

# Montana State Legislature

**2015 SESSION**

**ADDITIONAL DOCUMENTS**  
**May include the following:**

**Business Page**

[Signed by Chairman]

**Roll Call**

**Standing Committee Reports**

**Tabled Bills**

**Fiscal Reports**

**Rolls Call Votes**

**Proxy Forms**

**Visitor Registrations**

**\*Any other documents, which were submitted after the committee hearing has ended and/or was submitted late [within 48 hours], regarding information in the committee hearing.**

**\*Witness Statements that were not presented as exhibits.**

**Montana Historical Society Archives**

**225 N. Roberts**

**Helena MT 59620-1201**

**2015 Legislative**

**E-Document Specialist Susie Hamilton**

**BUSINESS REPORT**  
**MONTANA SENATE**  
**64th LEGISLATURE - REGULAR SESSION**  
**SENATE STATE ADMINISTRATION COMMITTEE**

**Date:** Monday, April 20, 2015  
**Place:** Capitol

**Time:** 3:25 PM  
**Room:** 335

**BILLS and RESOLUTIONS HEARD:**

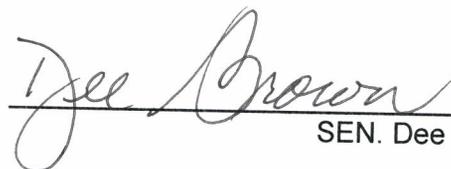
HJ 23 - Interim study of Montana's election process - Rep. Debra Lamm  
SR 53 - Resolution to confirm Jonathan Motl as commissioner of political practices - Sen. Jon Sesso

**EXECUTIVE ACTION TAKEN:**

HJ 23 - Be Concurred In

SR 53 - Tabled

**Comments:**

  
\_\_\_\_\_  
SEN. Dee Brown, Chair

MONTANA STATE SENATE  
ROLL CALL  
STATE ADMINISTRATION  
COMMITTEE

DATE: APRIL 20, 2015

NAME	PRESENT	ABSENT/ EXCUSED
Chair Dee Brown	✓	
Vice Chair Roger Webb	✓	
Senator Robyn Driscoll		✓
Senator Jedediah Hinkle	✓	
Senator Douglas Kary	✓	
Senator Sue Malek	✓	
Senator Lea Whitford	✓	

7 Committee Members



SENATE STANDING COMMITTEE REPORT

April 20, 2015

Page 1 of 1

Madame President:

We, your committee on **State Administration** report that **House Joint Resolution 23** (third reading copy -- blue) **be concurred in.**

Signed:

  
\_\_\_\_\_  
*Senator Dee Brown, Chair*

To be carried by Senator Roger Webb

- END -

**Committee Vote:**

**Yes 7, No 0**

Fiscal Note Required

HJ0023001SC15236.spt

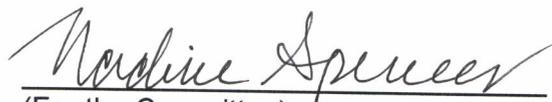
## BILL TABLED NOTICE

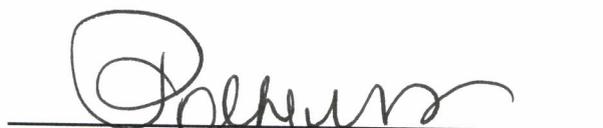
### SENATE STATE ADMINISTRATION COMMITTEE

The **SENATE STATE ADMINISTRATION COMMITTEE** TABLED

**SR 53 - Resolution to confirm Jonathan Motl as commissioner of political practices - Sen. Jon Sesso**

by motion, on **Monday, April 20, 2015** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

  
\_\_\_\_\_  
(For the Committee)

  
\_\_\_\_\_  
(For the Secretary of the Senate)  
6:00, 4/20  
\_\_\_\_\_  
(Time) (Date)

April 20, 2015 (5:48pm)

Nadine Spencer, Secretary

Phone: 444-1619

**MONTANA STATE SENATE**  
**Roll Call Vote**  
**STATE ADMINISTRATION COMMITTEE**

DATE 4/20/2015 BILL NO SR 53 MOTION NO. \_\_\_\_\_  
 MOTION: \_\_\_\_\_

Be Adopted

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN WEBB		✓	
SENATOR MALEK	✓		
SENATOR DRISCOLL	✓		
SENATOR HINKLE		✓	
SENATOR KARY		✓	
SENATOR WHITFORD	✓		
CHAIRMAN BROWN		✓	

7 Committee Members

3 4





**MONTANA STATE SENATE**  
**Visitors Register**  
**SENATE STATE ADMINISTRATION COMMITTEE**

Monday, April 20, 2015

SR 53 - Resolution to confirm Jonathan Motl as commissioner of political practices

Sponsor: Sen. Jon Sesso

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Jaime Blackington	Self / COPP	✓		
Karen Musgrave	Self / COPP	✓		
Mary Baker	COPP	✓		
Vanessa Sanddal	COPP	✓		
Amy Sims in Timber	SELF / MT JUSTICE FDN	✓		
Juliana Stewart	Self	✓		
Frederick F. Sherwood	self	✓		
Mike DALTON	self	✓		
Kristin Page-Nei	ASSCAN	✓		
Chris Maus	state bar of mt	✓		
Chris Galvan	Self, Attorney MT		✓	
Ron Murray	Self		✓	
Carole Mackin	Self	✓		
Mark Mackin	Self	✓		
Chris Shipp	self / MT GOPED		✓	
Ed Ferguson	self		✓	
Bill Wohler	Self		✓	
J Witt	COPP	✓		
Anne MacIntyre	Self	✓		
Kim Wilson	ll	✓		
Shirley Palmer	Self	✓		
Bruce Dezenia	self	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

**MONTANA STATE SENATE**  
**Visitors Register**  
**SENATE STATE ADMINISTRATION COMMITTEE**

**Monday, April 20, 2015**

**SR 53 - Resolution to confirm Jonathan Motl as commissioner of political practices**

**Sponsor: Sen. Jon Sesso**

**PLEASE PRINT**

Name	Representing	Support	Oppose	Info
Rick Pyfer	Self	✓		
Gregg Trust	Self		X	
John Morrison	"	✓		
TERRY BANNAN	Self		X	
Andie Andre Harose	Self	✓		
TaryAnn Dunwell	HD 84	✓		
Art Wittich	Self		✓	
Travis Butcher	Self		✓	
Mike Fellow	MT 60			X
Scott Staffanson	Self			
Julie Steab	Self			✓

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

10/10/10

10/10/10

10/10/10

*Jonathan Mott Contributions to Card dates  
From Follow the Money*

Filer	Total \$
BULLOCK, STEPHEN C	740
BUCY, PAM	360
BEST, ELIZABETH	310
VINCENT, JOHN	260
MORRISON, JOHN	250
MORRIS, BRIAN	250
NELSON, JAMES C	250
ECK, JENNY	220.73
TOOLE, KEN	205
LEAPHART, W WILLIAM	200
SCHWEITZER,, BRIAN & BOHLINGER, JOHN C	200
JUNEAU, DENISE	165
RANEY, BOB	150
ELLINGSON, JON E	150
COONEY, MIKE	100
MCCULLOCH, LINDA H	100
CAFERRO, MARY M	75
DAM CHEAP POWER,	75
MENAHAN, MIKE	65
LASLOVICH, JESSE	50
LINDEEN, MONICA J	50
JARUSSI, GENE R	50
KENNEDY, BILL	50
HARTELIUS, CHANNING	50
HEALTHY KIDS HEALTHY MONTANA	50
JUDGE, DON	50
WHEAT, MICHAEL E	50
KAUFMANN, CHRISTINE	40
COHN, MATT	40
VOREYER, STAN	40
LIND, GREG H	25
MONTANANS FOR CLEAN GOVERNMENT	25
SCHNEIDER, THOMAS J	25
MCGRATH, MIKE	20
TRIEWEILER, TERRY N	265
MORRISON, JOHN	200
TRIEWEILER, TERRY N	200
TOWE, THOMAS E (TOM)	50
HADLEY, KATHLEEN	50
DOHERTY, STEPHEN A	40
JOHNSON, PAUL	20
PEARSON, C B	100
HARPER, HAL	100
TRIEWEILER, TERRY N	100
OKEEFE,, MARK & WILLIAMS, CAROL	100
LEAPHART, W WILLIAM	100
<b>TOTAL DONATION AMOUNT</b>	<b>6065.73</b>

**Additional Document**

**SENATE: State Admin.**

**Date:** 4-20-2015

**Bill No.** SR 53

*Donations*

ents  
ictration

Additional Copies

SENATE: State Admin

Date: 11/11/11

Call No: 11111111

Kenat v.  
Vandyke

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Kenat v. Van Dyk No. COPP-2014-CFP-004	DISMISSAL OF COMPLAINT IN PART FOR LACK OF SUFFICIENT FACTS, IN PART AS DE MINIMUS AND IN PART AS FRIVOLOUS
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On January 27, 2014, Billings resident Brian Kenat filed a complaint with the COPP against Billings senator Kendall Van Dyk (Senate District 25, hereafter SD 25) alleging candidate Van Dyk violated Montana campaign finance and practice laws during his 2010 campaign by: accepting contributions that were over the limit; failing to accurately report the occupation and employer of one of his contributors; accepting general election contributions before an opponent was named in the primary election; and, failing to properly create a separate account for primary election funds.

**SUBSTANTIVE ISSUES ADDRESSED**

There are no substantive areas of campaign law addressed by this complaint as all issues raised lack factual, policy or legal support.

**FINDING OF FACTS**

The foundational facts necessary for this Decision are as follows:

1. Senate District 25, serving Montanans living in the Billings area, is one of 50 such elected offices to the Montana Legislature. (Secretary of State (SOS) Website).
2. Senate District 25 was open for election of its senator in the 2010 elections. *Id.*
3. On June 8, 2010, a SD 25 primary election was held. Three candidates were on the ballot for Senate District # 25: Kendall Van Dyk (Democrat), Linda Wetzel (Democrat) and Roy Brown (Republican). Mr. Van Dyk advanced to the general election with 1,208 votes, defeating Ms. Wetzel who had 332 votes. Mr. Brown received 2,071 votes and also advanced to the general election. *Id.*
4. On November 2, 2010, a general election was held. Candidate Van Dyk was elected to office, defeating candidate Brown. (Secretary of State's Office, investigative notes).

### **DISCUSSION**

The complaint in this matter alleges certain actions taken in the 2010 Van Dyk campaign violate Montana's campaign practice laws. Each category of violation is discussed separately below.

#### 1. Excess Campaign Contributions

The complaint alleges that 6 individuals made contributions in excess of limits to candidate Van Dyk's 2010 SD 25 campaign. Those individuals listed in the complaint are Gregar Lind, Hollis Edwards, James Manley, John Edwards, Kelly Edwards, and Russell Shay.

An individual could contribute \$160 per election to the 2010 SD 25 election. See §13-37-216 MCA (2010 code), with amounts adjusted for inflation by 44.10.338 ARM. Candidate Van Dyk faced two 2010 SD 25 elections, those being a primary and a general election. FOF Nos. 3 and 4. Candidate Van Dyk therefore was allowed to accept (and an individual allowed to make) a maximum \$160 contribution to each election for a total of \$320. §13-37-216 MCA (2010 code), with amounts adjusted for inflation by 44.10.338 ARM.

The Commissioner's investigator has examined candidate Van Dyk's campaign finance reports. The information in the campaign finance reports does not support, but rejects, the excess contribution complaints concerning Gregar Lind, Hollis Edwards, John Edwards, Kelly Edwards and Russell Shay. Each of these five individuals contributed, and candidate Van Dyk accepted, a total of \$320 split equally between the two elections.<sup>1</sup> These complaints are dismissed for lack of sufficient facts.

This leaves the complaint concerning the James Manley contribution. James Manley contributed to the campaign of Candidate Van Dyk, as did Julia Manley, the spouse of James Manley. In total, James and Julia Manley contributed \$640, an allowable amount for two contributors. Candidate Van Dyk's campaign finance reports, however, attributed \$480 of that amount to James Manley and \$160 to Julia Manley. (Commissioner's records). This accounting was described as an error by the Van Dyk campaign which filed an amended campaign finance report attributing \$320 each to James and Julia

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<sup>1</sup> A copy of the summary of this part of the Commissioner's investigator's work is attached as Exhibit 1.

Manley. The amended campaign finance report was filed after and in response to the complaint in this matter.

The Commissioner notes that a demand for an interpretation resulting in further restrictions on individual contributions is presumed to be contrary to Montana policy and federal constitutional principles. *Landsgaard v. Peterson*, COPP-2014-CFP-008. Only courts, not administrative agencies, have jurisdiction to decide issues requiring determinations of constitutionality. *Brisendine v. Dep't of Commerce*, 253 Mont. 361, 366, 833 P. 2d 1019, 1021-22 (1992). Agencies, however, are required to construe statutes or regulations in a manner that affords recognition of constitutional issues so as to interpret law in a manner that would render its use constitutional. *City of Great Falls v. Morris* 206 MT ¶19, 332 Mont. 85, 134 P. 3d 692. An interpretation that restricts individual contributions beyond the plain meaning of law is not favored as further limits on a base level contribution do not serve the anti-corruption interests that underlie Montana policy and provide the underpinning for the federal constitutional analysis that today substantially governs allowable campaign practice regulation by any state. *Landsgaard v. Peterson*, COPP-2014-CFP-008.

Accordingly, the Commissioner construes this complaint as being directed solely to the improper reporting by the Van Dyk campaign of a proper and lawful \$640 contribution (\$320 each by James Manley and Julia Manley). In that regard, the total amount of \$640 was reported by Van Dyk campaign. The error was in reporting the \$640 incorrectly by apportioning \$160 to Julia

Manley and \$480 to James Manley, rather than \$320 to each. That reporting error is just that (a reporting error) and it does not turn a legal contribution into an illegal campaign contribution. The Commissioner chooses not to interpret law in a manner that places restrictions on a lawful base level campaign contribution. *City of Great Falls v. Morris* 206 MT ¶19, 332 Mont. 85, 134 P. 3d 692, *Landsgaard v. Peterson*, COPP-2014-CFP-008.

Properly framed as a campaign bookkeeping or reporting error, the Van Dyk campaign failure must be dismissed as *de minimis*. The concept of a *de minimis* exception to civil enforcement of a violation of Montana's campaign practice law is set out and defined by the 9<sup>th</sup> circuit court of appeals in *Canyon Ferry Rd. Baptist Church of E. Helena, Inc. v. Unsworth* 556 F. 3d 1021, 1028-29 (9<sup>th</sup> Cir. 2009). The *de minimus* actions in *Canyon Ferry* were taken by a party involved in a ballot issue campaign. This Office has also, based on certain facts, declined prosecution of a candidate activity, after finding a violation of law based on failure of a candidate to properly label and disclose on a website. See *In the Matter of the Fitzpatrick Complaint*, COPP- CFP-2011-014. The failure to properly divide a \$640 contribution, fully and timely disclosed by the Van Dyk campaign, into its two lawful \$320 contribution amounts is *de minimis*. There is no harm to the public or opposing candidate caused by this failure that justifies any prosecution.

## 2. Unlawful Delay in Refunding an Excess Contribution

The complaint alleges a three month delay in refunding an excess contribution to James Edmiston. Again the complaint erroneously cites to

campaign data. James Edmiston made three contributions: \$160 on May 21, 2010, \$110 on May 23, 2010 and \$160 on August 10, 2010. (Commissioner's records). The excess contribution (that is, an amount greater than \$320) was created by the August 10 contribution of \$160. The excess contribution amount (\$110) created by the August 10 contribution was returned to Mr. Edmiston 19 days later, on August 29, 2010.

There is no applicable time frame established under Montana law for refunds of excess contributions. The only "refund" requirement is set out at ARM 44.10.330 and, in the event that a candidate does not win the primary election, it requires a refund of the general election contributions made prior to the date of the primary election. There is no time set (following the date of the primary election) by which such a refund must be made.

The time span of the \$110 refund is the 19 days between August 10 and August 19, 2010. The Commissioner takes administrative notice that the Van Dyk campaign had sufficient funds such that it did not make use of the \$110 during that 19 day time period. Further, the Commissioner notes that no campaign finance reports were filed during that time period.<sup>2</sup> Therefore there was no disclosure to the public issue involved in this matter. Under these facts there is no reasonable basis to interpret law in a manner that would require an earlier refund action by the campaign. The Commissioner determines that the 19 day refund time period was not a violation of Montana's campaign practice

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<sup>2</sup> A 2010 legislative candidate would have filed campaign finance reports in June of 2010 (20 days following the primary election) and in October of 2010 (12 days preceding the general election). §13-37-226(3) MCA.

laws.

3. Failing to Completely Report the Name of a Contributor

The complaint alleges a technical deficiency in the manner in which the campaign reported the occupation and employer of contributor Bryce Bennett. Again, the complaint is factually inaccurate as Bryce Bennett's position was "Director of Winning" and his employer was "Forward Montana." (Commissioner's records). The disclosure made by Van Dyk meets the requirements of §13-37-229(2) MCA. This complaint is dismissed as lacking support in facts and law.

4. Acceptance of General Election Funds During Primary

Montana law applies the \$160 individual contribution limit (for a 2010 legislative campaign) per election, with a contested primary and a general election counting as two elections. §13-37-216 MCA. Montana law therefore allows an individual to contribute \$320 to a candidate who is involved in a primary and general election. *Id.* Montana law requires that a candidate separate primary and general contributions into separate accounts and bans use of general election contributions for the primary election.<sup>3</sup>

The Complaint demands an interpretation restricting the timing of a contributor's ability to make a \$160 contribution to general campaign, arguing that the separate general election contribution cannot engage until another candidate files and creates a contested primary. There is no such timing limitation set out in Montana law with applicable law stating: "[i]f there is a

<sup>3</sup> The Van Dyk campaign made such a separation and accounting of primary and general contributions. There is no allegation that this separation was done improperly.

contested primary, then there are two elections to which the contribution limits apply." §13-37-216(6) MCA. ARM 44.10.330 adds: "a candidate in a contested primary may receive contributions designated for the general election during the primary election period."<sup>4</sup> Emphasis added.

Candidate Van Dyk was involved in a contested primary. The statute and regulation governing contributions made in regard to a contested primary (see above) are clear when read in the entirety, as is required by §1-2-101 MCA. Under statute and regulation a contributor could make and a candidate could accept two full limit contributions "during the primary election period." An interpretation is not required, particularly an interpretation imposing restrictions on the timing of a base level individual contribution. Such an interpretation proposes a limit that runs counter to Montana campaign practice policy and federal constitutional law which merge to discourage interpretations restricting base level contribution involvement of individual contributors. *Landsgaard v. Peterson*, COPP-2014-CFP-008. The Commissioner declines to make this interpretation and rejects this complaint as without support in law or policy. Because this interpretation actually runs counter to policy and law and requires no use of facts other than those supplied by the complaint it is deemed frivolous. *Id.*

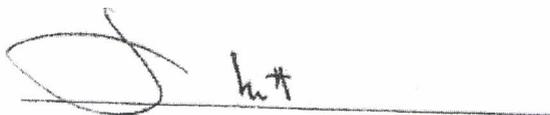
#### **OVERALL DECISION**

This Commissioner, having duly considered the matters raised in the

<sup>4</sup> The general election contributions "must be maintained in a separate account and not be used until after the primary election." ARM 44.10.330(2)(c). General election contributions must be returned to the donor if the candidate loses and does not advance to the general election. ARM 44.10.330(3).

Complaint, and having completed his review and investigation, hereby holds and determines, under the above stated reasoning, that as to some of the complaints in this Matter: there is insufficient evidence to justify a civil or criminal adjudication against Mr. Van Dyk under §13-37-124(1) MCA; there is no basis in law for a civil or criminal adjudication against Mr. Van Dyk under §13-37-124(1) MCA; or, that the complaints were dismissed as *de minimis* or frivolous . The Commissioner hereby dismisses this complaint in full.

DATED this 13<sup>th</sup> day of March, 2014.



