood law firm was the $97.50 for "staff time, copying and phone" reported in the June 10, 1996 report. Citizens to Qualify I-125 should also have reported the fair market value of office space, equipment, and supplies used by Mr. Motl in his I-125 campaign activities.[5] LWVM and Others for I-125 should have reported as in-kind contributions from the Reynolds, Motl and Sherwood law firm the fair market value of the office space, equipment and supplies used in the I-125 campaign. LWVM and Others for I-125 only reported in-kind contributions from the Reynolds, Motl and Sherwood law firm for copying and postage costs.

Mr. Motl has urged a broad interpretation of the volunteer time exemption to include the use of business office space, equipment, and supplies by volunteers in a political campaign. I must agree with my predecessor and conclude that the volunteer time exemption in 13-1-101(6)(b)(i), MCA, does not allow a business, corporation, partnership, association, or an individual to donate office space, equipment and supplies to political campaigns unless the fair market value of such space, equipment and supplies is properly reported. To interpret the Act and rules as suggested by Mr. Motl would not result in full disclosure of campaign finances and would, in turn, encourage the corporate behavior Mr.

[5] Enforcement action against the Reynolds, Motl, Sherwood law firm for failure to report these expenditures in a C-4 incidental political committee report is barred for the reasons stated on pages 6-8 of this decision.

Motl sought to restrict in I-125. Offices with computers, telephones, fax machines, copiers, computer disks, paper, desks, workstations, and furniture have great value to political campaigns. Montana law requires that the fair market value of such office space, equipment and supplies be accurately and timely reported.

The preceding conclusion is also a matter of equity. The public legislative debates about the reporting of cash and in-kind contributions has centered on the notion that there should be full disclosure of both the money and the services, property, and equipment used in political campaigns. A political committee able to raise substantial cash contributions must report expenditures made for personnel, office space, office equipment, and office supplies. It is fundamentally unfair and contrary to every notion of full disclosure to allow political committees that raise less cash to escape reporting the fair market value of office space, office equipment, and office supplies made available to campaign personnel by the employers or businesses for whom campaign officials work. The principal I-125 committees chose not to spend their cash contributions on office space, equipment, and supplies for a campaign headquarters. That choice does not excuse the I-125 proponents from reporting as in-kind contributions the fair market value of office space, equipment, and supplies provided by businesses or employers.

3. Green Corps. The issue of whether any of the payments made by Green Corps to C.B. Pearson for the EOS class were reportable as I-125 in-kind contributions is discussed on pages 58 and 59 of this decision (Claim 6).

4. Mont-PIRF. The issue of whether the Mont-PIRF study "Big Money in Montana's Ballot Campaigns" was a reportable I-125 campaign expenditure is discussed on pages 56-58 of this decision (Claim 5).

5. LWVM. LWVM is a Montana nonprofit corporation, first incorporated in 1985. LWVM's President and other members volunteered their time for a number of I-125 activities. League members were not reimbursed for their participation in the I-125 campaign.

The League spent a total of $5,802.70 on its activities in 1996-97. LWVM reimbursed Ms. Seekins $460.95 in 1996-97 for expenses as President but there is no evidence that any of the reimbursement was for I-125 activities. Ms. Seekins' participation in the preparation of arguments for I-125 in the Secretary of State's Voter Information Pamphlet is not a reportable activity (see the June 20, 2000 Chamber Decision, at pp. 52 and 53). Although LWVM endorsed I-125 and its name was featured prominently in the name of the second principal committee (LWVM and Others for I-125), such a public endorsement was not a reportable in-kind contribution.

6. MTLA. The Montana Trial Lawyers Association, through its Executive Director, was actively coordinating its I-125 activities with Jon Motl. Russ Hill, MTLA's Executive Director, was funneling information obtained from the political committees opposing I-125 to Mr. Motl. Mr. Hill was also submitting MTLA press releases for review by Mr. Motl before the press releases were issued. Mr. Hill was even writing proposed radio commercials for

consideration by LWVM and Others for I-125. Mr. Motl also faxed Mr. Hill copies of the I-125 radio ads. Mr. Hill's I-125 activities involved the use of MTLA offices, equipment and supplies. Mr. Hill was also being paid to serve as MTLA's Executive Director.

MTLA did not report any in-kind contributions to LWVM and Others for I-125 nor did LWVM and Others for I-125 report any in-kind contributions from MTLA. Although enforcement action against MTLA is barred for the reasons stated on pages 7 and 8 of this decision, LWVM and Others for I-125 had a continuing duty to accurately report MTLA's in-kind contributions in its September 11, 1998 and March 29, 1999 C-6 reports.