Jonathan R. Motl  
Commissioner of Political Practices  
Of the State of Montana  
P. O. Box 202401  
1205 8<sup>th</sup> Avenue  
Helena, MT 59620  
Phone: (406)-444-4622

NAME	ALLEGED AMOUNT	DATE (on report)	Amount Primary	Amount General	Total Primary to date	Total General to date	TOTAL	Reporting Period
Anderson, David	\$200	11/4/2009	\$0	\$40	\$160	\$40	\$200	5/1/09-5/23/10
		11/4/2009	\$160	\$0	\$160	\$40		
Anderson, Kai	\$320	11/4/2009	\$0	\$160	\$160	\$160	\$320	5/1/09-5/23/10
		11/4/2009	\$160	\$0	\$160	\$160		
Bennett, Bryce	Wrong Empl/Occ	5/18/2010	Forward Montana	is a 501 (c)(4) NP	registered w/SOS	Winning a section	on website	5/1/09-5/23/10
Blewett, Alexander 3	\$320	11/23/2009	\$0	\$160	\$160	\$160	\$320	5/1/09-5/23/10
		11/23/2009	\$160	\$0	\$160	\$160		
Browning, Aaron	\$320.00	7/12/2009	\$50.00	\$0	\$159.98	\$36.66		5/1/09-5/23/10
		8/2/2009	\$36.66	\$0	\$159.98	\$36.66		5/1/09-5/23/10
		8/28/2009	\$36.66	\$0	\$159.98	\$36.66		5/1/09-5/23/10
		8/30/2009	\$36.66	\$0	\$159.98	\$36.66		5/1/09-5/23/10
		9/30/2009	\$0	\$36.66	\$159.98	\$36.66		5/1/09-5/23/10
		6/8/2010	\$0.00	\$0	\$159.98	\$56.66		5/24/10-6/23/10
		8/1/2010	\$0	\$53.35	\$159.98	\$160		6/24/10-10/16/10
		9/1/2010	\$0.00	\$49.98	\$159.98	\$160		6/24/10-10/16/10
Edmiston, James	\$430	5/21/2009	\$160.00	\$0.00	\$160.00	\$110		5/1/09-5/23/10
		5/23/2010	\$0	\$110	\$160	\$110		5/1/09-5/23/10
		8/10/2010	\$0	\$160	\$160	270 (less \$110)		6/24/10-10/16/10
		8/29/2010						6/24/10-10/16/10
REFUND							Less \$110 = \$320 TOTAL	
Edwards, Hollis	\$470?	11/4/2009	\$150	\$0	\$150	\$0	\$310	5/1/09-5/23/10
		8/9/2010	\$0	\$160	\$150	\$160		6/24/10-10/16/10
Edwards, John	\$470?	11/4/2009	\$150	\$0	\$150	\$0	\$310	5/1/09-5/23/10
		8/9/2010	\$0	\$160	\$150	\$160		6/24/10-10/16/10

EXHIBIT

1

AMERICA

Edwards, Kelly	\$ 480?	10/7/2009	\$160	\$0	\$160	\$160	\$0	\$160	\$160	\$0	\$160	\$160	\$0	\$160	\$160	\$65	5/1/09-5/23/10
		8/9/2010	\$0	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$65	6/24/10-10/16/10
Gibson, Michael	\$200	10/7/2009	\$100	\$0	\$160	\$160	\$40	\$160	\$160	\$40	\$160	\$160	\$40	\$160	\$160	\$65	5/1/09-5/23/10
		2/4/2010	\$0	\$40	\$160	\$160	\$40	\$160	\$160	\$40	\$160	\$160	\$40	\$160	\$160	\$65	5/1/09-5/23/10
		2/4/2010	\$60	\$0	\$160	\$160	\$40	\$160	\$160	\$40	\$160	\$160	\$40	\$160	\$160	\$65	5/1/09-5/23/10
Gordon, Tylvyn	\$320	11/4/2009	\$0	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$65	5/1/09-5/23/10
		11/4/2009	\$160	\$0	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$65	5/1/09-5/23/10
Jenkins, Amelia	\$320	11/4/2009	\$0	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$65	5/1/09-5/23/10
		11/4/2009	\$160	\$0	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$65	5/1/09-5/23/10
Lehner, David	\$320	9/13/2009	\$160	\$0	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$65	5/1/09-5/23/10
		12/6/2009	\$0	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$65	5/1/09-5/23/10
Lind, Gregar	390 ?	12/23/2009	\$130	\$0	\$130	\$130	\$0	\$130	\$130	\$0	\$130	\$130	\$0	\$130	\$130	\$65	5/1/09-5/23/10
		8/9/2010	\$0	\$100	\$130	\$130	\$100	\$130	\$130	\$100	\$130	\$130	\$100	\$130	\$130	\$65	6/24/10-10/16/10
		10/31/2010	\$0	\$60	\$130	\$130	\$60	\$130	\$130	\$60	\$130	\$130	\$60	\$130	\$130	\$65	10/17/10-11/17/10
Manley, James	\$480	6/8/2010	\$160	\$0	\$160	\$160	\$0	\$160	\$160	\$0	\$160	\$160	\$0	\$160	\$160	\$65	5/24/10-6/23/10
		9/27/2010	\$0	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$65	6/24/10-10/16/10
Manley, Julia		6/8/2010	\$160	\$0	\$160	\$160	\$0	\$160	\$160	\$0	\$160	\$160	\$0	\$160	\$160	\$65	5/24/10-6/23/10
	Amended 2/26/14	11/1/2010	\$0	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$65	10/17/10-11/17/10
Murphy, Patrick	\$250	11/4/2009	\$0	\$90	\$160	\$160	\$90	\$160	\$160	\$90	\$160	\$160	\$90	\$160	\$160	\$65	5/1/09-5/23/10
		11/4/2009	\$160	\$0	\$160	\$160	\$90	\$160	\$160	\$90	\$160	\$160	\$90	\$160	\$160	\$65	5/1/09-5/23/10
Rich, Curtis	\$320	11/4/2009	\$0	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$65	5/1/09-5/23/10
		11/4/2009	\$160	\$0	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$160	\$65	5/1/09-5/23/10
Schultz, Lora	320 ?	9/3/2009	\$100	\$0	\$160	\$160	\$65	\$160	\$160	\$65	\$160	\$160	\$65	\$160	\$160	\$65	5/1/09-5/23/10
		1/8/2010	\$60	\$0	\$160	\$160	\$65	\$160	\$160	\$65	\$160	\$160	\$65	\$160	\$160	\$65	5/1/09-5/23/10

		1/8/2010	\$0	\$65	\$160	\$65	\$225	
Shay, Russell	440 ?	11/4/2009	\$0	\$40	\$160	\$40		5/1/09-5/23/10
		11/4/2009	\$160	\$0	\$160	\$40		5/1/09-5/23/10
		8/9/2010	\$0	\$120	\$160	\$160	\$320	6/24/10-10/16/10
Williams, Conrad	\$320	6/21/2009	\$160	\$0	\$160	\$320		5/1/09-5/23/10
		11/4/2009	\$0	\$160	\$160	\$320		
		11/4/2009	\$0	160 (refunded)	\$160	\$320		
REFUND		11/5/2009						
Williams, Jeanne	\$320	11/4/2009	\$0	\$160	\$160	\$160	\$320	5/1/09-5/23/10
		11/4/2009	\$160	\$0	\$160	\$160		
Glacier PAC	\$320	11/2/2009	\$0	\$160	\$160	\$160	\$320	5/1/09-5/23/10
		11/2/2009	\$160	\$0	\$160	\$160		

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Bishop v. Miller No. COPP 2012-CFP-056	Notice of Reopening Decision
---	------------------------------

A complaint was filed in this Matter on April 19, 2012. The COPP issued a Decision on June 1, 2012 and an amended Decision June 20, 2012. That sufficiency Decision has not been settled or enforced through adjudication.

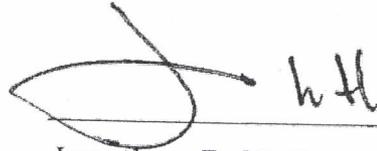
The Decision in this Matter, as amended, is hereby withdrawn and the Matter will be considered anew with a new Decision issued. The reason for this withdrawal is so that the individual contribution issues, including accounting for and handling of contributions, involved in this Matter can be reconsidered in light of the analysis and precedent set out in *Lansgaard v. Peterson*, COPP-2014-CFP-008 and *Kenat v. Van Dyk*, COPP-CFP-004.

The Commissioner will later address in writing any need for information to supplement that already set out in the documents and information currently in possession of the Commissioner. Candidate Miller and the public are informed that, pursuant to §13-37-111(2)(a) MCA and 44.10.307(3) ARM, the Commissioner will now reconsider the issues listed above. After consideration the Commissioner will issue a new Decision that replaces the June 2012

Decisions.

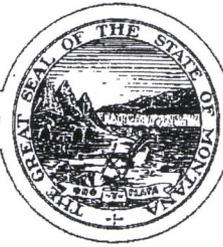
It is noted that the Commissioner withdrawn and reconsidered several prior Decisions, for example, *Washburn v. Murray*, COPP-2013-CFP-2.

DATED this 17<sup>th</sup> day of March, 2014.

A handwritten signature in black ink, consisting of a large, stylized loop followed by the initials "JM".

Jonathan R. Motl  
Commissioner of Political Practices  
Of the State of Montana  
P. O. Box 202401  
1205 8<sup>th</sup> Avenue  
Helena, MT 59620  
Phone: (406)-444-4622

COMMISSIONER OF  
POLITICAL PRACTICES



STATE OF MONTANA

JONATHAN R. MOTL  
COMMISSIONER  
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PO BOX 202401  
HELENA, MONTANA 59620-2401  
www.politicalpractices.mt.gov

SAYA  
update

February 4, 2014

Senator Dee Brown  
Chairperson  
State Administration and Veterans' Affairs Interim Committee  
PO Box 201706  
Helena, MT 59620-1706

Dear Senator Brown:

I write in response to your email dated February 2, 2014, but received on February 3, 2014 at 2:23 PM. I respond to each of your questions as follows:

1. Campaign Practice Decision Progress and Priorities

The Office will have 32 campaign practice complaints remaining on its docket at the time of Thursday's meeting. The current docket lists 34 campaign practice complaints, but we will have released 2 more Decisions by Thursday's meeting, reducing that number to 32.

Of the 32 remaining complaints on the docket: 5 are stayed pending a US Supreme Court ruling on contribution limits; 2 are now in draft Decision phase; and, 13 concern 2010 elections and therefore will, because of statute of limitations concerns, need to be resolved by Decision by the end of March of 2014. The remaining 12 complaints are primarily centered on the 2012 election cycle. We expect to have those 12 complaints resolved by the end of June of 2014. There will be new complaints filed, of course, and resolution of the currently filed 2012 complaints may lead to further complaints as was the case when work started on the 2010 complaints. Because of new complaints filed we expect the docket to fall to and then remain at about 10 complaints.

As of Thursday's meeting I will have served 8 months as Commissioner. During the past 8 months the Office released 44 Decisions covering 45 campaign practice complaints. Each Decision is listed on the website. Since 2009 (with the exception of a brief period in early 2012), the COPP docket has had 40 or more pending campaign finance complaints. There were 48 pending complaints at the time I began work as Commissioner. During the time I have served as Commissioner 29 new campaign finance complaints were filed. The 44 Decisions issued to date (resolving 45 complaints) exceeded the new complaints filed by 16 and therefore reduced the overall docket from 48 to 32 pending complaints. I expect that this progress will continue and the overall complaint docket number will drop below 20 by end of March of 2014. A docket of less than 20 is comparable to 2004, the end of Commissioner Vaughey's term as Commissioner. More importantly it means that Decisions are prompt thereby providing guidance to candidates, rather than just assessing fines.

## 2. Advisory Opinions

Your letter did not inquire as to advisory opinions. Advisory opinions are, in our judgment, a useful adjunct to other forms of establishing precedent, such as Decisions or administrative regulations, because they are published for public review, prospective, and involve less procedure. We see the advisory opinions as completely replacing private letters (which are not subject to public review), lessening the need for Decisions and being less costly than a rule making procedure. We have issued three advisory opinions in 2014 and a 4<sup>th</sup> such opinion will be in process by the time of the SAVA hearing.

## 3. Reopening Former Complaints/Decisions

Your letter asked about plans to "reopen cases already settled." There are no such plans. We have taken no such action. Any "case" resolved by settlement is likely a final resolution of that Matter; deemed to be so by law, precedent and justice.

If your question is directed to reopening complaints or Decisions on which there was no settlement, then we have done so twice. We reopened the *Madin v. Sales* dismissal and the *Washburn v. Murray* Decision. These appear on the current docket as the complaint *Madin v. Sales*, COPP-2010-CFP-029 and on the Decision record as *Washburn v Murray*, COPP-2010-CFP-019. There were no settlements in either Matter and the Commissioner is allowed

(more accurately charged by law) to reopen unresolved Matters when better or new evidence of a violation is determined.

In addition, and under the same reasoning, the Office worked with complainants to expand existing complaints to cover campaigns of 6 additional 2010 candidates: **Docket** *Bonogofsky v. Wittich*, COPP-2010-CFP-031; *Bonogofsky v. Prouse*, COPP-2010-CFP-033; *Bonogofsky v. Wagman*, COPP-2010-CFP-035; **Decisions** *Bongofsky v. Boniek*, COPP-2010-CFP-027; *Ward v. Miller*, 2010-CFP-027, and *Clark v. Bannan*, COPP-2010-CFP-023. Still further, the Commissioner filed four complaints against third party entities associated with candidate campaigns: *Commissioner v. WTP, et. al.*, COPP-2010-CFP-026, 028, 030, 032. Two complaints were advanced as originally filed: *Bonogofsky v. Kennedy*, COPP-2010-CFP-015, and the *Washburn v. Murray* matter cited above.

Finally, a recent complaint filed with this Office (*Howell v. Stamey*, COPP-2014-CFP-003] raises the issue of false swearing connected with the settlement of a prior complaint. The complaint was accepted and a Decision is forthcoming.

#### 4. Enforcement Action (including lawsuits)

There are currently 22 pending Decisions that will require enforcement by settlement or adjudication. Two of the 22 Decisions are currently in adjudication in state district court (*Ward v. Miller* and *Washburn v. Murray*). The Commissioner's office is represented in those lawsuits by in-house counsel Jonathan Motl and Jaime MacNaughton. The Office's existing legal staff will issue Decisions and then switch to litigation to enforce the Decisions. At this time there is no pre-session supplemental budgeting requested or anticipated. The litigation, as much of litigation does, may become more pronounced over time and additional staff and litigation funds will likely be requested from the 2015 Legislature.

#### 5. Defending Constitutional and other Challenges

The Office is currently being represented by the Attorney General's office in four court cases involving challenges to the constitutionality of certain campaign practice laws: *WTP v. Gallik* (Motl); *Sanders County Republican Central Committee v. Fox*; *Lair v. Murray*; and *Monforton v. Motl*. Each of these cases are listed on the legal memo prepared by Ginger Aldrich.

OFFICE OF THE GOVERNOR  
BUDGET AND PROGRAM PLANNING  
STATE OF MONTANA

STEVE BULLOCK  
GOVERNOR



CAPITOL BUILDING - P.O. Box 200802  
HELENA, MONTANA 59620-0802

MEMORANDUM

TO: Jon Motl, Commissioner  
Political Practices

FROM: Dan Villa, Chairman *DV*  
Legal Services Review Committee

RE: OUTSIDE LEGAL COUNSEL REQUEST  
CONTRACT LOG REFERENCE NUMBER: 6-14 / M + R Strategic  
Services

DATE: October 11, 2013

The Legal Services Review Committee reviews contracts and amendments for form and content. Workload at Agency Legal Services is examined to determine whether the contract for outside legal services is appropriate.

This request meets our criteria and the Department may proceed with the contractor they have selected.

C: Mary Baker

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MONTANA

# 277-Page Complaint Filed Against Governor Bullock Alleging Illegal Campaign Coordination

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Pennington Complaint

By: Garrett Lenderman (<http://mediatrackers.org/author/garrettlenderman>) | March 19, 2013



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The Office of Political Practices on Friday released a complaint filed against Gov. Steve Bullock that alleges illegal coordination between his gubernatorial campaign and multiple groups organized by Hilltop Public Solutions, a Washington, D.C.-based political consulting and management firm.

The complaint

(<http://mediatrackers.org/assets/uploads/2013/03/PenningtonvGovernorBullockComplaint-1.pdf>) was filed on Wednesday by James Scott Pennington of Billings and was publicly released online on Friday. Pennington begins his complaint with a letter that expresses his dissatisfaction with the Governor and groups involved with the complaint.

"This complaint is not a defense of anyone's underhanded tactics to avoid disclosure," wrote Pennington. "I abhor secretive, last minute, calculated and contrived campaigning to anyone seeking to influence my vote without saying who they really are."

Pennington lists multiple left-wing groups that were connected to Bullock's campaign through its relationship with Hilltop Public Solutions, including Montana Conservation Voters, Planned Parenthood Advocacy of Montana (PPAMT), Democratic Governors Association of Montana, MEA-MFT, AFL-CIO, Big Sky Democrats, Forward Montana, and the Democratic Party of Montana.

Media Trackers reported in February (<http://mediatrackers.org/montana/2013/02/04/bullock-campaign-held-conference-calls-with-firm-coordinating-independent-expenditures/>) that the Bullock's campaign held conference calls and meetings with Hilltop Public Solutions while the consulting firm was managing third-party independent expenditure and canvassing operations in support of his campaign.

Media Trackers found that one of the conference calls was listed just prior to the launch of a Planned Parenthood campaign and a Montana Conservation Voters campaign in support of Bullock's election.

## TRENDING ARTICLES

1 **School Board Candidate Claims Conspiracy in Hit-And-Run She Caused**  
(<http://mediatrackers.org/wisconsin/2015/03/27-board-candidate-claims-conspiracy-hit-run-caused>)

WISCONSIN  
(<HTTP://MEDIATRACKERS.ORG/WISCONSIN>)

2 **Waukesha Judge Van De Water Assaulted Vehicle, Disrupted Peace**  
(<http://mediatrackers.org/wisconsin/2015/04/07-judge-van-de-water-assaulted-vehicle-disrupted-peace>)

WISCONSIN  
(<HTTP://MEDIATRACKERS.ORG/WISCONSIN>)

3 **Prevailing Wage "Expert" a Pro-Obama Liberal**  
(<http://mediatrackers.org/wisconsin/2015/03/31-wage-expert-pro-obama-liberal>)

WISCONSIN  
(<HTTP://MEDIATRACKERS.ORG/WISCONSIN>)

4 **Bloomberg Anti-Gun Group Spends Thousands Lobbying Montana Legislature**  
(<http://mediatrackers.org/montana/2015/04/02-anti-gun-group-spends-thousands-lobbying-montana-legislature>)

MONTANA  
(<HTTP://MEDIATRACKERS.ORG/MONTANA>)

5 **Heroin Dealer & Bad Mom Turn to Sonderhouse for Help**

The complaint provides new evidence that Hilltop Director Barrett Kaiser, alongside Hilltop employees Joe Splinter and Aaron Browning, co-sponsored a Montana Conservation Voters fundraising event for of Bullock on June 20, which the governor allegedly attended.

(<http://mediatrackers.org/wisconsin/2015/03/30-dealer-mother-neglect-sonderhouse-for-help>)  
WISCONSIN  
([HTTP://MEDIATRACKERS.ORG/WISCONSIN](http://mediatrackers.org/wisconsin))

Bullock's campaign listed an expenditure for a conference call with Hilltop Public Solutions on the same day.

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The complaint also contains screenshots of the Facebook pages of the parties involved, including a screenshot of Bullock campaign manager Kevin O'Brien becoming friends with Hilltop employee Libby Smelker just prior to the general election.

See breaking news?

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The screen shots also raise new evidence that Smelker also worked in some capacity with PPAMT. A Facebook post is displayed with Smelker wearing a PPAMT pin that reads, "Don't F\*\*\* With Us Don't F\*\*\* Without Us."

In the comments section of the post, Smelker tells a friend that it is a PPAMT pin, and that she'll grab her one if she finds extras.

Eric Ohlsen, a political consultant based out of Oregon, was also listed in the complaint. Media Trackers Montana noted in its previous report that Ohlsen was paid by the Bullock campaign through Hilltop's Washington, D.C. address. The complaint alleges that illegal coordination is indicated since both Hilltop and Bullock benefited from Ohlsen's services.

"While Ohlsen's business is common in today's political environment, and is certainly legal, the fact that both Bullock and Hilltop benefited from the work indicates the Governor and Hilltop coordinated, and third-parties who also used Hilltop or their affiliates benefited from the work done by Mr. Ohlsen," the complaint states.

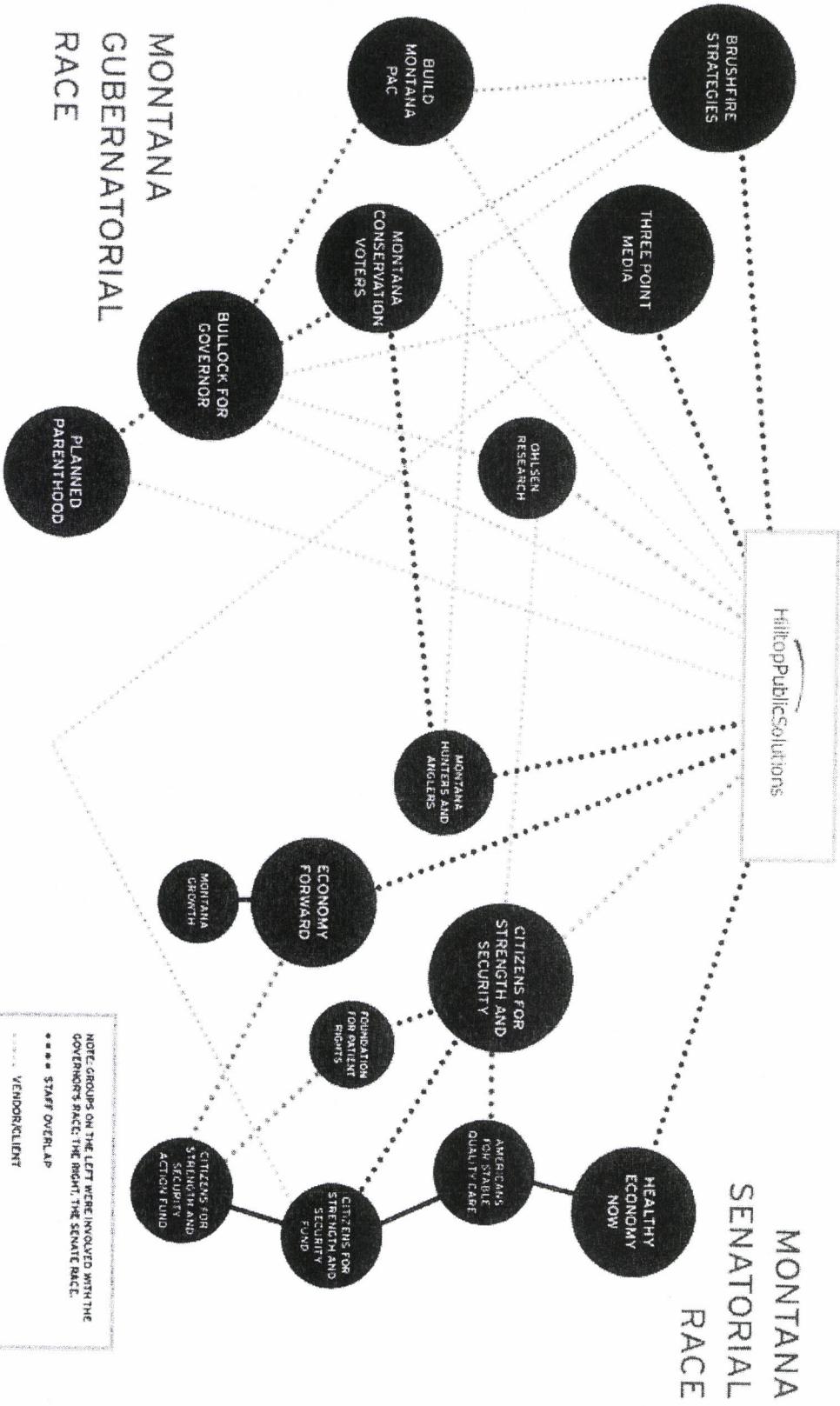
Commissioner of Political Practices Jim Murry is expected to recuse himself from the case on grounds that he was the treasurer (<http://mediatrackers.org/montana/2012/10/19/top-montana-elections-cop-helped-raise-60000-for-pac-supporting-democratic-gubernatorial-candidate/>) for the Democratic Governors Association of Montana, one of the parties involved, just prior to taking his position with the Office of Political Practices.

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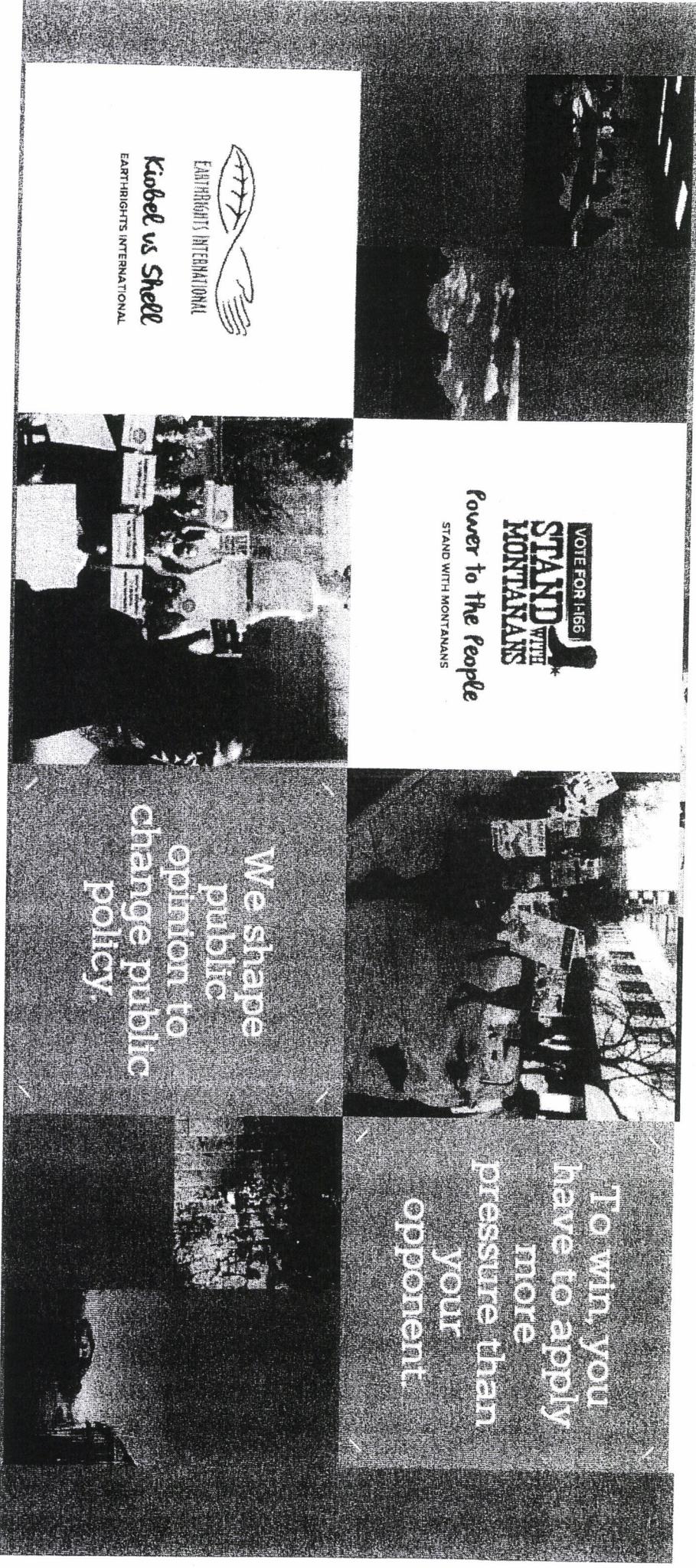
NOTE: GROUPS ON THE LEFT WERE INVOLVED WITH THE GOVERNOR'S RACE; THE RIGHT, THE SENATE RACE.

- \*\*\*\*\* STAFF OVERLAP
- \*\*\*\*\* VENDOR/CLIENT
- \*\*\*\*\* DIFFERENT ITERATIONS OF THE SAME GROUP
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Exhibit No. 2  
Date: 3/12/15  
Bill No. HB 446

## Press Release Mike Miller HD80

The terms of the settlement agreement between myself, my wife and the Commissioner of Political Practices speak for themselves.

I maintain now as I have maintained throughout the legal process instigated against me by Jon Motl that I engaged in no wrongdoing during my 2010 Primary election. As the settlement agreement states, I completely disagree with the findings of the Commissioner of Political Practices. Contrary to what the Commissioner asserts, I did not unlawfully coordinate my primary campaign with any third party entity, I maintained all required campaign records, I put all the statutorily required disclaimer language on my campaign materials, and I paid the prices charged to me by the mail house which I used to produce some of my campaign materials. The amounts paid were timely disclosed to and reported to the Commissioner of Political Practices in 2010, and my campaign reports remain publicly available to this date.

mike  
miller

I agree to settle this matter for financial reasons only. The settlement agreement is merely an effort on my and my wife's part to avoid more disastrous financial outlays. We've spent over \$10,000.00 in legal fees in the last 9 months defending ourselves against the Commissioner's frivolous legal claims and theories, and our attorney has estimated a cost approaching an additional \$25,000.00 to take this case to trial in May. Therefore, I have agreed to the \$4000.00 fine in order to not further dip into my retirement funds.

While I am confident I would be found innocent at trial, there comes a time when one must face the reality of the unlimited financial power of the State when it prosecutes one of its citizens. The State has unlimited resources derived from the taxes it imposes, and unlimited man power to prosecute their lawsuit against me. I cannot compete with that. I have a pair of financial deuces and the State holds all the aces. The legal reality is that there is no statutory provision in a civil case like this for me to recover the costs and attorney's fees I have expended to defend myself against these ridiculous allegations of wrongdoing, even if I am found innocent at trial.

As part of the settlement terms, I have also agreed not to file for public office for the next 4 years. While this provision may sound severe, there have been some major changes in our personal life over the last 2 years that allow me to accept this settlement term. The reality is that had the Commissioner of Political Practices not filed this lawsuit last January, I likely would not have run for reelection in 2014, even though I enjoy representing the interests of my constituency.

Further, I am "term limited out" of the House after this legislative session. I have told numerous people since the November election that I would not be running for the open Senate seat in SD40. Agreeing to not run for public office for 4 years was really quite an easy decision for me as I was not intending to run for another office in 2016 anyway. I understand and fully appreciate the precedent being set for other candidates and sitting public office holders now and in the future as a result of my voluntarily agreeing to

refrain from running for public office. I believe the precedent being set as a result of this term is a bad one for the people of Montana, and may lead to the Commissioner's office further interfering with and seeking to overturn election outcomes in the future, as was the case in the present instance. But, in order to get out from underneath the litigation I was pulled into by Jon Motl, I agree to this term to resolve this matter which has placed severe emotional and financial strains upon me and my wife.

I want the public to understand that no campaign finance complaint was actually ever filed against me. When Jon Motl became commissioner in 2013 some 3 years after the conclusion of my 2010 primary campaign, Mr. Motl on his own accord opened an investigation against me and accused me of wrongdoing without ever talking to me personally about the allegations he raised. Many of the matters discussed during this litigation could have been resolved without the State spending taxpayer resources to file a lawsuit against me if the Commissioner would have taken the time to sit down and have a chat with me. As a result of this experience, I am convinced more than ever that the structure of the office of Commissioner of Political Practices must be reformed so that one person is no longer able to be the investigator, fact-finder, decision, maker, judge, and prosecutor on a campaign finance complaint. Montana has set up a system whereby the Commissioner acts as a special prosecutor, accountable to nobody except a partisan Governor who appointed the position in the first instance.

This being said, I have really enjoyed representing the people of my House District and the people of Montana these past 4 sessions. It has been the highest honor of my life. I will continue representing the people of my district through the remainder of the 2015 Montana legislative session and will finish out my term of office, which is slated to end in January of 2017. I thank the people for placing their trust in me to represent them, and I value the overwhelming reelection vote total I received in November of 2014 despite the unsubstantiated allegations of wrongdoing against me.

Thank You. I look forward to seeing you in Helena or at home in the coming days and months.

Representative Mike Miller, HD80.

Questions may be directed to:  
Jim Brown (attorney) at 406-449-7444  
Mike Miller - 408-717-3821

COMMISSIONER OF  
POLITICAL PRACTICES

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OCT 07 2014



STATE OF MONTANA

JONATHAN R. MOTL  
COMMISSIONER  
TELEPHONE (406) 444-2942  
FAX (406) 444-1643

1205 EIGHTH AVENUE  
PO BOX 202401  
HELENA, MONTANA 59620-2401  
www.politicalpractices.mt.gov

October 6, 2014

James Brown  
Attorney at Law  
30 South Ewing, Ste. 100  
PO Box 4893  
Helena, MT 59604-4893

Dear Mr. Brown:

I write in response to your letter of October 1, 2014. You raised several issues.

Lets start with what we know. Mr. Miller is a sitting legislator and a candidate for reelection in 2014. Mr. Miller is also the subject of an enforcement action for campaign practices violations in a past election: *COPP v. Miller* No. BDV-2014-62 1<sup>st</sup> Judicial District, Lewis and Clark County.

Because this Office is a part to the *Miller* litigation we must consider the ramifications of interaction, such as Mr. Miller's unrepresented oral contact during the pendency of litigation, with a staff member of this office. **There are only 7 of us working in this Office. Consequently, we each know something about all of the activities going on in the Office and a statement from any one of us could potentially be subject to the evidentiary reach of Rule 801(d)(2) MRE .** With this in mind, under companion Rules 601, 602, and 613 MRE Mr. Miller could claim, and seek to introduce as evidence, a self-serving version of a conversation with any staff member of this Office. And, of course, the same can be said in reverse in regard to what this Office's staff may say about an "admission" or other statement of Mr. Miller. It is therefore prudent (and serves justice) that Mr. Miller's oral contacts with the staff of this Office, during the time of litigation, include counsel or be in writing (email or letter) with a copy to you. In contrast, it is inconsistent with litigation or justice principles to insist on unrepresented oral contact by Mr. Miller with this Office when there is potential for misuse.

I note that the current posture of litigants in the 9 pending district court actions <sup>1</sup> underlines the basis for the above stated litigation concern. To date the litigation has shown defendants willing to engage in substantial non-merits litigation activity. Already the Courts have denied at least 8 fully briefed defense motions in these cases. Already

<sup>1</sup> *COPP v. Miller*, Cause CDV-2014-62; *COPP v. Murray*, Cause BDV-2014-170; *COPP v. Bannan*, Cause CDV 2014-178; *COPP v. Boniek*, Cause ADV-2014-202; *COPP v. Kennedy*, Cause BDV-2014-234; *COPP v. Prouse*, Cause DDV-2014-250; *COPP v. Wittich*, Cause BDV-2014-251; *COPP v. Wagman*, Cause BDV-2014-267; and *COPP v. Sales*, Cause BDV-2014-283.

your own actions as defense attorney in *COPP v. Kennedy* resulted in your client being sanctioned for inappropriate 3<sup>rd</sup> party discovery attempts. Given the clear litigation concern and the established non-merits proclivity of defense counsel it is prudent to act to limit exposure of the staff of this Office to Rule 801(d)(2) "witness" treatment.

I further note that your letter does not waive any obligation I have to you under Rule 4.2 of the Rules of Professional Responsibility in regard to direct contact with Mr. Miller (you have instructed him to have no contact with me or Ms. MacNaughton). In turn, as attorney for the COPP I have instructed COPP staff to refrain from unrepresented oral contact with Mr. Miller. Accordingly, I or Jaime MacNaughton will be present at any oral contact Mr. Miller has with a staff member of this Office and at that point I will instruct Mr. Miller that under Rule 4.2 there can be no further discussion without his attorney being present. Simply put, either you waive Rule 4.2 or you need to be present if you insist on Mr. Miller continuing unrepresented contact with this Office during the pendency of litigation.

Turning to the broader arguments of your letter, I note your observation that the Rule 801(d)(2) "witness" issue is caused by my dual personal role as a COPP attorney and Commissioner. This observation is wrong as measured by law or policy. As measured by law it would make no difference whether this Office has inside or outside counsel in the *Miller* litigation. The litigation end point is the same – justice and litigation is served by limiting intra-party unrepresented oral contact that could lead to undesired witness issues. On a policy level you initially raised this conflict of interest issue and I took the issue to the ethics committee of the State Bar of Montana. That Committee issued Ethics Opinion No. 140519 specifically authorizing my conduct as litigation attorney in COPP discovery and pre-trial matters. The ethics committee of the State Bar is composed of veteran Montana lawyers and in issuing its Opinion the committee considered the very sort of issues you insist on revisiting. You have no basis in law or policy for this argument.

Lastly, this matter is in litigation with justice to be decided by the Courts. You are Mr. Miller's attorney of record in the *COPP v. Miller* matter. The COPP, as the other party in litigation, acted as it did with Mr. Miller solely for litigation reasons and it explained those reasons for action at the time the actions were taken. In response, in the midst of litigation, you sent your letter to SAVA, the COPP oversight committee, suggesting that another forum (the legislature) should engage aspects of the *Miller* litigation. I expect that your future actions will more appropriately stay within and address litigation.

Sincerely,



Jonathan Motl  
Attorney at Law

Law Firm

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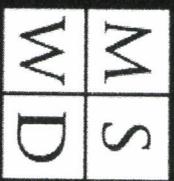
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## Jonathan Motl Of Counsel

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Address: Morrison, Sherwood, Wilson & Deola

401 North Last Chance Gulch

Helena, Mt 59601



Jonathan Motl is on sabbatical from the firm and as of June 7, 2013 is no longer an attorney of record in any cases handled by the firm. On May 20, 2013, Motl was appointed by the Governor of Montana to be Montana's 11th Commissioner of Political Practices and he began full time work as Commissioner on June 10, 2013. Motl stands for Senate confirmation as Commissioner at the 2015 Montana Legislature.



**SCHEDULE A.**  
**Receipts – This Reporting Period (continued)**

**8. Corporate Contributions (PACs & Ballot Issues Only)**  
 Full name and mailing address **REQUIRED**  
*for Independent Expenditures Only!*

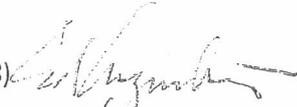
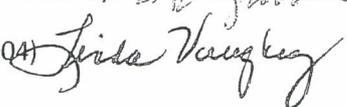
	Date Received Required	Description	In-Kind Value	Cash or Check Amount	Total to Date Amount
Everett Law PLLC Name: Box 969 Address: Anaconda, MT 59711-0969 City, State, Zip Code	8/15/2013 11/20/2013			2,500.00 2,500.00	5,000.00
Paoli Kutzman PC Name: Box 8131 Address: Missoula, MT 59802-8131 City, State, Zip Code	11/20/2013			15,000.00	15,000.00
Cok Kinzler PLLP Name: Box 1105 Address: Bozeman, MT 59771-1105 City, State, Zip Code	11/22/2013			7,500.00	7,500.00
Morrison, Sherwood, Wilson & Deola PLLP Name: Box 557 Address: MT 59624-0557 City, State, Zip Code	11/27/2013			2,500.00	2,500.00
Eddy Sandler Trial Attorneys Name: The Montana Building, 33 Second Street East, Suite 1 Address: Kalispell, MT 59901 City, State, Zip Code	9/5/2013			7,500.00	7,500.00
<b>TOTAL RECEIPTS THIS PAGE</b>				37,500.00	

IF ADDITIONAL PAGES ARE NEEDED, THIS FORM MAY BE REPRODUCED

8 Corporate Contributions	Description	In-Kind	Amount	Cash/Check	Totals to Date
Kohler Family Trust 34153 Misty Lagoon Polson 59860				\$ 500.00	\$ 500.00
Lamb and Carey Law 2601 Broadway Helena, MT 59601				\$ 5,000.00	\$ 5,000.00
Montana Trial Lawyers Assoc. P.O. Box 838 Helena, MT 59624	Donation of services of Al Smith for professional services: 133 hrs @50.95		\$ 6,776.35		
Montana Trial Lawyers Assoc. P.O. Box 838 Helena, MT 59624	Donation of general office services (bookkeeping, etc.)		\$ 587.46		
Montana Trial Lawyers Assoc. P.O. Box 838 Helena, MT 59624	Donation of office space-\$800; supplies-\$10; copies-\$5		\$ 815.00		
Morrison Sherwood Wilson & Deola P.O. Box 557 Helena, MT 59624-0557				\$ 10,000.00	\$ 10,000.00
<b>TOTAL RECEIPTS THIS PAGE</b>			<b>\$ 8,178.81</b>	<b>\$ 15,500.00</b>	

MEMORANDUM

TO: Senator Dee Brown, Chair, and Members, Senate State Administration

FROM: Ed Argenbright, Ed.D, Former Commissioner of Political Practices (1993-1998)   
Linda Vaughey, Former Commissioner of Political Practices (1999-2004) 

SUBJECT: Confirmation, Jonathan Motl as Commissioner of Political Practices

We respectfully object to the confirmation of current Commissioner Motl. Please consider the following.

The statutes and laws under jurisdiction of the Commissioner of Political Practices (CPP), while written carefully and with specificity, leave broad discretion with the commissioner. During our tenures we did our very best to clarify requirements for candidates, committees, and other independent organizations, including political parties. Our emphasis was on facilitation of compliance for those who are by law required to report campaign contributions and lobbying expenses while shining a light, for the benefit of the public, on influences exerted on elected officials and lobbyists.

Our experiences were similar in many respects. Many candidates are confused by the language of statutes and rules governing their campaign activities. With few exceptions candidates were willing and eager to comply. For the few who intentionally tried to game the system, our investigations, decisions, and subsequent fines were issued with an even hand, irrespective of political party. We applied the same judiciousness to activities of others within our jurisdiction - lobbyists and public employees.

Under Mr. Motl's direction, the culture of the office of CPP has changed. His approach to handling of complaints is, oft times, heavy-handed. For example, neither of us would have considered trying to remove an elected official from office due to an interpretation of a violation focused on the reporting of mailing cost separately from the total contractual obligation that was reported.

Additionally we are concerned with the law of the land as issued by the Supreme Court decision in Citizen's United. It is the law we must follow. Yet, a strict interpretation and enforcement of Montana statutes has great potential to run afoul of the court's ruling. Moving forward toward the next significant election cycle in 2016, the effects of the ruling allowing corporate contributions is filled with complex decisions and interpretations, i.e. the question of coordination between a committee or individual making the contribution and the candidate or the candidate's committee. Another aspect of the decision is issue advocacy. Will interested people continue to be able to express their opinions on issues of the day as long as they don't expressly advocate for or against a candidate?

Sunlight is imperative. We don't want our elected officials to be bought and paid for. That said, we have seen the damage to a campaign when, for political gain, charges are made—both official and in campaign literature. It is the *public* that needs to be aware of the interest and who will benefit. A punitive system fraught with pitfalls has a chilling effect on potential candidates. Do we want to discourage qualified people to file for the opportunity to serve in elected office?

The public is not well served by a commissioner whose goal is to strictly interpret and enforce laws, which come close to limiting our free speech as guaranteed by the bill of rights. The public is not well served by a commissioner whose interpretation and punitive enforcement might discourage qualified people entering the political arena. Our citizen's legislature is one we should be able to count on for the best representation possible.

We hope you will take our concerns under consideration. An appointee with a focus on facilitating compliance might be the agent to improve the confidence Montanans need in their elections.

Former  
Commissioner

The case to look into will be MCHA vs. MIHC. In 2009, Motl drafted a ballot measure to unionize home health workers and committed numerous campaign violations; see

here: <http://politicalpractices.mt.gov/content/2recentdecisions/MontanaHealthCareAssocvMontanansforInHomeCareSEIU775andSEIU775MT>

The COPP found:

1. Motl and his groups failed to file timely and adequate reports regarding statement of organization, designation of campaign treasurer and other assorted campaign filing laws regarding formation of a political committee.
2. Motl and his groups allowed someone other than the designated campaign treasurer to effectively serve as treasurer in violation of the law
3. Motl and his groups failed to provide adequate attribution language on campaign communications (same law Motl is now hitting MCC with)
4. Motl and his groups received and spent money for political purposes before filing as political organizations
5. Motl and his groups improperly reported, but later corrected, a financial report of \$268,000 of in-kind contributions. (far more than the paltry \$1,600 of MCC)
6. Motl and his groups adequately disclosed the nature of three debts to M & R Services; however, the law was changed after the debts were incurred and these groups have been in violation if the changes had been in effect 12 months earlier.
7. Motl and his groups were found on a technicality to have adequately disclosed costs paid to signature gatherers, but only after substantially amending reports.

Literally everything Motl is trying to make an issue out of with conservative groups, he himself violated in this one case. Furthermore, the bigger issue is that the group Motl started for his initiative MIHC acted as a front to accept hundreds of thousands of dollars from out-of-state unions. It was designed solely to launder money and white-wash the union name from these dollars to deceive Montana voters.

MOTL  
Complaint

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:

Griffin  
v.  
montpirg

**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

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 (9<sup>TH</sup> 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-PIRG's Board of Directors was comprised of Mr. Motl, Mr. Pearson, Mr. Newbold, and Linda Lee. Mont-PIRG 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. Mötli 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.<sup>1</sup> 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 Qualify 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,

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<sup>1</sup> 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<sup>2</sup>, the respondents in this investigation are primarily responsible.