7. American Lung Association of Montana. Dennis Alexander of the American Lung Association of Montana was consulting with C.B. Pearson about I-125 strategy and activities on a regular basis during the fall of 1996. Mr. Pearson was being reimbursed by the I-125 campaign for a substantial number of telephone calls to Mr. Alexander at the Lung Association's offices (Summary of Fact 144). Mr. Alexander was using Lung Association offices, equipment, and supplies and was being paid to serve as the Association's Executive Director. The Lung Association was interested in I-125 because of the significant sums contributed by tobacco companies to past Montana initiative campaigns.

The Lung Association did not report any in-kind contributions to LWVM and Others for I-125 nor did LWVM and Others for I-125 report any contributions from the Lung Association. Although enforcement action against the Lung Association is barred for the reasons stated on pages 7 and 8 of this decision, LWVM and Others for I-125 had a continuing duty to accurately report the Lung Association's in-kind contributions in its September 11, 1998 and March 29, 1999 C-6 reports.

8. Heffernan Consulting, Inc. John Heffernan, a MCC board member, volunteered his personal time to the I-125 campaign and such activity is not reportable under Section 13-1-101(6)(b)(i), MCA (see page 47 of this decision); however, on at least one occasion, Mr. Heffernan sent a fax memorandum on his business stationery. The use of business office space, equipment, and supplies must be reported for the reasons stated on pages 47 and 48 of this decision.

Neither John Heffernan, Inc. nor LWVM and Others for I-125 reported in-kind contributions by John Heffernan, Inc. Although enforcement action against John Heffernan, Inc. is barred for the reasons stated on pages 7 and 8 of this decision, LWVM and Others for I-125 had a continuing obligation to accurately report the in-kind contributions by John Heffernan, Inc. in the principal I-125 committee's September 11, 1998 and March 29, 1999 reports.

9. The Rainbow Coalition. The endorsement of I-125 by the Rainbow Coalition should have been reported as an in-kind contribution by LWVM and Others for I-125. The Rainbow Coalition endorsement by Jesse Jackson was written on the Coalition's stationery.

Although enforcement action against the Rainbow Coalition is barred for the reasons

stated on pages 7 and 8 of this decision, LWVM and Others for I-125 had a continuing obligation to report the in-kind contribution by the Rainbow Coalition in the principal committee's September 11, 1998 and March 29, 1999 reports.

10. Governor Richard Lamm. There is insufficient evidence to conclude that the endorsement of I-125 by former Colorado Governor Richard Lamm was a reportable in-kind contribution. Chris Newbold wrote the endorsement statements that Governor Lamm ultimately adopted. The endorsement statements were not written on any official stationery bearing Governor Lamm's office address. There is insufficient evidence to conclude that Governor Lamm was being paid during the time that he reviewed and approved the I-125 endorsement statements.

11. Center for New Democracy. Donna Edwards, the Center for New Democracy's Executive Director, was not involved in the early stages of the I-125 campaign, but she was consulted on a regular basis in the later stages of the campaign. The Center had no money to contribute to the I-125 campaign, according to Mr. Motl; however, Ms. Edwards was being consulted about I-125 strategy and assisted in I-125 fund-raising efforts. Mr. Pearson sent Ms. Edwards an update on the I-125 proponents' radio buy on October 4, 1996. Ms. Edwards was the recipient of several strategy and polling memos from Jon Motl and C.B. Pearson. Mr. Motl stated that Ms. Edwards was a valuable asset to the I-125 campaign because of her knowledge of I-125 issues and her influence with Doug Phelps and I-125 contributors.

The Center for New Democracy did not report any in-kind contributions to LWVM and Others for I-125 nor did LWVM and Others for I-125 report in-kind contributions from the Center for New Democracy. Although enforcement action against the Center for New Democracy is barred for the reasons stated on pages 7 and 8 of this decision, LWVM and Others for I-125 had a continuing duty to accurately report the Center for New Democracy's in-kind contributions in its September 11, 1998 and March 29, 1999 C-6 reports.

12. U.S.-PIRG. Gene Karpinski, Executive Director of U.S.-PIRG, was consulted on a regular basis about I-125. Doug Phelps, who was, according to Mr. Motl, the key member of the U.S.-PIRG Board responsible for approving the U.S.-PIRG cash contribution to the I-125 campaign, also received strategy memos as part of fund-raising solicitations from Mr. Motl. The contacts with Mr. Phelps were apparently designed to get Mr. Phelps' approval of the U.S.-PIRG $35,000 cash contribution to LWVM and Others for I-125. Mr. Karpinski, on the other hand, was involved in strategy discussions and received copies of proposed I-125 TV ads and other sensitive campaign information. Mr. Karpinski was also apparently involved in influencing Doug Phelps' decision to approve the $35,000 contribution to LWVM and Others for I-125.