<sup>2</sup> 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.<sup>3</sup> 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 all 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

<sup>3</sup> 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-PIRG 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-PIRG 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-PIRG 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-PIRG, 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	<u>\$ 2,656.70</u>

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.<sup>4</sup>

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

<sup>4</sup> 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-PIRF. 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-PIRF.

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:

<u>Contributor</u>	<u>Amount/Type</u>
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:

<u>Contributor</u>	<u>Cash</u>	<u>In-kind</u>	<u>Total</u>
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	<u>1,000</u>	<u>0.00</u>	<u>1,000.00</u>
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.<sup>5</sup> 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.

<sup>5</sup> 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

measures—strategically timed polls, studies, surveys, voter registration campaigns, and such.

The Alliance for Justice, a Washington D.C. campaign reform organization, published a 1996 study titled *Seize the Initiative*, “a tool for nonprofit organizations on the legal do’s and don’ts of ‘seizing the initiative.’” They can do “education.”<sup>143a</sup>

A section called “An Overview of the Law” offers strong advice:

“[T]he staying power of the coalition in 1996 were due, in part, to the clear understanding by 501(c)(3)s of permissible activities under the tax code and election law. Such an understanding should be the initial step in any initiative campaign.”

Education is permissible. Although most environmentalist ballot measures deal with specific reforms such as banning hog farms (Colorado, 1998, won), or stopping the use of forestry herbicides (Oregon, 1998, lost), or some other rural cleansing particular, the big target of their coalition with other “progressives” is “campaign finance reform.”<sup>143b</sup>

Campaign finance reform is based on the platitude, “money in politics is bad,” which really means *your* money in politics is bad, *my* money in politics is good. Ellen Miller, executive director of the non-profit group, Public Campaign, said of campaign finance reform, “It is the reform that makes all other reforms possible.”<sup>143c</sup>

Translation: “Kick your opponents off the playing field and it’s easier to win the game.”

Public Campaign, like Americans for the Environment, is a non-profit, non-partisan organization. It says it is “dedicated to sweeping reform that aims to dramatically reduce the role of special interest money in America’s elections and the influence of big contributors in American politics.”

One of Public Campaign’s eight directors is John Moyers, executive director of the Florence and John Schumann Foundation, 1997 assets, \$88,509,775. Grant-driven progressives.

Publications such as the *Funders’ Handbook on Money in Politics*, published by the Ottinger Foundation, list dozens of campaign finance reform groups, including the Association of Community Organizations for Reform Now (ACORN) “Money and Politics Project;” Working Group on Electoral Democracy; Western States Center “Money in Western Politics Project;” U.S. Public Research Interest Group Education Fund - Americans Against Political Corruption; Eliminate Private Money; Missouri Alliance for Campaign Reform, and on and on.<sup>143d</sup>

undue  
influence

from **UNDUE INFLUENCE** by Ron Arnold



What happened at Montana's ballot box in 1996 reads like a screwball comedy script for political Armageddon: a coalition of nonprofit organizations campaigned, qualified and won a state ballot initiative to outlaw for-profit corporations from contributing to state ballot initiative campaigns.

Their battle cry was, "Make Montana Safe From Out of State Big Money."

Two-thirds of their campaign was paid for by out of state big money. But nobody knew that.

Their measure, Initiative-125, passed by a 52-48 percent margin.

I-125 banned all for-profit corporations from making either cash or in-kind contributions to ballot issue campaigns. It also extended that ban to the majority of nonprofits (for-profit corporations can use nonprofits as front groups). The only nonprofits that were allowed to make contributions were those that:

- Were organized for political purposes;
- Did not have any for-profit corporations as members;
- Received less than 5 percent of their income from for-profits; and
- Did not engage in business activities.

This new law posed some serious questions about the free speech rights of business owners. The Montana Chamber of Commerce and the Montana Mining Association sued in 1997. Both suits named Ed Argenbright, Montana's commissioner of political practices, as a defendant. Five left-wing organizations filed as defendant-intervenors.

After months of legal wrangling, U.S. District Court Judge Charles Lovell declared I-125 unconstitutional in late 1998. Argenbright and the five groups took the case to the Ninth U.S. Circuit Court of Appeals.<sup>144a</sup>

In the beginning, it all looked so local and grass-rooty and so—well, so *Montana*. No one suspected that Initiative-125 was hatched in Massachusetts, funded out of Washington D.C., Hollywood, Santa Barbara, and Atlanta, and shepherded through the appeals court by a Boston group that gets enormous grants from a New Jersey foundation.

The first anybody saw of the campaign was a University of Montana course notice in mid-1995. The Course Flow said there would be an Environmental Organizing Semester in Spring 1996. It said "weeks twelve through fifteen will focus on the planning and execution of a petition drive."<sup>144b</sup>

**The syllabus announced that the professor who would teach the 12-credit Environmental Organizing Semester was one C. B. Pearson, who,**

according to his resume, was the former executive director of MontPIRG, the former executive director of Montana Common Cause, had been an assistant organizing director of the Fund for Public Interest Research back in Boston, Massachusetts, and was the former executive director of CalPIRG.<sup>145a</sup>

MontPIRG, incidentally, occupies an office on the University of Montana's campus.

The syllabus also announced guest lectures by Jonathan Motl, Helena attorney and head of Montana Common Cause, the group sponsoring the campaign finance reform initiative, I-125, and Lila Cleminshaw, a member of Montanans for Clean Water, sponsors of an anti-mining initiative, I-122.

The syllabus gave two important dates:

Thursday April 18, 1996

\* Morning: Direct Democracy: The Initiative Process

Friday April 19, 1996

\* Morning: On-going campaigns — Spring 1996; possibilities clean water and campaign finance issues.<sup>145b</sup>

Students on those dates did more than study. They went out and gathered many of the signatures needed to put both I-122 and I-125 on the ballot. According to state law, a public officer or employee may not use public time, equipment, personnel or funds for any campaign activity persuading or affecting a political decision. The University of Montana is a state-supported institution.

When questions arose about the ethics of this activity, attorney Motl said the 14 students enrolled in the course received instruction on the signature-gathering process during class time, but circulated the I-122 and I-125 petition on their own. Motl thought the students probably took votes among themselves on which petition they would circulate. He added that course expenses and its professor, C. B. Pearson, were entirely supported by private funds and thus nothing illegal transpired.<sup>145c</sup>

Private funds? That came as a surprise. Whose private funds?

Eric Williams of Environomics, a Montana-based consulting firm, began to snoop around.

Turns out that Motl was not just a guest speaker. He also served as "special consultant" to the Environmental Organizing Semester to "assist in the development and release of the investigative report and the petition portions of the course."<sup>145d</sup>

Then too, Williams discovered, a group called Montana Environmental Information Center had paid Pearson "a small consulting fee very early in the campaign just to help them plan the petition gathering stage."<sup>145e</sup>

Williams dug further. He found that in early June of 1996, C. B. Pearson sent a letter to a foundation requesting grants for the I-125 campaign. His cover letter to the Stern Family Fund, a \$2.5 million foundation granting primarily to government and corporate accountability projects, said:

I am the campaign manager for the petition drive to qualify Initiative 125, active with MontPIRG, their Foundation MontPIRF, Common Cause and the League of Women Voters, and will be the campaign manager for the fall campaign.

We are in the process of completing a comprehensive study on the role of corporate money in the Montana Initiative process."<sup>146</sup>

Attached to Pearson's fundraising letter was *A Proposal To Get Corporate Money Out Of Montana's Initiative Process*. It was beginning to look a lot like the National Audubon Society proposal to Pew Charitable Trusts for the Southwest Forest Alliance.

Pearson's proposal revealed a far more convoluted plan than the public knew about:

The coalition of supporters for I-125 are led by MontPIRG, Common Cause and the League of Women Voters. We expect to expand the coalition once we have qualified the initiative. Outreach has been completed to over 30 different organizations. Both the Montana Trial Lawyers Association and the Montana Lung Association have shown a strong commitment to joining in the effort but have not done so on paper yet. We fully expect the support of AARP and United We Stand. Other potential supporters include labor and senior citizen groups as well as environmental groups.

The timing for proposing I-125 could not be better. Two important citizen initiatives which will draw large direct corporate contributions are moving to the 1996 ballot. Initiative 121, a minimum wage petition has recently made the ballot. The Montana Chamber of Commerce looks to be the main opponent. The other initiative is I-122, a clean water initiative targeted at mining companies, particularly cyanide heap-leach gold mines. Multi-national gold mining companies are the identified opponents. These two initiatives should demonstrate to the people of Montana the problem of unlimited direct corporate contributions as well as act as a good target for media hits and organizing public opinion for our reform. Both initiatives enjoy wide-spread public support in recent public opinion polls. The opponents to I-122

have made it clear that they will raise as much money as necessary to defeat the initiative and are using the fact that there is no limit on giving to ballot campaigns in their fundraising materials.

"We will focus on who the messenger is (most likely the League) and the message. We have had some luck at this point in cutting the message to our benefit."

The current list of opponents reads like a who's who among corporate bad guys. Opponents include the lobbyist for Western Environmental Trade Association, (WETA), the primary lobbying outfit for the timber and mining industry in the northwest and a main wise-use organizer, the lobbyist for the tobacco companies in Montana who is also the person running the campaign against the clean water initiative, and the executive director of the Chamber of Commerce.

No money has been allocated for polling and message development. There have been discussions with Celinda Lake [noted Democrat pollster] on possible polling options but nothing has been firmed up at this point. Celinda has talked about the possibility of tying [sic] our polling questions to an existing poll to help save costs, etc.

We will focus on the seven major counties and their media outlets along with a county by county media and grassroots organizing strategy.<sup>147a</sup>

How similar all these proposals are when you get into them. The reliance on urban media for rural cleansing. The vilification of resource producers. The secret advance planning among colleagues. The hidden funding by prescriptive foundations. The use of popular organizations as fronts.

The I-125 campaign's use of the League of Women Voters was particularly egregious. The League received prominent media notice as a leading proponent of I-125, but the League didn't report spending a dime towards its passage. It was all talk and no financial contribution.<sup>147b</sup>

In fact, the League was paid to be a supporter. According to reports submitted to the IRS, MontPIRG paid \$3,000 to the League of Women Voters for "Campaign Finance Reform/I-125" a month and a half before election day, but what happened to the money is unknown.<sup>147c</sup>

Another question about the proposal: why did Pearson emphasize those two other initiatives, I-121 and I-122? It was no accident. Americans for the Environment gave us the reason. In June of 1996, when this trio of campaigns was heating up in Montana, AFE published *The Populist I&R Movement: Direct Democracy in Action*. It said,



There is a fourth, indirect benefit which can accrue to ballot initiatives that arouse powerful public sentiments. When a particular proposal is contentious enough to actually bring out voters who would not otherwise come to the polls on election day (and environmental issues are sometimes of this type), there can be a spill-over effect on the other issues or candidates on the ballot ... Under the right conditions, environmentalists could enjoy a long-term electoral benefit by employing the same technique if they could devise a cohesive national ballot measure strategy, put more resources into obtaining expert guidance from campaign consultants, expand their use of focus groups and polling, and test (for instance through exit polls) whether or not environmental and animal welfare ballot measures can create a "surge vote" that can have an effect on voter turnout and the outcome of candidate races.<sup>148a</sup> (Parentheses in the original.)

Was anyone backstage coordinating these campaigns to create a "surge vote?"

Of course. The I-125 and I-122 campaigns paid MacWilliams, Cosgrove, Snider, Smith & Robinson Consulting (MCSSR), of Takoma Park, Md., more than \$78,000 to provide advertising, consulting, retainer and other services.<sup>148b</sup> Recall, it was MacWilliams Cosgrove Snider that did the 1992 anti-wise use "Search and Destroy Strategy Guide" (note, p. 126).

Lake Research, Inc., of Washington D.C. was paid a modest \$2,000 by Montanans for Clean Water/For I-122 for "Professional Services," but nothing for the I-125 campaign.<sup>148c</sup>

The string-pulling hub was Ralph Nader's Boston-based Center for Public Interest Research (CFPIR), C. B. Pearson's old stomping grounds. *The Funders' Handbook* noted:

During 1996, CFPIR supported eight state projects through an integrated Campaign to Get Big Money Out of Politics. This campaign had two objectives: to advance the policy debate on money in politics, and to educate and unify the reform community.<sup>148d</sup>

So—there was an integrated campaign behind the Montana Initiative Wars, just like the Southwest Forest Alliance and the Northern Forest Alliance. Well, we should be expecting it by now.

When all the money supporting I-125 was counted by Montana's commissioner of political practices, six entities had paid the bulk of the total reported \$114,980. They were:

- The Montana Public Interest Research Group, Missoula, Montana. \$31,640.81.
- U.S. Public Interest Research Group, Washington, D.C. \$35,000
- The 2030 Fund, Inc. a PIRG entity, Santa Barbara, California. \$40,000.
- Common Cause, Helena, Montana. \$5,296.82
- Hollywood Women's Action Fund, Hollywood, California. \$1,000.00
- Individuals \$1,945.00
- Reynolds, Motl & Sherwood (Motl's law firm) contributed \$97.50 of in-kind services.
- The Montana Public Interest Research Foundation, Missoula, Mont., created a non-reported study, *Big Money and Montana's Ballot Campaigns*, that became a crucial campaign component, but was an "educational" product that did not have to be reported as a campaign contribution.

Raw funding score:

- 66 percent came from California and Washington D.C.
- 92 percent came from Public Interest Research Groups (PIRGs), both in-state and out of state sources.<sup>149a</sup>
- Only 2 percent came of individual Montanans.

The final irony came after Judge Lovell ruled I-125 unconstitutional. Attorney Jonathan Motl had the Boston-based National Voting Rights Institute file a notice of appeal on behalf of the defendant-intervenors. NVRI assumed full responsibility for handling the appellate phase of the case. Thus an out of state organization represented the citizens of Montana when I-125 moved to the Ninth Circuit Court of Appeals.<sup>149b</sup>

The National Voting Rights Institute gets a big percentage of its money from the Florence and John Schumann Foundation of Montclair, New Jersey. NVRI had a 1997 total revenue of more than \$1.21 million, of which \$812,113 came from the Schumann Foundation. \$175,000 came from the Ford Foundation (New York City) and \$65,000 from the Joyce Foundation (Chicago). All but \$47,531 of NVRI's \$1.21 million came from donations of \$10,000 or larger, none of which were from Montana.<sup>149c</sup>

There's one more thing to be learned from the Montana Initiative Wars: Don't underestimate the power of the PIRGs. They may soon cram their "democracy" down the throat of an electoral system near you.

C. B. Pearson's old outfit, the Boston-based Fund for Public Interest Research, paid PIRG programs in Montana during 1996:

- ⊕ Montana Membership Education and Services Project: \$11,367
- ⊕ Montana Public Education and Outreach Project: \$11,281
- ⊕ Montana Citizen Lobbying Project: \$11,281<sup>150a</sup>

None of this showed up in the I-125 campaign reports, but it supported campaign related activities. The Fund also gave \$31,200 to U.S. PIRG in 1996, which was the second-largest contributor to the I-125 effort.

Pearson really understands how these campaigns work: they always release a big study at a crucial point to steam up the public. The study, of course, has been thought out and agreed upon long in advance of the campaign; only the wording is left until the proper moment. In the I-125 campaign it was *Big Money and Montana's Ballot Campaigns*, co-authored by Pearson and Hilary Doyscher, a University of Montana Student. **Others, including Jonathan Motl, were listed for special thanks.**<sup>150b</sup>

The study was performed under the auspices of Montana Public Interest Research Foundation (MontPIRF), a 501(c)(3) sister organization to MontPIRG, which is a 501(c)(4) lobbying group. The study was paid for by grants from several foundations, notably the Turner Foundation in Atlanta.

In fact, a grant from Turner Foundation was used to create MontPIRF in the first place—a 1993 \$10,000 contribution to the Montana Public Interest Research Group. MontPIRG never got the check. Instead, in 1994 that \$10,000 went to the brand-new organization called the Montana Public Interest Research Foundation, IRS documents show.<sup>150c</sup>

In late January 1994 MontPIRF received the \$10,000.<sup>150d</sup> The new organization's main product that year was a study titled "If Money Could Talk." That study was the big bomb in the passage of Montana's Initiative 118, an earlier and less stringent campaign finance reform measure.

In 1996 Turner gave MontPIRF another \$10,000.<sup>150e</sup>

That year, MontPIRF's primary product was the *Big Money* study that touted I-125 as "the solution to this problem" of corporate contributions. *The 1996 Funders' Handbook on Money and Politics*, considered the most comprehensive guide on campaign finance reform organizations across the country, stated that MontPIRF's 1996 campaign finance reform "Project Budget" was \$10,000.<sup>150f</sup>

In addition to the Turner money, MontPIRF received two grants from the U.S. Public Interest Research Group Education Fund (located at the same Washington, D.C. address as the U.S. Public Interest Research Group) between July 1 1995 and June 30 1997. The first grant was for \$1,000, the second for \$5,000.<sup>150g</sup>

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

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In the Matter of the Complaint )  
Against Montanans for In-Home ) **SUMMARY OF FACTS**  
Care for I-159, SEIU 775 ) **AND**  
Montana, and SEIU 775 ) **STATEMENT OF FINDINGS**  
PAC )

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Montana Health Care Association filed a complaint against Montanans for In-Home Care for I-159, SEIU 775 Montana, and SEIU 775 Montana PAC alleging violations of Montana campaign finance and practice laws.

**SUMMARY OF FACTS**

1. In 2008, a proposed statewide ballot initiative known as the Montana Home and Community Care Act or Initiative No. 159 (I-159) was approved for signature gathering to qualify it for the ballot. If approved by voters, I-159 would enact laws establishing a program to provide home-care services to low-income disabled and elderly persons by individual home-care providers. Under the program as proposed by I-159, a home-care recipient would choose an individual provider trained and certified by the state. Individual providers would be permitted to bargain collectively with the state, but only through a statewide union exclusively composed of individual providers who would not be permitted to strike.

2. I-159 was submitted to the secretary of state on April 14, 2008. The attorney general approved the petition language on May 9, 2008. The secretary of

MHCA

state then approved the petition form for I-159 on May 12, 2008, and transmitted it to the sponsors, authorizing the gathering of signatures. The sponsors of I-159 voluntarily withdrew the initiative on June 25, 2008.

3. SEIU is an acronym for the Service Employees International Union, a labor union headquartered in Washington, D.C. SEIU 775 Montana (SEIU Montana), headquartered in Helena, is the Montana local union affiliate of SEIU.<sup>1</sup>

4. SEIU 775 Montana PAC (SEIU Montana PAC) was formed as the local affiliate's political action committee.

5. SEIU Montana and SEIU Montana PAC both supported I-159.

6. Montanans for In-Home Care for I-159 (MIHC) was formed as a ballot issue committee to support passage of I-159.

7. Montana Health Care Association describes itself on its website as a "non-profit, member-driven professional association serving Montana's long term care facilities." Rose Hughes is the executive director and filed the complaint in this matter.

8. Jonathan Motl is a Helena attorney who represents the complainant respondents--MIHC, SEIU Montana, and SEIU Montana PAC. Mr. Motl submitted an answer and supplemental answer to the complaint.

9. The complainant generally alleges that SEIU Montana and SEIU Montana PAC spent approximately \$268,000 through in-kind contributions of staff, direct expenditures on behalf of the initiative, and monetary contributions to

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<sup>1</sup> SEIU 775 Montana has since changed its name to SEIU Healthcare 775NW.

MIHC. The complainant alleges that MIHC was funded almost entirely by SEIU Montana and SEIU Montana PAC and reported only \$800 of non-SEIU related contributions. The complainant further alleges that, throughout the campaign, numerous attempts were made to become informed about where the money to support MIHC's efforts was coming from and going to; however, because reports were filed late by the entities, complainant was unable to obtain timely information about their activities. The following specific violations of Montana law are alleged in the complaint:

Claim 1

MIHC and SEIU Montana each failed to file a statement of organization in timely manner with the commissioner of political practices and to designate a campaign treasurer and depository, in violation of §§13-37-201 and 13-37-205, MCA, and ARM 44.10.405 and 44.10.413.

Claim 2

MIHC failed to designate a campaign treasurer in timely manner and permitted someone to serve as campaign treasurer before making a designation, in violation of § 13-37-203, MCA.

Claim 3

MIHC failed to include required attribution language on its website and on campaign fliers, in violation of § 13-35-225, MCA.

Claim 4

MIHC and SEIU Montana received and deposited contributions and made expenditures before filing their respective organizational statements, in violation of § 13-37-207, MCA and ARM 44.10.503.

Claim 5

MIHC, SEIU Montana, and SEIU Montana PAC improperly reported certain in-kind contributions and failed to make timely report of the contributions, in violation of §§ 13-37-225, 13-37-226, 13-37-228, 13-37-229, and 13-37-230, MCA.

Claim 6

MIHC failed to disclose sufficient information regarding amounts paid to signature gatherers, in violation of § 13-27-112, MCA.

Claim 7

MIHC failed to report complete information regarding its receipt of in-kind contributions and failed to disclose the "nature" of the contributions, in violation of §§ 13-37-229 and 13-37-230, MCA, and ARM 44.10.513.

Claim 8

MIHC failed to report properly sufficient information to describe the "nature" of debts and obligations, in violation of ARM 44.10.535.

10. State law sets forth reporting requirements and the commissioner of political practices provides reporting calendars based on state statutes to political committees, showing deadlines for filing of campaign finance reports for ballot

issue committees, incidental committees, and PACs. For 2008 ballot issue committees, an initial report was due March 10th, with monthly reports due thereafter on the 10th of each month. For statewide incidental committees, an initial report was due March 8th, with monthly reports due thereafter on the 8th of each month. For other political committees, a pre-primary report was due May 22nd, a post-primary report was due June 23rd, and a pre-general report was due October 23rd.

11. MIHC filed a statement of organization with the commissioner of political practices on May 29, 2008, naming Jacquie Helt as treasurer and designating Wells Fargo as its primary depository. Helt performed duties as treasurer before being designated as treasurer on May 29, 2008.

12. MIHC filed its initial campaign finance report with the commissioner of political practices on June 10, 2008, covering the period from February 21 to June 5, 2008. MIHC reported that its first expenditure was made to M & R Strategic Services on May 16, 2008. The report also disclosed contributions received as early as May 6, 2008, and was signed by Jacquie Helt, treasurer. MIHC filed its next campaign finance report on July 10, 2008, designating it as a closing report. That report covered the reporting period from June 6 to June 25, 2008, the date on which I-159 was withdrawn. See Fact 2.

13. SEIU Montana PAC filed a statement of organization on June 28, 2006, naming Ted Dick as its treasurer and designating Wells Fargo as its primary depository.

14. SEIU Montana PAC filed a campaign finance report with the commissioner of political practices on May 22, 2008, for the reporting period January 1 to May 17, 2008. That report disclosed that SEIU Montana PAC had made expenditures before May 12, 2008, the day on which the secretary of state approved the form of the I-159 petition and transmitted it to the sponsors. See Fact 2. SEIU Montana PAC filed its second campaign finance report on July 11, 2008, covering the reporting period from May 18 to June 18, 2008.

15. SEIU Montana filed a statement of organization on July 16, 2008, naming Jacquie Helt as treasurer and designating Wells Fargo as its primary depository. Helt performed duties as treasurer before being designated as treasurer on July 16, 2008.

16. SEIU Montana filed an incidental political committee campaign finance report on July 16, 2008, for the period from February 21 to June 25, 2008. According to that report, SEIU Montana made its first expenditure, a consulting fee of \$5,400 paid to Sellers Feinberg & Associates, LLC, on February 29, 2008.

17. Complainant alleges that the MIHC website and fliers used by MIHC in petition signature gathering did not include the attribution "paid for by" followed by the name of the committee, name of the committee treasurer, and the address of the committee or treasurer. In response, MIHC concedes that the words "paid for by" were not included on the website or the fliers, but contends that all other required attribution information was included.

18. The fliers referenced in Fact 17 did not include the words "paid for by." However, identifying and contact information for MIHC was listed on the fliers, including the MIHC name, address, telephone number, website address, and the name of its treasurer. The MIHC website also did not include the words "paid for by." However, identifying and contact information for MIHC was listed on the website, including the MIHC name, address, telephone number, and email address. In addition, the name of MIHC's treasurer was available through several links on the website.

19. In an answer to the complaint, respondents acknowledged that campaign finance reporting requirements for ballot issues are triggered by the date that a proposed initiative becomes a "ballot issue" under Montana law. Respondents contend, however, that prior to the 2008 election cycle, the commissioner of political practices interpreted the law to mean that a statewide initiative does not become a "ballot issue" for reporting purposes until sufficient signatures are submitted and certified such that it is qualified for submission for a vote by the public. According to the answer, a 2007 amendment to the statutory definition of the term "ballot issue" divided the definition into subparts (a) and (b), and the commissioner thereafter (in May, 2008) changed its interpretation, concluding that a statewide issue becomes a ballot issue upon preparation and transmission by the secretary of state of the form of the petition to those who submitted the proposed issue. Respondents claim that they filed their reports in a timely manner, but that if they were late there should be no fine based on their

contention that the commissioner changed its legal interpretation of the filing requirements in May 2008.

20. Previous complaint decisions establish that the commissioner of political practices has consistently interpreted the law to mean that a statewide initiative becomes a "ballot issue" upon approval of the form or petition by the secretary of state, not when sufficient signatures are gathered to qualify it for the ballot.

21. Complainant alleges that campaign finance reports filed by MIHC disclose substantial in-kind and monetary contributions (totaling \$267,984.09) from "SEIU 775 Montana." Complainant alleges that these contributions are listed under Schedule A, section 4 of the report form, which requires reporting of "Political Action Committee Contributions." Complainant notes that campaign finance reports filed by SEIU Montana PAC disclose no contributions made to MIHC during the same reporting periods covered by the reports. In their answer to the complaint, respondents acknowledge that MIHC should have reported the contributions, which were from SEIU Montana, under Schedule A, section 6 of the report form, which requires reporting of "Incidental Committee Contributions." Accompanying the answer filed by respondents was an amendment to the MIHC campaign finance reports, disclosing the amounts referenced above under section 6 instead of section 4 on Schedule A of the report form.

22. Complainant alleges that MIHC employed signature gatherers while trying to qualify I-159 for the ballot, but failed to include in its reports details

regarding who was paid to gather signatures and how much they were paid. In their answer, respondents contend that the amounts paid to signature gatherers were fully disclosed in MIHC campaign finance reports, listed as expenditures made to M & R Strategic Services (M & R) for "consulting." The answer explained that part of the services provided by M & R included hiring and paying signature gatherers, but the previously filed reports from MIHC did not itemize those as separately identified expenses in listing expenditures made to M & R. Instead, MIHC reported its expenditures for all services provided by M & R, which included expenses related to payments made to signature gatherers. MIHC provided additional information in a supplemental report filed on July 21, 2008, including the names and addresses of signature gatherers and the amounts paid to each signature gatherer.

23. In August 2005, a stipulation was approved by Judge Donald Molloy in Montana Public Interest Research Group, et al. v. Bob Brown, et al., United States District Court Cause No. CV 03-183-M-DWM. The lawsuit challenged Montana's signature gatherer disclosure requirements as set forth in § 13-27-112, MCA. Pursuant to the stipulation, the statute was declared unconstitutional to the extent it may be interpreted to require disclosure of the name and address of individual paid signature gatherers, and any enforcement of the statute that would require such information was enjoined by the court. However, the stipulation as approved by Judge Molloy did not affect the statute to the extent it requires disclosure of the amount paid to a signature gatherer. The commissioner of

political practices was not aware of the stipulation until after it had received the MIHC supplemental report referenced in Fact 22, providing additional information with respect to the payments made to signature gatherers.

24. Complainant alleges that MIHC reported receiving in-kind contributions in the form of time spent by SEIU and SEIU Montana staff, but that MIHC did not identify the contributions "as to [their] nature" in violation of ARM 44.10.513. Complainant alleges that MIHC was required to provide specific details regarding what type of services were provided by staff. In response, MIHC contends that it fully reported the value of the staff time provided by SEIU and SEIU Montana, including the value of costs, office overhead, staff time, benefits, and other expenses.

25. MIHC campaign finance reports disclose receipt of in-kind contributions from SEIU and SEIU Montana in the form of staff time and related expenses. The reports disclose the value of in-kind staff contributions from SEIU and SEIU Montana, identifying a) individual staff members and a portion of their salary and benefits based on the percentages of their time spent providing services with respect to MIHC, b) office overhead costs, and c) gas reimbursement. Although SEIU Montana filed a campaign finance report as an incidental political committee, SEIU did not file a statement of organization or a campaign finance report.

26. Complainant alleges that MIHC failed to report the nature of three debts amounting to \$98,424.70, owed to M & R Strategic Services. Complainant

acknowledges that the MIHC initial campaign finance report, filed on June 10, 2008, reported three debts owed to M & R for the amount listed above. However, citing ARM 44.10.535, complainant contends that the disclosure of the three debts should have included more detail and itemization as to the particular consulting services that were provided by M & R.

27. The MIHC campaign finance report, covering the period February 21 to June 5, 2008, discloses three debts owed to M & R in the following amounts: \$33,643.36 (incurred May 5, 2008), \$27,293.16 (incurred May 16, 2008), and \$37,488.18 (incurred June 5, 2008). The purpose for all three debts is described in the report as "consulting." On July 10, 2008, MIHC filed its second campaign finance report (also designated as a closing report) listing \$98,424.70 as an expenditure to M & R, to reflect payment of the three debts disclosed on the previous report. On the same date, MIHC faxed copies of billing statements from M & R to the commissioner of political practices.

### **STATEMENT OF FINDINGS**

#### **Claim 1**

Complainant alleges that both MIHC and SEIU Montana failed to file in timely manner statements of organization, designating a campaign treasurer and primary campaign depository, in violation of §§13-37-201 and 205, MCA, and ARM 44.10.405 and 44.10.413. Consideration of this allegation requires a review of the statutes establishing registration and reporting requirements for political committees that support or oppose statewide ballot issues.

A "political committee" is defined to include "a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure . . . to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue. . . ." Section 13-1-101(22)(b), MCA. A "person" includes a corporation, association, union, or other organization. Section 13-1-101(20), MCA.

The question arises: when did I-159 become a "ballot issue" for reporting purposes? The definition of the term is found in § 13-1-101(17), MCA, which provides:

(a) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue. (Emphasis added).

Applying the last clause of subsection (b) of the above definition, it is clear that I-159, which was a statewide issue, became a "ballot issue" for campaign reporting purposes on May 12, 2008, when the secretary of state approved the form of the petition, thereby authorizing the gathering of signatures. See Fact 2.

The definition in subsection (17) was amended in 2007 by dividing it into its existing two parts, (a) and (b). Prior to the amendment, the definitional language was exactly the same, with the exception of the underscored and italicized language above in the last clause of the definition, which provided as follows:

... except that a statewide ballot issue becomes a “ballot issue” upon approval by the secretary of state of the form of the petition or referral.

This slight clarification to the language did not substantively change the definition, other than to clarify that transmission of the form of the petition by the secretary of state to the person who proposed the issue must occur before a statewide issue is considered a ballot issue. The amendment also did not change the interpretation of the commissioner of political practices concerning registration and reporting requirements related to statewide ballot issues. Contrary to respondents’ contentions summarized in Fact 19, both before and after the 2007 amendment, the commissioner interpreted the language to mean that for reporting purposes a statewide ballot issue exists once the secretary of state has approved the form of the petition, thus authorizing the gathering of signatures. For example, in Matter of the Complaint Against Canyon Ferry Road Baptist Church, Summary of Facts and Statement of Findings (March 3, 2006), former Commissioner Gordon Higgins, citing the previous version of the definition of “ballot issue” in § 13-10-101(17), MCA, stated: “. . . the form of the petition for CI-96 was approved by

the office of the Secretary of State on April 29, 2004; therefore CI-96 was a 'ballot issue' when the Church engaged in its signature-gathering activities." *Id.* At 6.

Clearly, MIHC, SEIU Montana, and SEIU Montana PAC all qualify as political committees under these definitions, based on their financial activities related to their support of I-159. The question to be addressed is this: when were their respective registration and reporting requirements triggered?

The statute requiring a political committee to register with the commissioner of political practices by filing a statement of organization, naming a campaign treasurer and providing other organizational information is § 13-37-201, MCA, which provides:

**Campaign treasurer.** Except as provided in 13-37-206, each candidate and each political committee shall appoint one campaign treasurer and certify the full name and complete address of the campaign treasurer pursuant to this section. A candidate shall file the certification within 5 days after becoming a candidate. *A political committee shall file the certification, which must include an organizational statement and the name and address of all officers, if any, within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first.* The certification of a candidate or political committee must be filed with the commissioner and the appropriate election administrator as specified for the filing of reports in 13-37-225. (Emphasis added).

Applying the statutory provisions referenced above, it is apparent that two things must occur to trigger registration and reporting requirements related to a statewide ballot issue. First, the secretary of state must prepare the form of the petition and transmit it to the person who submitted the proposed issue; second, a political committee must make or authorize an expenditure. If a political

committee made or authorized an expenditure *before* an issue became a ballot issue under § 13-1-101(17), MCA, the committee must file a statement of organization within five days after the secretary of state prepared the form of the petition and transmitted it to the person who submitted the proposed issue.

A. Timeliness of Filing of Statements of Organization

*MIHC*

MIHC filed its statement of organization on May 29, 2008. See Fact 11. According to its initial campaign finance report filed with the commissioner of political practices, MIHC made its first expenditure on May 16, 2008. Because I-159 became a ballot issue on May 12, 2008, (see Fact 2) MIHC had five days after making its first expenditure to file its statement—that is, no later than May 21, 2008. MIHC filed its statement of organization eight days too late, in violation of § 13-37-201, MCA.

*SEIU Montana*

SEIU Montana filed its statement of organization on July 16, 2008. See Fact 15. According to a campaign finance report filed with the commissioner of political practices, SEIU Montana made its first expenditure on February 29, 2008. SEIU Montana had five days after I-159 became a ballot issue to file its organizational statement—that is, no later than May 17, 2008. SEIU Montana filed its statement nearly two months too late.

*SEIU Montana PAC*

SEIU Montana PAC filed its statement of organization on June 28, 2006. See Fact 13. According to a campaign finance report filed with the commissioner of political practices, SEIU Montana PAC made expenditures in January, March, and April 2008. SEIU Montana PAC filed its statement of organization in timely manner.

*B. Timeliness of Filing of Campaign Finance Reports*

Section 13-37-226, MCA, establishes deadlines for candidates and political committees to file periodic campaign finance reports. Section 13-37-228, MCA, specifies the time periods that each report must cover. The commissioner of political practices makes available campaign finance report calendars for the different types of political committees, including statewide ballot issue committees (MIHC), statewide incidental committees (SEIU Montana), and other political committees (SEIU Montana PAC).

*MIHC*

Based on the statutory deadlines for reporting by statewide ballot issue committees, MIHC filed its campaign finance reports in timely manner. See Facts 10 and 12.

*SEIU Montana*

On July 16, 2008, SEIU Montana filed its initial and closing campaign finance report on one form covering the period February 21 through June 25, 2008. The committee failed to provide specific dates of expenditures, referring

instead to a timeframe of February to June 2008. SEIU Montana should have filed a report by June 8, 2008, the first deadline for an incidental committee reporting after I-159 became a ballot issue. See Facts 2 and 16.

*SEIU Montana PAC*

Based on the statutory deadlines for reporting by political committees, SEIU Montana PAC filed its pre-primary report for the period January 1 to May 18, 2008, in timely manner on May 22, 2008. Its report for the period May 18 to June 18, 2008, should have been filed by June 23, 2008; however, the report was filed several weeks late, on July 11, 2008. Other SEIU Montana PAC reports were filed on time, with the exception of its year-end report (for activity through December 31, 2008). That report was due January 31, 2009, but was not filed until February 2, 2009.

*SEIU*

SEIU (the national organization) made an in-kind contribution to MIHC in the form of staff time, thereby becoming an incidental political committee. ARM 44.10.327(2)(c). SEIU did not file a statement of organization or a campaign finance report. See Fact 25. Montana law authorizes the commissioner of political practices to adopt rules requiring reporting by incidental political committees. Section 13-37-226(6), MCA. The commissioner has adopted ARM 44.10.411, which requires incidental committees to file a statement of organization and establishes a schedule for filing of periodic campaign finance reports. SEIU did not comply with these reporting requirements.

C. Other Statutory and Regulatory Violations

Section 13-37-205, MCA, requires a political committee to designate a primary campaign depository for the purpose of depositing contributions received and making expenditures. According to the statute, the depository must be identified "at the same time and with the same officer with whom the . . . committee files the name of the . . . committee's campaign treasurer pursuant to 13-37-201," in other words, when the committee files its statement of organization. MIHC and SEIU Montana violated this statute when they filed their statements late.

Claim 2

Complainant alleges that because MIHC failed to designate a campaign treasurer in timely manner, it permitted someone, in effect, to serve as campaign treasurer before making a designation, in violation of § 13-37-203, MCA. That statute provides that an individual "may not serve as a campaign or deputy campaign treasurer or perform any duty required of a campaign or deputy campaign treasurer of a candidate or political committee until the individual has been designated and the individual's name certified by the candidate or political committee." MIHC, SEIU Montana, and Jacquie Helt violated the statute because Helt performed duties for MIHC and SEIU Montana that a treasurer would normally perform before being officially designated as treasurer of both committees. See Facts 11 and 15.

### Claim 3

Complainant alleges that MIHC failed to provide proper attribution language by including the words "paid for by" on its website and on certain campaign fliers, in violation of § 13-35-225, MCA. Subsection (1) of the statute provides:

**Election materials not to be anonymous -- statement of accuracy.**

(1) All communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, internet website, or other form of general political advertising must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication. When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign. In the case of a political committee, the attribution must be the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer.

To comply with the statute, MIHC communications should have included the attribution language "paid for by" followed by the name of the committee, name of the committee treasurer, and address of either the committee or its treasurer.

While the words "paid for by" were not included on the website or the campaign fliers, all other identifying and contact information for MIHC was included. See Facts 17 and 18. In Matter of the Complaint Against CI-97 Stop Overspending Montana, et al., Summary of Facts and Statement of Findings (April 15, 2008), Commissioner Dennis Unsworth decided not to prosecute an alleged technical violation of the attribution requirements of § 13-35-225(1), MCA, where he found

that, despite the violations, the attribution language did not deprive the public of notice regarding which political committee paid for the campaign materials and how the committee could be contacted. For similar reasons, a civil prosecution of the technical violations of the attribution requirements is not justified in this particular case.

#### Claim 4

Complainant alleges that MIHC and SEIU Montana received and deposited contributions and made expenditures before filing their respective organizational statements, in violation of § 13-37-207, MCA, and ARM 44.10.503. Subsection (1) of § 13-37-207, MCA, requires all funds received by a campaign treasurer to be deposited within five days of receipt in a campaign depository designated pursuant to § 13-37-205, MCA. ARM 44.10.503(1) provides that no contribution received or expenditure made by a political committee shall be deposited or expended except by the appointed campaign treasurer through the designated campaign depository. MIHC and SEIU Montana violated the statute and rule when they engaged in financial transactions before officially appointing a treasurer and designating a campaign depository by filing their statements of organization.

#### Claim 5

Complainant alleges that MIHC improperly reported substantial in-kind contributions (amounting to \$267,984.09) from SEIU Montana under Schedule A, section 4 of the campaign finance report form, which requires disclosure of PAC contributions, and notes that SEIU Montana PAC did not report making those

contributions to MIHC during its corresponding reporting periods. In response, MIHC acknowledged that the contributions should have been reported under Schedule A, section 6 of the form, which requires reporting of incidental committee contributions such as those received from SEIU Montana. MIHC amended its campaign finance reports to correct the oversight. Because the contributions were fully disclosed and simply had been entered in the wrong part of the report form, no violation is found.

#### Claim 6

Complainant alleges that MIHC failed to disclose sufficient details regarding amounts paid to signature gatherers. Section 13-27-112, MCA, requires a person who employs a paid signature gatherer to file a report with the commissioner of political practices "containing those matters required by Title 13, chapter 37, part 2" for, *inter alia*, ballot issue committees. According to the statute, the reports "must include the amount paid to a paid signature gatherer." Section 13-27-112(2), MCA.

MIHC disclosed expenditures it had made to M & R Strategic Services, a consulting firm that had hired and paid signature gatherers to obtain signatures for I-159. Reports from MIHC did not itemize the amounts of the expenditures made to M & R that were for signature-gathering expenses rather than other consulting services. In July 2010, MIHC filed a supplemental report disclosing the names and addresses of signature gatherers and the amounts paid to each. See Fact 22. Apparently neither the attorney for MIHC nor the commissioner was aware of a

stipulation approved by Federal District Judge Donald Molloy in August, 2005, which interprets § 13-27-112, MCA, to require only the disclosure of amounts paid signature gatherers without disclosure of their names and addresses. See Fact 23. MIHC provided sufficient information regarding amounts paid to signature gatherers and, thus, did not violate the statute.

Claim 7

Complainant alleges that MIHC failed to report the "nature" of in-kind contributions received from SEIU and SEIU Montana, in violation of ARM 44.10.513. The rule describes reporting requirements for in-kind contributions:

**IN-KIND CONTRIBUTION, REPORTING** (1) For the purposes of Title 13, chapter 37, and these rules, an in-kind contribution shall be reported as follows:

(a) A candidate or political committee shall report an in-kind contribution on the appropriate reporting schedule and, in addition to the reporting requirements of ARM 44.10.511, shall identify it as to its nature.

(i) The total value of the services, property, or rights contributed in-kind shall be deemed to have been consumed in the reporting period in which received.

(b) The value of an in-kind contribution shall be determined as follows:

(i) It shall be reported at its fair market value at the time of the contribution; or

(ii) It shall be reported at the difference between the fair market value at the time of the contribution and the amount charged the contributee; or

(iii) It shall be reported at the actual monetary value or worth at the time of the contribution; or

(iv) If due to extraordinary circumstances none of these provisions would be appropriate or no reasonable fair market value can be established, it shall be sufficient to report a precise description of such in-kind contribution so received.

(c) Fair market value shall be the retail price of such services, property, or rights in the market from which it ordinarily would have been purchased by the contributee at the time of its contribution.

MIHC reported the value of SEIU and SEIU Montana staff contributions, naming individual staff members and the percentage of their time and corresponding value of their salaries and benefits attributable to providing services to MIHC. The reports also disclosed a value for office overhead costs and for gas reimbursement. The rule requires reporting of the fair market value of an in-kind contribution.

MIHC reported the value of staff time and other costs contributed by SEIU and SEIU Montana, including a percentage of staff time contributed and a corresponding proportion of salaries and benefits, office overhead costs, and costs for gas reimbursement. MIHC reports adequately identified the "nature" of in-kind contributions it received.

#### Claim 8

Citing ARM 44.10.535, complainant alleges that MIHC did not adequately disclose the nature of three debts that total more than \$98,000 owed to M & R Strategic Services for consulting services. See Fact 26. ARM 44.10.535(2) requires a reporting committee to report the full name and mailing address of those to whom a debt is owed, including the amount, date contracted, and nature of each debt or obligation. MIHC accurately reported the debts, listing M & R's name and

mailing address, specifying the date each debt was incurred, and describing the purposes of each as "consulting." The MIHC closing report filed on July 10, 2008, reports an expenditure that fully paid the debts. See Fact 27.