U.S.-PIRG's cash contribution to LWVM and Others for I-125 was timely and accurately reported by LWVM and Others for I-125; however, LWVM and Others for I-125 had a continuing obligation to report an in-kind contribution from U.S.-PRIG in the principal committee's September 11, 1998 and March 29, 1999 reports. Enforcement action against

U.S.-PIRG is barred for the reasons stated on pages 7 and 8 of this decision.

13. Texans for Public Justice. Craig McDonald was employed by Texans for Public Justice beginning in 1996. He was formerly employed by the Center for New Democracy. Mr. Motl recalls that his contacts with Mr. McDonald during the I-125 campaign occurred while Mr. McDonald was employed by the Center for New Democracy; however, Mr. Motl's phone records show a significant number of calls and faxes to Mr. McDonald at Texans for Public Justice in October of 1996 (Summary of Fact 144). Mr. McDonald was also being sent the same strategy memos as Gene Karpinski, Doug Phelps and Donna Edwards. Mr. McDonald was also asked by Mr. Motl to influence the decision by Doug Phelps and U.S.-PIRG to contribute $35,000 to the I-125 campaign.

Texans for Public Justice did not report any in-kind contributions to LWVM and Others for I-125 nor did LWVM and Others for I-125 report in-kind contributions from Texans for Public Justice. Although enforcement action against Texans for Public Justice is barred for the reasons stated on pages 7 and 8 of this decision, LWVM and Others for I-125 had a continuing duty to accurately report the Texans for Public Justice's in-kind contributions in its September 11, 1998 and March 29, 1999 reports.

14. Other Groups. There is insufficient evidence to conclude that other groups and associations made reportable in-kind contributions to the I-125 campaign. C.B. Pearson's description of the I-125 campaign strategy in the June 7, 1996 letter to the Stern Family Fund came true (see Summary of Fact 52). Montana's major corporate entities and the Montana Chamber of Commerce were pre-occupied with I-121 and I-122. The I-125 opponents organized too late and marshaled too few resources to defeat I-125 at the polls. At the same time, potential I-125 allies were busy supporting I-121 and I-122 and seemed indifferent to I-125. This lack of visible public support for I-125 from other major Montana public interest groups enabled the I-125 proponents to run the stealth but well-organized campaign envisioned in the Stern Family Fund letter. Accordingly, there is insufficient evidence to conclude that any other entities made reportable in-kind contributions to the I-125 campaign.

C. I-125 Claim 3

The allegation that Citizens to Qualify I-125 failed to timely file its initial C-6 report is dismissed for the reasons set forth in Part IV, pages 7 and 8 of this decision. This allegation appears to have merit, but Mr. Griffin's complaint was filed too late and enforcement action based on this claim is barred by Section 13-37-130, MCA.

D. I-125 Claim 4

The allegation that Citizens to Qualify I-125, Mont-PIRG and LWVM failed to accurately report two grants totaling $5,000 made by Mont-PIRG to LWVM for I-125 activities is without merit. This allegation is based on Mont-PIRG's 1996 tax return, which lists grants of $3,000 and $2,000 to LWVM on September 19 and November 4, 1996, respectively. Both grants were for "Campaign Finance Reform/I-125." Unfortunately, Mont-

PIRG's accountant did not have sufficient space on the IRS form 990 to include the full name of the I-125 principal committee, LWVM and Others for I-125. The September 19 and November 4, 1996 checks were written to the I-125 principal committee (LWVM and Others for I-125), not LWVM. Both monetary contributions were timely and accurately reported by LWVM and Others for I-125.

The issue of whether Mont-PIRG timely and accurately reported these contributions in C-4 reports is dismissed for the reasons set forth in Part IV, pages 7 and 8 of this decision.

E. I-125 Claim 5

Claim 5 involves two allegations:

1. That the principal I-125 committees and Mont-PIRF should have reported the cost of producing and publishing the study "Big Money and Montana's Ballot Campaigns" as an I-125 campaign expense; and

2. That the principal I-125 committees failed to report polling costs as a campaign expense.

There is insufficient evidence to conclude that either principal I-125 committee paid for polling or that the I-125 committees received in-kind contributions of polling results. Although Jon Motl's September 13, 1996 letter references polling information obtained from an unidentified pollster, the financial records of the two principal I-125 committees do not indicate that payments were made for polling. The I-125 campaign apparently relied on public polls conducted by newspapers and several units of the Montana University system. Relying on polling information after it is published and available to the public is not a reportable campaign expense; however, it must be noted that obtaining confidential polling information before it is published and available to the public would be considered an in-kind contribution.

The I-125 proponents assert that the corporate contribution study funded by Mont-PIRF is not a reportable campaign expenditure because:

1. The study was released in a press release and hand-delivered to the opposition the same day the press statement was issued. The I-125 proponents assert that the release of the study constitutes a "bona fide news story" and does not have to be reported as a campaign expenditure under Sections 13-1-101(6)(b)(i) and (10)(b)(ii), MCA.

2. The Mont-PIRF study did not contain express advocacy urging readers to vote for I-125.

Let me first dispel any suggestion that the Mont-PIRF corporate contribution study was an educational document that had no value to the I-125 proponents' campaign. The

study was, from its inception, an integral part of the I-125 campaign strategy. The three key people running the I-125 campaign -- C.B. Pearson, Jon Motl and Chris Newbold -- were involved in writing, approving, authorizing, and controlling the study's content and conclusions. C.B. Pearson's June 7, 1996 letter to the Stern Family Fund seeking funding for the study describes in detail the I-125 campaign strategy and the significance of the corporate contribution study to the overall I-125 campaign effort. Mr. Pearson's Stern Family Fund letter indicates the I-125 proponents were already "in the process of completing a comprehensive study on the role of corporate money in the Montana initiative process." The Mont-PIRF study was a coordinated campaign document prepared and distributed as part of an orchestrated I-125 campaign activity. Although the study itself fell just short of expressly urging its readers to vote for I-125, Summary of Fact 96 documents the study's unequivocal assertion that it is "time to reestablish the ban on direct corporate money for initiatives...."

Based on the preceding, I am compelled to conclude that the Mont-PIRF study "Big Money and Montana's Ballot Campaigns" was a vital I-125 campaign document, not an independent, impartial analysis of I-125 issues. The document was written and produced by the same people who ran the I-125 campaign from beginning to end. The extensive coordination between the I-125 principal campaign committees and Mont-PIRF, coupled with the study's discussion of issues central to the debate about the passage of I-125, lead to the inescapable conclusion that the Mont-PIRF study should have been reported as an I-125 campaign expenditure. This conclusion is consistent with my predecessor's determination that an arsenic brochure and a mixing zone issue paper that did not expressly advocate a vote against I-122 were reportable campaign expenditures in the April 30, 1998 *MCSWL Decision*, at pp. 94-97. Similarly, Commissioner Argenbright concluded that "white papers" discussing I-122 issues but not advocating a vote for I-122 were reportable campaign expenditure in the April 29, 1997 *MCW Decision*, at pp. 3-6 and 11-15.

Despite the preceding conclusion, the I-125 proponents argue that the Mont-PIRF study expenditure did not have to be reported because it is exempt from campaign finance reporting as a bona fide news story (Sections 13-1-101(6)(b)(ii) and (10)(b)(ii), MCA). To my knowledge, this is the first formal decision by a Commissioner defining the bona fide news story exemption.

The definitions of the terms "contribution" and "expenditure" in 13-1-101, MCA, exclude "the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation." The I-125 proponents assert that the bona fide news story exemption applies to not only the cost of preparing the press release but the $2,656.70 paid to research and prepare the Mont-PIRF study. The plain language of Sections 13-1-101(6)(b)(ii) and (10)(b)(ii), MCA, does not permit such an expansive interpretation of the bona fide news story exemption. Worse yet, such an expansive interpretation would exempt from reporting significant expenditures for campaign documents and advertisements.

The language of Sections 13-1-101(6)(b)(ii) and (10)(b)(ii), MCA, is clearly limited to the cost of preparing the bona fide press release, commentary, or editorial, not the underlying studies, research, or campaign documents that are prepared as part of a coordinated campaign strategy. If the interpretation suggested by the I-125 proponents were adopted, every campaign document and advertisement would be exempt from reporting so long as the campaign document or advertisement was first released via a press conference or press release. The bona fide news story exemption is intended to allow candidates and political committees to respond to bona fide media inquiries and issue bona fide press releases, editorials, and commentaries without reporting the cost of such legitimate media events. The bona fide news story exemption cannot be used as a subterfuge to hide expenditures on campaign-related studies and advertisements.