In 2008, § 13-37-230, MCA, which provides for disclosure of expenditures, did not require the reporting of details regarding amounts paid to consultants, advertising firms, and other entities for services performed for committees and candidates. The statute was amended in 2009 to add the following language:

(2) Reports of expenditures made to a consultant, advertising agency, polling firm, or other person that performs services for or on behalf of a candidate or political committee must be itemized and described in sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was made.

Although the statute was amended to require more specificity in the description of services performed by firms like M-&R, it was not enacted until 2009; thus, the MIHC 2008 campaign finance reports of debts owed was in compliance in all respects with the laws and rules in effect at that time.

### CONCLUSION

Following is a summary of the violations found in this case:

#### MIHC

- Filed its statement of organization eight days late, in violation of § 13-37-201, MCA.
- Violated § 13-37-205, MCA, requiring designation of a campaign depository, when it filed its statement of organization late.

- MIHC and its treasurer, Jacquie Helt, violated § 13-37-203, MCA, when Helt performed duties for MIHC that a treasurer would normally perform before being officially designated as treasurer.
- Violated the attribution language requirements of § 13-35-225(1), MCA; however, because sufficient identifying and contact information was provided on the campaign materials, a civil prosecution of this violation will not be pursued.
- Violated § 13-37-207, MCA, by engaging in campaign-related financial transactions before officially appointing a treasurer and designating a campaign depository by filing a statement of organization.

SEIU Montana

- Filed its statement of organization nearly two months late, violating § 13-37-201, MCA.
- Failed to file certain campaign finance reports, thereby violating §§ 13-37-226 and 13-37-228, MCA.
- Violated § 13-37-205, MCA, requiring designation of a campaign depository, when it filed its statement of organization late.
- SEIU Montana and its treasurer, Jacquie Helt, violated § 13-37-203, MCA, when Helt performed duties for SEIU Montana that a treasurer would normally perform before being officially designated as treasurer.

- Violated § 13-37-207, MCA, by engaging in campaign-related financial transactions before officially appointing a treasurer and designating a campaign depository by filing a statement of organization.

SEIU Montana PAC

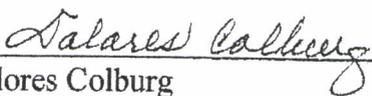
- Filed two campaign finance reports late, violating § 13-37-226, MCA.

SEIU

- Failed to file a statement of organization and an incidental committee campaign finance report, in violation of ARM 44.10.411.

Therefore, based on the preceding Summary of Facts and Statement of Findings, sufficient evidence is found to conclude that MIHC, SEIU, SEIU Montana, and SEIU Montana PAC violated Montana campaign finance and reporting laws and that a civil penalty action under § 13-37-128, MCA, is warranted.

Dated this 31st day of August, 2011.

  
\_\_\_\_\_  
Dolores Colburg  
Deputy Commissioner of Political Practices

MacNaughton, Jaime

Exhibit No. 3Date: 3/2/15Bill No. HB466Dem  
Letter

From: Motl, Jonathan  
 Sent: Thursday, February 26, 2015 8:39 AM  
 To: 'bennettforhouse@gmail.com'; 'brownformontana@gmail.com'; Court, Virginia (Rep); Curdy, Willis (Rep); 'kimberly.dudik@gmail.com'; Dunwell, Mary Ann (Rep); 'jennyeck4mt@gmail.com'; Ellis, Janet (Rep); Funk, Moffie (Rep); Hayman, Denise (Rep); 'elliehillhd94@gmail.com'; Hunter, Chuck (Rep); 'tomjacobsonmt@gmail.com'; Karjala, Jessica (Rep); Kelker, Kathy (Rep); Kipp, George (Rep); 'liesered@yahoo.com'; 'kelly@kellyformontana.org'; 'ediemcclafferty@gmail.com'; McConnell, Nate (Rep); 'mehlhoff@yahoo.com'; 'pnoonan73@yahoo.com'; Olsen, Andrea (Rep); Pease-Lopez, Carolyn (Rep); Pope, Christopher (Rep); 'jeanbigskybigwin@gmail.com'; Peppers, Rae (Rep); Perry, Zac (Rep); 'james.a.person@gmail.com'; Pierson, Gordon (Rep); Schreiner, Casey (Rep); 'repbsmith@gmail.com'; 'mtsteenbergbresnan.net'; Swanson, Kathy (Rep); 'tropila@mt.net'; 'Rep.Susan.Webber@gmail.com'; 'KathleenHD61@bresnan.net'; 'nwilsonhd95@gmail.com'; 'tomwoods4mt@gmail.com'  
 Cc: Baker, Mary; MacNaughton, Jaime; Sanddal, Vanessa  
 Subject: Mike Miller speech on the floor yesterday.

**Dear Democratic House Member:**

I just listened to Representative Mike Miller's floor speech on HB 446. It makes several stunningly false statements. These are as follows:

1. That "47 legislators" paid a \$100 fine because of a computer crash. That is false. There was no COPP computer crash, Miller is referring to a statewide computer server outage that occurred on June 23, 2014, affecting everyone dealing with the State. The \$100 fine originated from the *Bowen Greenwood v. Hoklin* complaint filed months later (August 4, 2014) against one candidate for failure to file a campaign finance report. Because there were a number of additional candidates (of both parties) who had failed to file their campaign finance reports we expanded the complaint to cover all candidates. We did this because a failure to file a campaign finance reports results in the candidate being removed from the ballot (see 13-37-126) and the date to file was August 14, 2014. The complaint was fortunate because each candidate could be notified and provided an opportunity to file the missing report and stay on the ballot. There were 42 candidates for public office (legislature, JP, other offices) addressed by the Decision. Three candidates were removed from the ballot and six were found to have properly filed (or were excused) leaving 33 candidates at issue, all of whom filed the missing reports and stayed on the ballot. Of those 33 candidates, 28 have paid a fine (uniformly set at \$100 a missing report) and 5 are outstanding.
2. That Mr. Miller was treated unfairly in litigation. That too is remarkably false. Mr. Miller's Sufficiency Decision concerned the 2010 elections and it was advanced to litigation in order to conform to statute of limitations requirements. Mr. Miller was provided a courtesy copy of the complaint prior to filing and provided an opportunity to accept service by mail. Mr. Miller did not accept service and it took almost three months involving a half dozen failed contacts by the COPP investigator (and eventually retention of a process server) before Mr. Miller was even served with the complaint. Mr. Miller's claim of cooperative document production is also false. Mr. Miller did not produce documents during the COPP investigation but only did so after litigation was joined.
3. Please note that the COPP has consistently declined to discuss Mr. Miller's settlement with this office, out of respect for the fact that the Legislature was in session.

I cannot tell you how disappointed I am in this speech by Representative Miller. The COPP regards candidates as one of the two distinct groups of people we serve, the other being the people of Montana. In that sense the staff of this Office will respond immediately to candidate phone calls, assist in filing reports and do whatever we can to keep candidates in line with reporting and disclosure. The "47 legislators" comment is just wrong and any disrespect for Mr. Miller during litigation is simply false.

I am in depositions all day today and I cannot come to the House to talk about this. Mary Baker, Jaime MacNaughton and Vanessa Sanddal are coming over however and will be in the lobby to talk to anyone who wishes about this.

Jonathan Motl  
Commissioner of Political Practices

Inconsistencies – (prior to Commissioner Motl compared to Motl actions)

Inconsistencies

- Commissioner of Political Practices (hereafter "COPP") never initiated complaints
- COPP refused to investigate informal complaints
- Commissioner proposes an "apology" as part of the penalty (SAVA Hearing of 12-10-13)
- Commissioner was never directly involved with investigations
- Investigation files were confidential and only available after compliance with COPP policy on requesting access which included a right to know analysis for privacy purposes<sup>1</sup>
- COPP never worked specifically to create a legal "precedent" to justify its actions
- Commissioner never "re-opened" a decision for the purpose of expanding the original allegations of a complaint
- Consistently held speech was not express advocacy if it was susceptible to any other interpretation
- Never targeted candidates for using a common vendor
- For purposes of pursuing a penalty when a violation was found, the matter was referred to the county attorney in the county where the respondent (or violator) resided. If the violation was by a ballot committee, the matter was referred to the county of origin for the ballot committee.
- The Commissioner never solicited complaints
- The Commissioner has refrained from making personal judgments about activities – most recently Motl noted a school board's efforts on a bond issue were "diligently" educational
- Never retained the services of an expert witness prior to issuing a decision the Commissioner anticipated would result in litigation
- Never paid an expert witness "stand-by" fees in anticipation of litigation
- Complaints were handled in the order they were received. This changed somewhat when Commissioner Hensley came into the office in that she preferred to address easy complaints quickly; however, addressed more complex complaints in the order they were received. That practice continued with Commissioners Gallik and Murry.
- Never charged candidates for copies of documents from their own campaign file
- Never charged a fee for electronic copies of documents
- Never investigated complaints based on hearsay (See March 2012 dismissal of *Swingley v. Dutton* compared to October 2013 decision on *Wells v. Lambert*)

<sup>1</sup> COPP - Office Management Policy Number 2.2 - Confidentiality of Investigative Documents - Adopted

ETHICS  
OPINION

**From:** Motl, Jonathan [mailto:JMotl@mt.gov]  
**Sent:** Wednesday, April 16, 2014 5:01 PM  
**To:** Betsy Brandborg  
**Subject:** request for opinion as to application of Rule 3.7, Rules of Professional Conduct

Dear Betsy ---

I request an opinion, by the appropriate body, as to the application of Rule 3.7 of the Rules of Professional Conduct to the below described litigation conduct of Jonathan Motl, attorney at law.

Situation On Which Request is Based

The office of the Commissioner of Political Practices (COPP) is a small state agency with a limited budget and a staff of six people. Two of the six COPP staff are attorneys licensed to practice law in Montana. The COPP staff attorneys are Jonathan Motl (also Commissioner) and Jaime MacNaughton.

The Commissioner's duties include accepting complaints raising allegations of campaign practice violations. The Commissioner's staff investigates these complaints and the Commissioner then drafts and writes a Decision as to whether or not sufficient facts exist to show campaign practice violations. The final Decision is a non-binding agency decision. However, "usually" the Decision is a sufficient platform to allow the Commissioner and the candidate or political committee addressed by the complaint to settle the matter by the negotiation of a fine. The settlement is a final resolution of the complaint.

There is no "usual" in the COPP Office right now, as it is dealing with a number of violations stemming from the actions of Western Tradition Partnership, a non-profit corporation that championed "dark money" use in Montana's 2010 elections. The Commissioner has issued a number of Decisions on this issue and there has been no interest by the parties in settling the Decisions. This means that Decisions have to be advanced to prosecution in state district court where a judge can hear and decide the matter. The COPP has already filed 9 civil enforcement actions, based on Decisions, against nine 2010 candidates for public office. In total the Office will file 15-20 such enforcement actions.

Each enforcement action is filed as a civil complaint in the 1<sup>st</sup> Judicial District. The complaints are filed under a heading listing "Jonathan Motl, Jaime MacNaughton" as attorneys for the Commissioner of Political Practices. Jonathan Motl will be a witness at the enforcement trial because he prepared the underlying administrative decision.

Planned Role for Jonathan Motl

This Office intends to use Jonathan Motl in an active litigation role in all of the district court enforcement actions. Jonathan Motl will take and defend depositions (other than his own), prepare and send discovery, interview and prepare witnesses and generally work on the case. Because Rule 3.7 states that "a lawyer shall not advocate at a trial in which the lawyer

is” a witness, Jonathan Motl will not appear as trial lawyer or advocate as a lawyer in any trial of the any enforcement action. Jaime MacNaughton (who will also be involved in discovery) will act as the trial lawyer. Jonathan Motl will appear in court as the representative of the party and will advocate as a witness for the party. The COPP hereby informs that it does not have the resources to engage another attorney and it is therefore dependent on use of Jonathan Motl and Jaime MacNaughton in the manner set out above.

Request for Determination

The COPP requests a determination that its attorney, Jonathan Motl, is in compliance with Rule 3.7 of the Rules of Professional Conduct when he acts as set out above. To any extent necessary the COPP invokes the substantial hardship provision of subparagraph 3 of the Rule.

Jonathan Motl  
Commissioner of Political Practices

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## ETHICS OPINION 140519

### Facts:

The office of the Commissioner of Political Practices ("COPP") is a small state agency with a limited budget and a staff of six people. Two of the six COPP staff are attorneys licensed to practice law in Montana. COPP staff attorneys are Jonathan Motl (also Commissioner) and Jaime MacNaughton.

The Commissioner investigates complaints that allege campaign practice violations. The Commissioner's staff investigates these complaints and the Commissioner then drafts and writes a decision as to whether or not sufficient facts exist to show campaign practice violations. The final decision is a non-binding agency decision. The decision, however, can be a sufficient platform to allow the Commissioner and the candidate or political committee addressed by the complaint to settle the matter by the negotiation of a fine. The settlement is a final resolution of the complaint.

COPP is dealing with a number of complaints over Western Tradition Partnership, a nonprofit organization that is alleged to have been connected with "dark money" use in Montana's 2010 elections. The Commissioner has issued a number of decisions on this issue, which have not been settled and must now be prosecuted in state district court. COPP has filed nine civil enforcement actions against nine 2010 candidates for public office, and anticipates filing more.

COPP files each enforcement action as a civil complaint in the 1<sup>st</sup> Judicial District. The complaints list "Jonathan Motl and Jaime MacNaughton" as attorneys for the Commissioner of Political Practices.

COPP intends to use Jonathan Motl in an active litigation role in all of the district court enforcement actions. Mr. Motl will take and defend depositions (other than his own), prepare and send discovery, interview and prepare witnesses, and generally work on the case. Mr. Motl will not appear as trial lawyer or advocate as a lawyer in any trial of any enforcement action. Jaime MacNaughton (who will also be involved in discovery) will act as the trial lawyer. Mr. Motl will appear in court as the representative of the party and will advocate as a witness for the party. COPP indicates that it does not have the resources to engage another attorney and it is therefore dependent on use of Jonathan Motl and Jaime MacNaughton in the manner set out above.

COPP requests a determination that its attorney, Jonathan Motl, is in compliance with Rule 3.7, Mont.R.Prof.Cond., when he acts as set out above.

**Short Answer:**

Yes, COPP's intention to use Mr. Motl in the civil enforcement actions as an advocate and witness is appropriate under Rule 3.7, Mont. R. Prof. Cond. (sometimes referred to as the "lawyer-witness rule" or the "advocate-witness rule.") Rule 3.7(a) addresses advocating "at trial." Case law construing the rule generally limits disqualification of a lawyer-witness as trial counsel but not from participating in pretrial matters. Rule 3.7(b) makes it clear that disqualification is not automatically imputed to partners and associates of the disqualified lawyer-witness at trial, unless a separate conflict of interest is present.

**General Discussion:**

Rule 3.7, Mont.R.Prof.Cond., states:

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

As noted in Montana Formal Ethics Opinion 050317, the prohibition against a lawyer from serving as advocate and testifying as a witness in the same matter is essentially aimed at eliminating confusion about the lawyer's role. As an advocate, the lawyer's task is to present the client's case and to test the evidence and arguments put forth by the opposing side. A witness, however, provides sworn testimony concerning facts about which he or she has personal knowledge or expertise. When a lawyer takes on both roles, jurors are likely to be confused about whether a statement by an advocate witness should be taken as proof or as an analysis of the proof (see Comment 2, below).

Rule 3.7 is designed to preserve the distinction between advocacy and evidence and to protect the integrity of the advocate's role as an independent and objective proponent of rational argument. This is discussed in the Comments to the Model Rules:

[1] Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.

[2] The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

See also *Restatement (Third) of the Law Governing Lawyers*, §108 cmt. b (2000) ("combined roles risk confusion on the part of the factfinder and the introduction of both impermissible advocacy from the witness stand and impermissible testimony from counsel table.")

Further, the rule protects trial counsel from having to cross-examine opposing counsel and impeach his or her credibility, even if only on the obvious ground of interest in the outcome of the case. *See, e.g., Ford v. State*, 628 S.W.2d 340 (Ark. Ct. App. 1982) (opposing counsel handicapped in cross-examining and arguing credibility of lawyer-witness); Model Code EC 5-9 ("If a lawyer is both counsel and witness, he becomes more easily impeachable for interest and thus may be a less effective witness. Conversely, the opposing counsel may be handicapped in challenging the credibility of the lawyer when the lawyer also appears as an advocate in the case.")

As noted, Rule 3.7(a) prohibits a lawyer who is likely to be a necessary witness from "acting as an advocate at trial." The majority of courts and ethics committees construing the rule have permitted pretrial preparation work by an attorney who likely will serve as a witness at trial. *See, e.g., Culebras Enter. Corp. v. Riveras-Rios*, 846 F.2d 94 (1<sup>st</sup> Cir. 1988) (lawyers who performed substantial pretrial work in case in which, had it gone to trial, they would have been called as witnesses but would not have served as trial counsel did not violate Rule 3.7 because they did not assume, and did not plan to assume, "advocate at trial" role); *United States v. Castellano*, 610 F. Supp. 1359 (S.D.N.Y. 1985) (lawyer for alleged organized

crime group may participate fully in pretrial stage even though he will probably be called as witness, and other defense counsel are free to consult with him during trial); *United States v. Johnston*, 690 F.2d 638 (7th Cir. 1982) (prosecutor who testified at pretrial suppression hearing is not automatically disqualified from trying case); *Merrill Lynch Bus. Fin. Servs. v. Nudell*, 239 F. Supp.2d 1170 (D. Colo. 2003) (since the rule's purpose is to avoid jury confusion at trial, it does not automatically require that lawyers be disqualified from pretrial activities, such as participating in strategy sessions, pretrial hearings, settlement conferences, or motions practice; however, continued pretrial involvement cannot be used later as basis to argue that disqualification at trial works undue hardship); *Main Events Prods. v. Lacy*, 220 F. Supp.2d 353 (D.N.J. 2002) (companies' attorney would be properly disqualified as necessary witness but was appropriately allowed to represent client in pretrial matters; disqualification rule is designed to avoid confusing jury about what is testimony and what is argument); *Massachusetts Sch. of Law at Andover Inc. v. Am. Bar Ass'n*, 872 F. Supp. 1346, 1377, *aff'd*, 107 F.3d 1026 (3d Cir. 1997) (while plaintiff law school's administrators and faculty were disqualified by Rule 3.7 from serving as trial counsel, they were not prohibited from "attending any and all depositions, acting as an advisor, or as a consultant, or making 'the snowballs for somebody else to throw'"); *DiMartino v. Dist. Court*, 66 P.3d 945 (Nev. 2003) (rule doesn't necessarily disqualify counsel from pretrial proceedings; holding otherwise to permit total disqualification would invite rule's misuse as tactical ploy); *Cunningham v. Sams*, 588 S.E.2d 484, 487 (N.C. Ct. App. 2003) ("even though an attorney may be prohibited from being an advocate during trial, the attorney may, nevertheless, represent his client in other capacities, such as drafting documents and researching legal issues"); *Heard v. Foxshire Assocs.*, 806 A.2d 348 (Md. Ct. Spec. App. 2002) (rule applies only to trials and does not preclude giving of evidence by attorney of record for party before administrative agency). See also ABA Informal Ethics Op. 89-1529 (1989) (lawyer who expects to testify on contested issue at trial may represent party in pretrial proceedings, provided that client consents after consultation and lawyer reasonably believes that representation will not be adversely affected by client's interest in expected testimony); Colorado Ethics Op. 78 (revised 1997) (rule permits lawyer who may be necessary witness to continue to represent client "in all litigation roles short of trial advocacy"); Michigan Informal Ethics Op. CI-1118 (1985) ("advocate" in context of Rule 3.7 is best defined as person who "participates as a spokesperson for the client in open court"; lawyer who in his capacity as certified public accountant will be providing expert testimony in divorce case may also serve as co-counsel to lawyer from another firm); Utah Ethics Op. 04-02 (2004) (if pretrial representation is not forbidden by another rule, lawyer who is necessary witness may represent client in pretrial stage and retain another lawyer to handle trial).

The Committee agrees with the majority of courts and ethics committees construing Rule 3.7(a). If Mr. Motl is a necessary witness, Rule 3.7(a) prohibits him from "acting as an advocate at trial." However, even though it is likely he will serve as a witness at trial, Mr. Motl is permitted to participate in pretrial matters such as pleadings, motions, and other papers, taking and defending depositions (other than his own), preparing and sending discovery, interviewing and preparing witnesses, appearing at and participating in hearings, and other work leading up to trial.

Rule 3.7(b) does not extend the prohibition on lawyer-witnesses to the partners and associates of the testifying lawyer such as other counsel for COPP. Comment [5] to Model Rule 3.7 notes that the Rule does not automatically forbid lawyers to act as advocates in a trial where other lawyers from the same firm are testifying as necessary witnesses. The comment explains that it is unlikely the trier of fact will be misled under these circumstances. Comments [6] and [7], however, encourage lawyers to stay alert to the conflicts of interest that may arise when an attorney, or a lawyer with whom the attorney is associated, is a necessary witness. Counsel ought to resolve such conflicts in accordance with Rules 1.7 and 1.9.

Cases construing the rule generally support the position that disqualification is not imputed to other associated attorneys. See, e.g., *Brown v. Daniel*, 180 F.R.D. 298 (D.S.C. 1998) (no disqualification of entire firm even though partner in firm would be necessary witness); *Ramsay v. Boeing Welfare Benefit Plan Comm.*, 662 F. Supp. 968 (D. Kan. 1987) (guided by Rule 3.7(b), court refused to disqualify firm from representing plaintiff whose wife was firm member and likely witness; any perception of testifying lawyer's interest is "attributable to her role as spouse," rather than her status as lawyer); *Syscon Corp. v. United States*, 10 Cl. Ct. 200 (Cl. Ct. 1986) (refusing to disqualify lawyer whose partner was general counsel and major stockholder in plaintiff company, where partner's testimony, if any, would be peripheral); *Owen & Mandolfo v. Davidoff of Geneva Inc.*, 602 N.Y.S.2d 369 (N.Y. App. Div. 1993) (under post-rules amendment to state's code, no disqualification of law firm in arbitration proceeding; even though lawyer who was closely involved in design and construction project at issue would be testifying, colleague who was "of counsel" to firm would be handling proceeding); see also *Restatement (Third) of the Law Governing Lawyers*, §108 cmt. b (2000) (any other lawyer in testifying lawyer's firm may serve as advocate despite disqualification so long as representation would not involve other conflict of interest such as giving adverse testimony).

Where, as here, the result would be to bar an entire government office from prosecuting cases, courts generally are even more hesitant to impute disqualification of a lawyer-witness to other lawyers in the office. See, e.g., *U.S. v. Watson*, 87 F.3d 927 (7<sup>th</sup> Cir. 1996) (U.S. attorney's office may prosecute cases where the office has interviewed a suspect and the statement is at issue); *In re Harris*, 934 P.2d 965 (Kan., 1997) (Rule does not disqualify deputy disciplinary counsel from prosecuting case in which another disciplinary counsel is a witness); *State ex rel. Macy v. Owens*, 934 P.2d 343 (Okla. Crim. App. 1997) (where two district attorneys were likely to be necessary witnesses, the entire district attorney's office could not be disqualified because the office is required by law to prosecute all crimes within the district and Rule 3.7(b) specifically allows other lawyers in the office to handle trial); *State v. Schmitt*, 102 P.3d 856 (Wash. Ct. App. 2004) (*ibid*).

For these reasons, under Rule 3.7(b), disqualification of Mr. Motl from serving as trial counsel is not imputed to other COPP counsel, unless a separate conflict of interest is present. The facts presented do not suggest that COPP's trial counsel would have a conflict in calling Mr. Motl as a witness at trial. However, counsel are encouraged to be mindful of any circumstances that might give rise to such conflicts.

Finally, as other authorities note, Rule 3.7 is used in disqualification motions far more than it is used in discipline. In this regard, paragraph 21 of the Preamble to the Montana Rules is an appropriate reminder that:

The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies....  
Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons.

Disqualification motions can be extremely burdensome, expensive, and time-consuming. So, the potential for abuse as a litigation tactic is well-recognized. See, e.g., *Kalmanovitz v. G. Heileman Brewing Co.*, 610 F. Supp. 1319 (D. Del. 1985) (motions to disqualify "are often disguised attempts to divest opposing parties of their counsel of choice"), *aff'd*, 769 F.2d 152 (3d Cir. 1985); *Council for Nat'l Register of Health Serv. Providers v. Am. Home Assurance Co.*, 632 F. Supp. 144 (D.D.C. 1985) (noting potential for tactical abuse of disqualification motions, court held that where lawyers testimony may be relevant but not necessary, "totality of circumstances," including client's desires, must be considered); *Devins v. Peitzer*, 622 So. 2d 558 (Fla. Dist. Ct. App. 1993) (refusing to disqualify lawyer

for estate merely because contestants announced intention to call him as adverse witness on their own behalf, court rejected use of rule as means of removing opposing counsel by calling him as witness); *Klupt v. Krongard*, 728 A.2d 727 (Md. 1999) (courts "will take a hard look" at disqualification motions out of concern that movant will use motion as tactical ploy); *May v. Crofts*, 868 S.W.2d 397 (Tex. App. 1993) (refusing to disqualify lawyer who represented proponents of a will in a will contest against allegations of their, and his, undue influence despite plaintiff's assertion that she would be calling him as witness; court expressed disapproval of "tactical" use of lawyer-witness rule, and cited insufficient showing of prejudice).

### Conclusion

If Mr. Motl is a necessary witness in the various civil enforcement actions, counsel for COPP are not violating Rule 3.7 as long as Mr. Motl does not act as trial counsel. Even though it is likely he will serve as a witness at trial, Mr. Motl is permitted to participate as counsel in pretrial proceedings. The disqualification of Mr. Motl as a witness-advocate at trial is not imputed to other attorneys for COPP, absent some other conflict of interest not described in the facts presented here.

THIS OPINION IS ADVISORY ONLY

MINUTES

MONTANA SENATE  
53rd LEGISLATURE - REGULAR SESSION  
COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Senator Eleanor Vaughn, on April 6, 1993, at  
10:00 a.m.

ROLL CALL

**Members Present:**

Sen. Eleanor Vaughn, Chair (D)  
Sen. Jeff Weldon, Vice Chair (D)  
Sen. Jim Burnett (R)  
Sen. Harry Fritz (D)  
Sen. John Hertel (R)  
Sen. Bob Hockett (D)  
Sen. Bob Pipinich (D)  
Sen. Bernie Swift (R)  
Sen. Henry McClernan (D)  
Sen. Larry Tveit (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** David Niss, Legislative Council  
Deborah Stanton, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing: SR 6  
Executive Action: SR 5, SR 6, SR 7

HEARING ON SR 6

Sen. Vaughn turned the gavel over to Sen. Weldon to conduct the  
hearing.

Opening Statement by Sponsor:

Sen. Vaughn, Senate District #1, presented SR 6 which is the  
resolution to confirm Ed Argenbright as the Commissioner of  
Political Practices for a term of six years ending January, 1,  
1999.

ARGENBRIGHT  
CONFIRMATION

Sen. Weldon stated Mr. Argenbright would have a few minutes to make any comments he would like to make.

Mr. Argenbright commented on how it seemed it had been a long time coming. He stated he had been on the job since the first of January and during that time he deemed a greater appreciation for the importance of the position and the competencies of the staff people he has worked with. "I believe that my qualifications are equally suited to giving this office the kind of results that the people of Montana want. I have been an educator for most of my career. I have my doctorate from the University of Montana. The important thing is that I have been a classroom teacher. I've been an administrator. I've been a state superintendent. I've been a director of the Recognition Divisions within the U.S. Department of Education for the past several years. In the private sector, I have owned a resort out of Big Timber. I have broadcast sporting events on radio and television. I've given flying lessons. I've worked in construction and have managed a sporting goods department in the past. The broadness of my experience is such that I can put myself in the shoes of the other person and be able to deal with the issues that come before me in a fair and impartial manner. I've been a base provost marshall and I think that my experience in the Air Force has given me a good deal of respect for the enforcement aspect of the law. As a classroom teacher I have maintained order and settled lots of disputes. I've supervised playgrounds and know that fairness is the name of the game. As a basketball coach I have engaged in refereeing duties and that also deals with the concept of applying the rules equally and fairly. I think those are experiences that I have had that lend me the necessary background to be qualified. One of the characteristics that I will bring to the position is that I have been through two statewide successful campaigns for State Superintendent of Public Instruction. I have built a campaign from the ground up. I've dealt with the media. I've gone through with the processes. I understand what you are talking about when, earlier this year, you had the bill before you to study the unfair charges that people make against one another in the campaigns. I can understand the need for fairness in campaigns and the enforcement of the rules and regulations. I believe I have the vision to look ahead and work to make sure the credibility of the office is maintained. I would maintain that Delores Colburg did a good job with a very limited staff and she has implemented a number of procedures that are important and fair and I intend to build on those procedures. I believe that my experience in a local community makes me public spirited or I would not be here. The opportunity to further make contributions to the State of Montana is exciting to me. I will bring energy to the position and the very basic notions that underlie the office. We will gather the required information for the financial reporting. We will make the information available to any Montana citizen. We will register the lobbyists and will have the statements and the reports on file. We will bring charges if people disobey. I will oversee the elections, publish the rules and do the investigations that are required in a fair

and impartial way. One of the directions that I would like to see for the office in the future is to increase it's efficiency. I was disappointed to see Sen. Fritz's HB 205 fail to get the money to get the computers to network our office. That is an area where we could make some improvements. My background as an educator will assist me in taking a preventative role toward avoiding campaign disputes to make sure people understand what the rules and requirements are beforehand. That is a critical thing. During this past session, I have stepped into the position and we have seen three bills that Delores Colburg proposed and they have gone all the way through the process. They deal with making the information available to the candidates. We are going to be changing the publication of the candidates booklet dealing with campaign laws and requirements. I believe that I can bring to the office the prospective of one who has run a program at the national level called the National Diffusion Network. This is a group of outstanding educators whose programs are disseminated to other teachers around the country and the same kind of procedure will be important in getting the information out to the people of Montana. We have to stay in touch with grassroots Montanans and keep the perception of being credible and fair. In closing, I would like to say that anyone who is in this position has to put aside their partisan past and deal with people on a non-partisan, impartial, fair basis and I am willing to do this. I had a conversation with Governor Pete Wilson's Commissioner in California. There is an individual who was appointed to be the Commissioner, it is the Office of Ethics in California, and the Governor's Office did not report \$7 million in media buys. That Commissioner prosecuted and it cost that campaign over \$100,000. So I think you have to pursue the violators and be fair and follow the procedures. I look forward to answering questions and working for the people of Montana to maintain a credible, fair election process. I am capable of doing the duties of the office."

Proponents' Testimony:

Sen. Bob Brown, Senate District #2, rose in support of Ed Argenbright as Commissioner of Political Practices. "I have known Ed since before he was elected Superintendent of Public Instruction. I regard him as a good friend. I stayed at his home in Washington, D.C. when he was in charge of the Diffusion Network and I have a very good relationship with him. He is a competent and honest individual who will serve very well in that capacity. He has a good background for this job. Not only has he served as an elected official he has served in various aspects of education going back close to 30 years. Most people who have had anything to do with him in his various capacities have a very high regard of him both for his abilities and as an individual. It would be most unfortunate if the committee were persuaded, because of this process that resulted in his selection, that he was not fit for this job. You should focus your attention to his fitness for the position that he has been nominated for. And if you do you will find that he is imminently qualified and fit for

this position. I have known him both professionally and personally. I served as Chairman of the Education Committee in the Senate four sessions during the period that he was Superintendent of Public Instruction. We had a very good working relationship. He would be equally successful in the position he has been nominated for. It is without reservation that I stand as a proponent for Mr. Argenbright."

Hal Stearns rose in support of Ed Argenbright. He stated he had no need for notes because of his long association and admiration of Mr. Argenbright. "I've known him since he was a star basketball player for the Grizzlies. I've seen him over his career as an educator and am tremendously impressed. I have some ability to know something about the school system in Montana because I have had the honor of heading the bicentennial, working for two six-mill levy campaigns for the University system, traveled every county and on a couple of occasions had the opportunity to go to Hardin where Ed Argenbright was the Superintendent of Schools. He enjoyed a relationship in a reservation area that was excellent. He has a great deal of rapport with all people and has had experience and understands children, but more importantly, as Superintendent of Public Instruction, he was able to use those years as a school administrator to his advantage. Montana will be honored to have a man of his caliber occupying the position of Commissioner of Political Practices."

Tom Schneider, representing the Montana Public Employees Association, appeared to ask for support in confirming Ed Argenbright to the Commissioner's position. "In 1979, MPEA organized the Office of Superintendent of Public Instruction. We spent one year negotiating with the Superintendent of Public Instruction prior to the election of Ed Argenbright. In fact, we negotiated until midnight the night of the election and never reached an agreement with the Superintendent at that time. She hired an attorney and spent nearly \$40,000 keeping us from ever reaching an agreement in negotiations. We talked to Ed Argenbright the week after the election. He told us we would have a contract within 30 days after he took office on January 1 and we did have a contract 30 days after he took office. The contract was to his benefit, our benefit and the state's benefit. During the eight years that he was superintendent he dealt with us straightforward, completely honest, and in those eight years we never once arbitrated a case with the Superintendent's office and since that time that is not true. It was his ability to get to the crux of the problem, get with the people involved, and resolve the problem without having to go to that extent. For that reason, Mr. Argenbright would make a good Commissioner and the committee should support his confirmation."

Wayne Buchanan, Board of Public Education, spoke in support of SR 6 as a private citizen. "I have known Dr. Argenbright for a number of years. I first met him when he was running for the position of Superintendent of Public Instruction. I supported

his opponent in that race and contributed to Ms. Rice's campaign, and when Mr. Argenbright won the race I was sorry to see that happen. Over the years, I have learned to have tremendous respect for that Superintendent. I thought that the silver lining in his election was that we now had an administrator and all of the school controversies that would be brought to the Superintendent of Public Instruction would be from the standpoint of an administrator and from the standpoint of a Republican. We were soon to learn that that was not the case. We found that many of the school controversies that were decided by Mr. Argenbright were not decided either as a former school administrator or as a Republican. We all learned to have tremendous respect for this man. He has been a friend ever since and the second time he ran I am pleased to say that I did support him. He was a terrific Superintendent of Public Instruction. He is as fair and intelligent as you could get in this position. I don't think anyone would have the qualification that he would have to be the Commissioner of Political Practices and Montana would be very lucky to have him in that position."

Millie Woolley, from Sweetgrass, Montana, spoke in support of SR 6 on Ed Argenbright's behalf. "I've known Ed Argenbright in Sweetgrass County as a friend, businessman, co-worker, principal, administrator at the Big Timber School System. I worked on his election and re-election for the office of State Superintendent of Public Instruction for Montana from 1980 to 1988. During that time, I served on the state task force for the recertification of schools, which was very well organized and carried out very successfully. After that, when he was in Washington, D.C., he was very much involved with the Department of Education for our nation. While he was there, I again had the opportunity to participate in the national drug program for the nation's schools under the direction and organization of his department. This noteworthy program was very well organized and I was honored, as well as impressed by Mr. Argenbright and his staff in carrying out this program most effectively. No matter what capacity I have been associated with Mr. Argenbright, as a friend, co-worker, principal, administrator, director of programs, I always found him willing to listen to all sides of an issue, impartial. He handled all situations diplomatically. We did not always agree on the issues or the outcomes but he always worked for what was the best for the good of everyone. If it is the political affiliation that you are concerned with, let me assure you that his political philosophy has always been to consider the person, or the issue and what they or it represents and not his political affiliation. This qualifies anyone to be non-partisan in decisive issues concerning the overall good of the State of Montana. Without any reservations I would like to ask you to confirm his nomination to the Commissioner of Political Practices for the State of Montana. He will do an outstanding job for the State of Montana."

Steve Brown, attorney in Helena, rose in support of SR 6 confirming Ed Argenbright as Commissioner of Political Practices. "I was the chair of the Ad Hoc Committee comprised of Republicans and Democrats and people from all other political persuasions in 1973-74 that proposed the campaign reform law which created the Office of the Commissioner of Political Practices. I have some limited involvement from the work perspective with the Commissioner's office. Doty Colburg heard my story about the history of the campaign finance reform that took place in the 70's following Tom Judge's 1972 campaign and some other political questions that arose. It turned out that she was using the Attorney General's office for legal advice. The Attorney General's office in certain situations had a conflict and did not wish to advise her. Those conflicts involved situations where a state official was involved or in certain campaigns where Attorney General Racicot was the Republican candidate and had some limited involvement so she needed to have outside counsel and retained me. Over the past three or four years I have given her legal opinions about how to proceed. I have not done that on a regular basis. I want to disclose that I have no contract with Mr. Argenbright and do not anticipate that I will have one. Doty Colburg would also use me from time to time to get a second opinion. I also wish to emphasize that I am not a member of Mr. Argenbright's party. I do not believe that I ever supported him in either of his tries for political office. I do know Mr. Argenbright and that is why I rise to support him today. I disagree with a lot of his policies but I can tell you that he is honest, decent, a dedicated public servant, and you can go in and disagree with him legitimately and not end up in a shouting match. And in the end you can respect one another in the give and take that occurs. The objective, in my opinion, is to find a commissioner that will enforce and administer the campaign finance laws aggressively and in a non-partisan manner. I am satisfied that Ed Argenbright can meet both of those tests. We have had some long discussions about the importance of this office. There are a lot of people who have historically looked at the Commissioner's office and said that the Commissioner has not done this or that right and that will happen because being the Commissioner is a lot like being a judge. In every case referred to the Commissioner's Office, there is someone who thinks he or she did not violate the law, and someone who is absolutely certain that they did. So when the Commissioner renders his opinion someone is not happy. We're talking about bitter partisan disputes with a lot on the line. I don't know if you will ever find a person who can be a perfect Commissioner of Political Practices. That may be impossible. That is why we have to bring it back to the real test. Will that person be aggressive. Will they be non-partisan. Those are the issues you will need to examine in deciding on whether you will vote for Mr. Argenbright to be the Commissioner. In my conversations with him I am convinced that he understands his ethical obligations. He understands that he must be non-partisan. He must be aggressive in enforcing the campaign finance laws of this state. That is what keeps this system alive and well. We cannot allow the

public to lose confidence in our electoral system. Mr. Argenbright will maintain public confidence in that system by vigorously enforcing the campaign finance laws.

Opponents' Testimony:

~~John Heffernan, Chairman of the Board of Common Cause, rose in opposition to SR 6 and submitted written testimony (EXHIBIT #1).~~

Kelly Addy, attorney from Billings, spoke in opposition to SR 6. "I am not here on behalf of the Montana Democratic Party. I speak as a private citizen and ironically I was drawn into this issue some years ago because I was about to become a private citizen again. It was in the Spring of 1990 that news reports of alleged improprieties on the part of the Montana Republican Party were reported widely in the statewide press. I came to Helena and had the occasion to run into Jane Murphy who was the Executive Director of the Montana Democratic Party and asked if the party was going to do anything about this. These are apparently blatant violations of every campaign law I can think of and if the Democratic Party doesn't do anything about it, everyone will think the Democrats and Republicans are in cahoots on this. Something needs to be done by somebody. And Jane said, "we're involved in a lot of campaigns this year, and you're not. You are probably right that something should be done about this so if you will meet me at party headquarters, I will turn our press clippings over to you and good luck." So as a private citizen I became involved in this 1988 cycle of complaints and that is why I am here today. If the public is not completely convinced that the fix is not in on either side, that the campaign process is above a fix or a deal or even any hint of those kind of shenanigans, then both parties have a problem. Any party that elects, anybody who gets elected to any political post has a problem. This position should be held by Caesar's wife. The fact of the matter is and the reason that I have opposed this appointment since it was announced, I didn't even get to the name Argenbright in the story, I got to the name Stephens appoints political commissioner and I said this is wrong. This man is under investigation. In fact at that point it was in state court enforcement proceedings for alleged campaign violations and he was appointing the person who was going to carry on the investigation. He was appointing the person who was going to carry on the enforcement proceedings. This is wrong. Governor Racicot, in a previous life, was the head of the county prosecutorial services for the Attorney General. And he was called in by county attorneys that had serious crimes that needed to be prosecuted in their counties. And the way I see this being analogized to that, is if the person who is about to be prosecuted had the right to say, "I don't want Mr. Racicot. I want someone else called in. In fact, I want to appoint the person who is going to assist the county attorney in prosecuting this matter in district court in this district." It is just that difficult a situation. I have known Mr. Argenbright for a long time. In fact, he and I grew up in the same country, Cut Bank

and Shelby. But the appearance of a conflict is just manifest when someone who is under investigation gets to appoint, due to a glitch in history, the person who is going to carry on the investigation. I would also point out that while Mr. Argenbright does not have a partisan history, the person who appointed him does. And probably the most partisan person to hold that office in my lifetime. My last session in the Legislature, I was asked to carry a bill on behalf of a group that would not necessarily be seen as my natural constituency. And after some negotiation I agreed to carry it. The lobbyist was so happy that he went right down to Governor Stephen's office and told him, "our chances just improved because I got Kelly Addy to carry this bill." He said he had to scrape the Governor off of the ceiling when the Governor found that out. A year later, I ran into that same lobbyist on the airplane on the way to Helena. He had still not been allowed back in the Governor's office because he had gotten me to carry that bill. That is the kind of blood that is being brought into this appointment. It is perhaps an appointment of a person who otherwise has adequate qualifications and good intentions but it is made by a person who is under investigation. It is an appointment that should be above partisanship and it is being made by a person who has a very partisan history. As I sat and thought about this over the week there were other coincidences about this that bothered me as well. Mr. Argenbright's chief counsel as Superintendent of Public Instruction was appointed Chief Counsel for Governor Stephens when he took office. Mr. Argenbright's financial budget officer at the Office of Public Instruction was appointed as Governor Stephens first budget officer. The person that Mr. Argenbright hired to defend the Office of Public Instruction in the school equalization suit and to whom he paid many thousands of dollars in legal fees for defending the state is the person that Governor Stephens hired to defend him when the charges of campaign practices violations were made against him. The thing that maybe will be developed during question and answer is what are the plans to continue the state court proceedings that are now pending against former Governor Stan Stephens. Is there enough money there to continue those enforcement proceedings. Has there been any consideration given as to what will be required to complete that job. Now that it has begun, this is not the time to get off of the horse, since we are in the middle of the stream on this one. If the state runs out of money and just can't continue the enforcement proceedings, then our campaign practices laws are brought under serious question. The big allegation against Governor Stephens in the state case is that his campaign received contributions from the Republican Governor's Association along with a cover letter that said while this check is made out in the name of the Republic National Committee, every dime of it is Republic Governor's Association money but reported as Republican National Committee money. And it was reported as Republican National Committee money on the campaign finances form. That oversight was called "inadvertent" by Governor Stephens' attorney in the state court proceedings. The Senator, in this last campaign cycle that is involved, is somebody who

filed campaign statements and forgot to list a couple of billboards and a few thousand cookies as campaign expenditures although they were fairly involved in the campaign. His conversation with Mr. Argenbright resulted in Mr. Argenbright characterizing those oversights as "inadvertent." That scares me. Its the same word coming back out of a different mouth. A couple of weeks ago, I became aware of efforts to chill testimony in opposition to this nomination and they were messages that were sent to me through third parties. Common Cause received a message and the Senator I am talking about had a visit from somebody who told him that his opponent would file charges against him if he did not forget about his charges against his opponent. It just doesn't chill my testimony. It makes me really think that there is something up here when there is an effort not just to speak to the merits of the concerns that opponents to the nomination have, but there is an effort to get them to shut up and not get up. If there was any doubt about me being here today before then, there wasn't afterwards. I would just point out that the person who holds the Governor's seat today is not a member of the same political party to which I belong. But he is someone who has shown the willingness to deal with individuals on both sides of the aisle and someone who does not carry the burden of being under investigation himself. So if this nomination were not to be confirmed by the Senate there would be a better person from the standpoint of not appearing to have a conflict of interest involved in who is Commissioner. There would be a much better person making that decision. The process could be sanitized. For those reasons I am here to oppose the nomination.