The I-125 proponents' interpretation of the bona fide news story exemption would also encourage the use of smear campaigns in candidate elections. Candidate political committees could spend thousands of dollars investigating the opponent's private life and not report the expenditure so long as the investigation results were released at a news conference.

Mont-PIRF and the two principal I-125 committees should have reported the cost of "Big Money and Montana's Ballot Campaigns" as an I-125 campaign expenditure. Although enforcement action against Mont-PIRF is barred for the reasons stated on pages 7 and 8 of this decision, LWVM and Others for I-125 had a continuing duty to accurately report Mont-PIRF's in-kind contribution of $2,656.70 for the corporate contribution study in its September 11, 1998 and March 29, 1999 C-6 reports.

F. I-125 Claim 6

C.B. Pearson was being paid by Green Corps, not the University of Montana, to teach the EOS course in the spring of 1996. Mr. Pearson was also being paid by Citizens to Qualify I-125 to manage the I-125 campaign during the same period. Mr. Pearson was using his UM EOS office and equipment to conduct I-125 campaign activities (e.g., Jon Motl was reimbursed by LWVM and Others for I-125 for at least 25 telephone calls to Mr. Pearson's EOS office in October of 1996). The University of Montana provided Mr. Pearson with office space, furniture, and equipment (e.g., desk, chair, phone) for his EOS course duties. Mr. Pearson instructed his EOS students on how to circulate I-125 petitions and obtain I-125 signatures during a portion of the spring 1996 EOS course. Neither Mr. Pearson, Green Corps, the UM, nor Citizens to Qualify I-125 reported an in-kind contribution for C.B. Pearson's I-125 work involving EOS office space, equipment and supplies or his I-125 signature gathering instruction.

C.B. Pearson asserts that his EOS course activities related to I-125 are exempt from reporting because the EOS students voluntarily chose to circulate I-125 petitions during the initiative petitioning portion of the course. There is insufficient evidence to conclude that Mr. Pearson required his spring 1996 EOS students to circulate I-125 petitions. But even if the EOS student participation in I-125 signature gathering was voluntary, Mr. Pearson had a

duty to report the fair market value of his Green Corps salary and his use of UM office space, equipment, and supplies as in-kind contributions. Mr. Pearson was the I-125 campaign manager and treasurer. He was managing or directing every aspect of the I-125 campaign. Teaching a college course does not exempt Mr. Pearson from reporting the portion of the Green Corps salary he was being paid while teaching students how to collect I-125 signatures. Similarly, Mr. Pearson had a duty to report the fair market value of office space, equipment, and supplies he was using to conduct I-125 activities. As the campaign manager and treasurer for the two principal I-125 committees, Mr. Pearson assumed a heightened obligation to report the fair market value of in-kind contributions. Citizens to Qualify I-125 and LWVM and Others for I-125 reported no in-kind contributions for the office space, equipment, and supplies being used by Mr. Pearson to conduct the I-125 campaign.

It must be noted that there is no evidence that the University of Montana had advance knowledge that Mr. Pearson was using the EOS course or his UM office space, equipment, and supplies to conduct I-125 activities. Accordingly, I do not conclude that the University of Montana violated any campaign reporting requirements; however, recent news accounts indicate that the University is concerned about law professor Rob Natelson conducting political activities out of his Law School office. I would hope that the University would have the same concern about an instructor who manages an initiative campaign while using his UM office, equipment, supplies, and classroom to conduct initiative-related activities.

There is also insufficient evidence to conclude that Green Corps had advance knowledge that Mr. Pearson was going to use the EOS course to conduct I-125 activities. The documents reviewed during the investigation of this matter establish that Green Corps' objective was to establish a course to train environmental activists. There is no indication that Green Corps' desire to establish the EOS class was issue-specific and related to the objectives of I-125. Teaching petition gathering skills was a part of subsequent EOS classes and students circulated petitions on topics unrelated to corporate contribution issues. Accordingly, I do not conclude that Green Corps violated any campaign reporting requirements.

G. I-121 Claim 1

I-121 Claim 1 is dismissed for the reasons stated on pages 8 and 9 of this decision.

H. I-121 Claim 2

I-121 Claim 2 is dismissed for the reasons stated on page 9 of this decision.

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VIII. CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is substantial evidence to conclude that Citizens to Qualify I-125, LWVM and Others for I-125, and the individual treasurer and committee members for these principal I-125 committees violated Montana's campaign finance reporting and disclosure laws and that a civil penalty action under Section 13-37-128, MCA, is warranted.

DATED this _____ day of August, 2002.

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Linda L. Vaughey
Commissioner of Political Practices