Questions From Committee Members and Responses:

Sen. Burnett asked Mr. Addy if, under the circumstances, would the Governor have the right to withdraw Mr. Argenbright at any time prior to this time. Mr. Addy stated that he had spoken with Governor-elect Racicot to see if he would speak to Governor Stephens and ask him to withdraw the name. He declined. After he became Governor I researched that point and it is ambiguous. Governor Racicot could legitimately make the point that I do not have the authority to withdraw this appointment. I did my own research and talked to other people and asked them to look at the law and use their independent judgement. It is not clear.

Sen. Burnett asked Mr. Addy if he would assume under the circumstances that Governor Racicot would consider Mr. Argenbright an acceptable person for this office. Mr. Addy stated he would have to ask Governor Racicot.

Sen. Burnett asked Mr. Addy since the violation happened in 1988 if the action would be "outlawed" at this point in time. Mr. Addy said the most recent argument made by the proponents is that any action that has already been begun would not at this time be subverted by the person who is now appointed. And if it is subverted, there would be a bill next time to abolish the office.

Sen. Burnett commented that he had a bill to abolish the office to start with. Mr. Addy said that Sen. Burnett has had a lot of bills to abolish many offices and it was nice to see he was being non-partisan.

Sen. Burnett said he could recall \$94,000 that nobody asked about. Mr. Addy said there was no office back then and everybody jumped on it. Mike Greely jumped on it in May of 1988 and did not get the Democratic nomination and from then on Stan Stephens did not have to say anything about \$94,000 to win the election in November of 1988. He did not have to take \$6,000 from the Republic National Committee or the Republican Governor's Association, whoever it was, either.

Sen. Swift stated Mr. Addy made some comments about 1988 and asked him if that was when charges were brought against the Republican Party. Mr. Addy answered yes, he filed charges with the Federal Election Commission, and with the state commissioner as well. There are some entities that are strictly state reporting entities and therefore, are subject to the investigation by the State Commissioner and there are other agencies that are federal agencies and are only properly investigatable by the federal agency. That's one of the big arguments in the Stephens case, whether some of those agencies can be investigated by the State Commissioner.

Sen. Swift asked if Mr. Addy asked Ms. Colburg to investigate and look into those charges. Mr. Addy answered that he did.

Sen. Swift commented that nothing had come out of that. Mr. Addy said it seemed like forever until anything came out of it. That office has a limited enforcement budget. It was this last session of the Legislature, the 1991 session, that gave that office \$45,000 to enforce the allegations that she made. She finally did file a complaint in State District court that is pending right now. It's on hold because the Governor's attorney, Governor Stephens attorney, John Larson, is now a district judge in Missoula, because the Argenbright nomination had not been confirmed, and there is another reason that I cannot think of right now.

Sen. Swift commented that the Statute of Limitations had already run on the complaint that Mr. Addy filed. Mr. Addy said his complaint was filed before the statute of limitations ran out.

Sen. Swift said he hoped the reason that Mr. Addy was opposed to Mr. Argenbright's appointment to the position was not from the standpoint of the Republic Party being involved in some aspect of financial concerns or questions on legality. Mr. Addy said that investigation and enforcement action, once begun, has to be decided by a mutual third party, such as a district court. "If the matter is terminated prior to a decision by a neutral third party the whole process suffers. It isn't the Republicans, it isn't the Democrats, it isn't Stan Stephens, it isn't Ed

Argenbright, it's the whole process. I am very concerned that one of the prime defendants in the state action, Stan Stephens, is appointing the person who is in charge of continuing the action if this nomination is confirmed. It's the fox in the henhouse, the kid in the candy store, and all kinds of little phrases like that."

Sen. Swift asked Mr. Addy if, by innuendo or implication, he was accusing an individual of being less than honest or straightforward by this kind of presentation. Mr. Addy stated that we all have our biases, and our philosophical point of view. We tend to be blind to those things that don't lean the same way we do. Governor Stephens certainly was when he decided to make the appointment of the person who was going to investigate him.

Sen. Hertel called on Mr. Robert Lee, Special Counsel to the Montana Republican Party to comment on the allegations of Mr. Addy.

Mr. Robert Lee, attorney in Billings, stated he knew Kelly Addy. He said he was retained by the Montana Republican Party to act as special counsel in some of the matters that Mr. Kelly alluded to. "I was shocked to hear Mr. Addy say that he actually filed charges with Delores Colburg, not based upon anything he knew about wrongdoing, but because he was asked by the executive director of the opposing party which was based on press clippings which was based on a single lawsuit filed by the person who had been the executive director of the Republican Party and had been fired and was bringing a civil litigation to seek damages from the Republican Party. What we have is speculation built upon suspicion built on hearsay. Mr. Addy did make a complaint with Delores Colburg and he did make a complaint with the Federal Election Commission. Both of them based entirely on the civil litigation. We have a situation in which there has been four years of intensive investigation by Doty Colburg. She has looked at every allegation that has been suggested to you. In fact, she took no action prior to the time the statute of limitations expired. To suggest that Mr. Argenbright may be able to influence any pending proceedings or proceedings that might have been brought is unfair. Former Commissioner Colburg had a special counsel, Leo Gallagher. He will be able to tell you that he has never been brought to any influence on this. To say that a good man may be impugned because the person who appointed him is under investigation for something is missing the point. There was no wrongdoing. There was a suspicion of wrongdoing by a person whose level of suspicion is very low. Four years of intensive investigation by the former political commissioner has lead to no proceedings and to say that because he filed a complaint that is going to continue past the statute of limitations is simply incorrect. Had the Commissioner found any wrongdoing she would have been obligated to go forward and she didn't. After investigation she took no action against the Republican Party, any officer or employee of the Republican Party, or anyone who was involved with the Republican Party

during the 1988 election. Mr. Addy suggests some kind of impropriety. But in the case that is now pending that he is alluding to, there has already been a correction of the record to make the RNC the real party in interest because this matter was brought against a bureau, a department, of another entity as if it were a separate entity. Eventually a judge will resolve that case but to suggest a new commissioner could influence it or would is to impugn the integrity of Helena's finest attorney. Leo Gallagher will tell you that he is not going to be influenced by anything. He and Doty Colburg were forceful, aggressive, intense. They read every piece of paper generated by the Republican Party headquarters in 1988 and the time for acting on any complaints filed by Mr. Addy is past."

Sen. Hockett stated that the hearing "was digressing quite a ways from the original intent of the questions and I resent having to sit here and listen to these things. I come in impartial but I am beginning to become a little less so, unfortunately."

Sen. Fritz asked Mr. Gallagher if he would respond to the argument that there is a conflict of interest and to Mr. Lee's statements. Mr. Gallagher stated he was hired by Doty Colburg to assist her in the investigation of complaints that were filed by Mr. Addy. The complaints were filed by Mr. Addy with both the FEC, the Federal Election Commission, and with the local party investigation office, the Commissioner of Political Practices. I was retained in late August, 1990. A complaint was filed in Helena District Court against Governor Stan Stephens, and an entity which was nominated as the Republican Governor's Association. That case is presently on hold because of three factors. The first is this pending nomination and whether or not Mr. Argenbright will be nominated. The second factor is there has been a change in leadership in the Republican National Committee, which has presently engaged Mr. Lee's services. The third factor is that John Larson has been appointed the District Judge in Missoula County. We have a very limited budget with which to get this thing finally resolved and rather than spinning wheels with unclear counsel we are putting things on hold until this thing resolves itself. There is a complaint that has been filed with the FEC. The FEC has not acted on that complaint. There has been a civil action filed by Common Cause in a Washington, D.C. federal court against the FEC to learn from them why they have not taken action on Mr. Addy's complaint. Common Cause also filed a complaint with the FEC as did Doty Colburg for inappropriate investigation of the 1988 campaign activities of the Republican National Committee and the Montana Republican Party. The statute of limitations did not run out at the time that the complaint was filed against Governor Stephens and the Republican Governor's Association. I am not clear as to whether the statute of limitations has run out with respect to federal jurisdiction. I will leave that to the federal courts."

Sen. Weldon stated he would like to give Mr. Argenbright a chance to respond to the topic of the Stephens lawsuit to see what his perceptions were and specifically to what his intentions were as the Commissioner.

Mr. Argenbright commented that he felt like a soccer ball. He stated he had been briefed by Doty Colburg and Mr. Gallagher and it is his intention to pursue that case. He reminded the committee of his statements regarding the conversation with the California Commissioner of Ethics. He was appointed by Governor Wilson and ended up, because their campaign fouled up by not reporting the media buy, with a fine of over \$100,000. "As an enforcer, as a former provost marshall, I understand that there is a process that you follow. When you assume the role of Commissioner you forget those past allegiances and the kinds of partisan that you have been involved in in the past. You put those aside when you become the Commissioner. In terms of being away from Montana for two and a half years and living on Capitol Hill in Washington, D.C., I was ready to come back to Montana. My wife and I are both natives. She is from Winifred, and I am from Cut Bank. We have lived all over the state and this is the ideal kind of opportunity for me to continue to be a contributing member of this kind of citizenry. I intend to do a good job and I resent the fact that I made application because a friend of mine called me and said Doty Colburg's term is expiring and why don't you think about it. My wife and I talked about it. I missed the Common Cause deadline so I wrote Verner Bertelson because I knew him from years back. He is on the board of Common Cause. I wrote him a letter and said I missed the deadline, I am interested and I will apply through the normal procedure. So I wrote letters to the leadership. I've sat through two court hearings. They say we don't have anything against you personally but this process is really something. You get kicked around here and there and it seems right now that it is getting partisan. I hope that that is not going to be the basis on which you make your judgements on my qualifications to do the job. I can tell you that I have hired some excellent staff members. It's a point of pride. One of the teachers from Big Timber is directing the National Teacher of the Year program and I feel really good about that. I take great pride in some of things that I have been able to accomplish. If Governor Stephens hired some of the folks who worked for me, it should not come my way in the form of some conspiracy. I've been gone for three and a half years and I have not really even paid attention to all of this business that we are dealing with here today. I came back and will try to do the job and I am trying to follow in the footsteps of what I consider to be a good Commissioner. I follow the procedure. One of the presenters here today said it is an impossible position to be in because the people who think that the charge is true and those that are charged do not think it is true, someone is going to get angry. You can only go so far in terms of following the procedure to be able to try to resolve these issues. There was an example of an opponent who was charged with not reporting some contributions. I followed the normal procedures and my staff

members told me that that was exactly the way it would be handled. Then someone did not believe it. At that point I said the normal procedure is to have a formal complaint where we can get on with an investigation and we can do it right. Now that's being thrown up to me as somehow not meeting expectations. I think you have to look at both sides of that kind of an issue."

Sen. Weldon said a lot of the testimony settles on this lawsuit involving the Stephens campaign. "Part of your statement is that you wanted to carry with you a perception of fairness in this job. One of the things concerning me here, what I've heard today and leading up to this hearing, is that you may enter this office with the perception of not being fair, something clouding your perception of fairness. You've had some time to be in the Commissioner's office. What is the status of that particular lawsuit and your office now?"

Mr. Argenbright answered that it was being pursued. He added that he had given Mr. Gallagher the direction to pursue any violation. "As far as I know we have been doing that with the exception of, there have been some changes and Mr. Gallagher listed the three reasons why it has not been moving forward. I intend to follow through with it."

Sen. Weldon said that his staff was small without an attorney on staff. Mr. Argenbright said he was working with Mr. Gallagher, the special attorney on that case, and he is working with one of the staff attorneys in Joe Mazurek's office.

Sen. Weldon asked if the Commissioner's office was contracting with Mr. Gallagher to pursue this case. Mr. Argenbright said that was correct.

Sen. Weldon asked Mr. Argenbright what his relationship is with former Governor Stan Stephens, who is a party to this lawsuit.

Mr. Argenbright answered that he supported him in 1988. The process of the appointment was that he wrote a letter to Joe Mazurek, Hal Harper, Bruce Crippen and John Mercer and told them he was interested in the Commissioner's job and to consider him as an applicant for the job. "My name went forward with the procedure that I thought was all right. There was nothing that I did that influenced anything. My name went forward and it is my understanding that Governor Stephens interviewed every person whose name was put forward. My interview was conducted via phone. The Governor personally conducted the interview and I was asked questions about my qualifications and what approach I would take and the standard format questions. I applied like anyone else and was selected by Governor Stephens. I saw him in December briefly and have not seen him since."

Sen. Weldon asked Mr. Argenbright if he had talked to Governor Stephens about this particular lawsuit. Mr. Argenbright answered that he has not. He stated he had not talked about this lawsuit

with John Larson. He said he was briefed by Doty Colburg and Leo Gallagher.

Sen. Weldon said the two points Mr. Argenbright made were wanting to stay in touch with the grassroots part of this job and perceptions of fairness. He asked Mr. Argenbright how he intends to stay in touch with the grassroots part of his office.

Mr. Argenbright stated he has been invited by Secretary of State Mike Cooney's Office to participate with county clerks and recorders. He said he was going to be very active in working with those groups. From his experience as State Superintendent, he has had a number of advisory committees, special education purposes and vocational education. He intends to get some people who have some stature and interest in the office and the perception of fairness and enforcement to get in and donate some of their time because there is no money to pay them.

Sen. Weldon asked Mr. Argenbright if he thought the state's election and campaign laws are being fully enforced now. Mr. Argenbright said he believed Delores Colburg did a good job. She resolved a lot of things before they had to go to court and within the resources she did a good job. He stated he planned on continuing that kind of approach. In terms of enforcement, it is very difficult, because the office just had a complaint over the activities of a lobbyist. That's the first time in the history of the office that there has ever been a complaint of that nature. In talking with attorneys he said he had to find out just who had jurisdiction. He said he will work with the Attorney General and the county attorneys who oftentimes share those prosecution enforcement responsibilities with the Commissioner.

Closing by Sponsor:

Sen. Vaughn commented that the committee appreciates Mr. Argenbright's patience in this action.

HEARING ON SR 7

Opening Statement by Sponsor:

Sen. Vaughn, Senate District #1, presented SR 7. SR 7 is the resolution confirming the Governor's appointments. She listed the nominees and their boards.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

Sen. Vaughn said she closed.

EXECUTIVE ACTION ON SR 5

Motion/Vote: Sen. Weldon moved to ADOPT SR 5. Motion to ADOPT SR 5 CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SR 7

Motion/Vote: Sen. Weldon moved the PRELIMINARY APPROVAL for SR 7. The motion for the preliminary approval CARRIED.

Sen. Vaughn stated that she had spoken with Pat Lopach from the Governor's office about the termination dates of some of the board appointments. Ms. Lopach said they would look into the dates of termination and get back to the committee about the discrepancies.

There was additional discussion on the remaining appointments to be confirmed.

EXECUTIVE ACTION ON SR 6

Motion: Sen. Swift stated that in view of the fact that Mr. Argenbright has come a long distance in relocating, he moved that SR 6 be PRELIMINARY APPROVED.

Discussion: Sen. Pipinich said he had been doing a lot of checking and has been given notes about Mr. Argenbright, but he did not think there was any reason to not confirm Mr. Argenbright. The system is what went wrong in his appointment. He had talked with Common Cause and other people and it all went back to the closed door meetings when he was selected. There was nothing against him. What they wanted to do was not confirm him and start over again with the system. He said he could not find anything wrong with the appointment and Mr. Argenbright is a fairly upstanding citizen and would do the job well but they are all against the system. Starting with Stan Stephens and down the line but we cannot hold that against the Commissioner's office. He said some people wanted to abolish the office and it was already tried. As far as the confirmation of Mr. Argenbright he stated he had nothing against the appointment.

Sen. Fritz said the appointment put Mr. Argenbright in a very difficult position because it raises the appearance of impropriety with the office of the Commissioner and the ongoing case of the person who appointed him. All the testimony boils down to the key question that Sen. Weldon asked, what he would do with respect to the ongoing investigation. Mr. Argenbright promised that he would follow it up, work with Leo Gallagher and the staff attorney from the Department of Justice and that is all he could say and the best he could say in that instance. The case raises the possibility of the appearance of impropriety no matter how it comes out. It is a difficult position and he made the best of it.

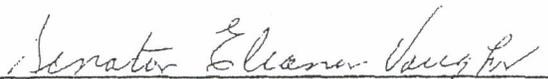
Sen. McClernan said the only question he has for Mr. Argenbright, given the hassle he has gone through, is why would he want the job. "If I were him I would have bailed out of that position long ago. I've known Mr. Argenbright for ten or twelve years and worked well with him. I think he is an excellent person and I would support him."

Sen. Tveit stated it was the process versus the individual. Much of it surfaced around the process itself and trying to put Mr. Argenbright in the same kind of character as the former governor is totally unfair. He said he has known Mr. Argenbright since 1975 when he was the President of the School Board Association and Mr. Argenbright was the Superintendent of Public Instruction and he is an impeccable individual.

Vote: Motion to ADOPT PRELIMINARY APPROVAL OF SR 6 CARRIED.

#### ADJOURNMENT

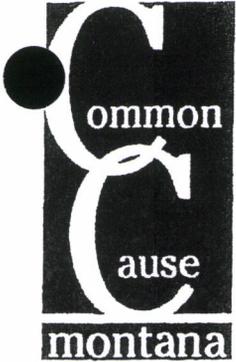
Adjournment: 11:40 a.m.

  
SENATOR ELEANOR VAUGHN, Chair

  
DEBORAH STANTON, Secretary

EV/ds

2



P.O. Box 623  
Helena, MT  
59624  
406/442-9251

SENATE STATE ADMIN.  
EXHIBIT NO. 1  
DATE 4-6-93  
BILL NO. SR 6

COMMON CAUSE TESTIMONY IN OPPOSITION TO  
SENATE CONFIRMATION OF ED ARGENBRIGHT  
AS COMMISSIONER OF POLITICAL PRACTICES  
APRIL 6, 1993

Madame Chair, members of the Senate State Administration Committee, for the record my name is John Heffernan of Missoula, Chairman of the Board of Directors for Common Cause/Montana.

I come before you today on behalf of our Board to oppose Senate confirmation of Ed Argenbright as Montana's fourth Commissioner of Political Practices. This is an unfortunate position for us, one which our twelve-member Board -- Republicans and Democrats alike -- spent extensive time considering.

It is unfortunate, because although Common Cause is a strictly nonpartisan organization, and although we speak today on strictly nonpartisan concerns, we are concerned that this legislative body will criticize us for taking what can be characterized as a partisan stance. In fact, we have been cautioned by members of the Republican party who have told us "this is not our fight," that we should not give our opinion on this matter.

This is, of course, our fight. And we would be remiss if we chose not to take a position on this appointment. Because of the very nature of our work -- good government -- the office of the Commissioner is the most critical office in state government to us. We have worked to support that office in every way possible. Further, we have placed high demands on the holder of that office, expecting the Commissioner to carry out his or her mandate to the fullest ability.

While supporting the office of the Commissioner, we have and will continue to criticize the holder of that office if he or she is compromised or unable to perform the work required.

In 1986, we called for the resignation of Peg Krivec -- a Democrat -- when it was revealed that she had used state telephones to make nearly \$2,300 in personal telephone calls which were initially charged to and paid for by public funds. We felt very strongly that the Commissioner, as the enforcer of governmental ethics, must be beyond reproach.

In 1992, Common Cause filed a lawsuit against Commissioner Dolores Colburg -- also a Democrat -- for failure to complete five years of annual reports as required by Montana law.

We speak today against the appointment of Ed Argenbright for the same type of reasons we acted against the former two Commissioners. The political party of the appointee is irrelevant to us.

Since May of last year, Common Cause has worked to identify highly competent, nonpartisan individuals who could be our next Commissioner. Those people spoke with excitement and commitment as to why they wished the position. But, until today, we have been denied the opportunity to hear why Mr. Argenbright was selected by the Legislative Leadership and the Governor to take on this responsibility. Until today, we have not heard Mr. Argenbright speak publicly about the office of the Commissioner, why he feels qualified to hold this critical position, where he sees the office going in the next 6 years.

We oppose the confirmation of Ed Argenbright as Montana's fourth Commissioner of Political Practices for three significant reasons.

**1. HISTORY HAS PROVEN THAT THE APPOINTMENT OF A "POLITICAL INSIDER" SEVERELY COMPROMISES THE INTEGRITY AND ABILITY OF THE COMMISSIONER.**

Historically, the tendency has been for both the legislative leaders and the Governor to select a "safe" Commissioner candidate, one who would serve more as an "electoral file clerk" than an "electoral cop," thereby causing the least disruption in the way the electoral process is used or abused by political parties and other political insiders. This "insider status" becomes a severe liability for the Commissioner, as s/he inevitably ends up regulating those to whom s/he feels personal allegiance and with whom s/he shared many past circumstances.

The two most recent Commissioners, Peg Krivec (1981-1986) and Dolores Colburg (1987-1992), were both political "insiders." Both were actively involved in Democratic party politics, with both receiving the post at the end of lengthy political careers. In hindsight, those appointments were not good appointments, and should not have been made. Ed Argenbright's appointment is no different. His appointment is the Republican version of these two former Commissioners.

continued 1  
4-6-93  
SR-6

We strongly feel that history has proven that the past allegiances of a "political insider" renders the Commissioner unable and unwilling to rule on the more complex and controversial complaints. For example, Commissioner Krivec created a loophole in Montana's aggregate PAC contribution limit law by ruling that "in kind" contributions do not count toward PAC contribution limits. Commissioner Colburg was unwilling to reverse that administrative decision, a stance which Common Cause believes was secured by political connections and continued pressure from other political insiders.

The area of lobbyist disclosure has also suffered. Studies by Common Cause show great disparities in the way different entities report their lobbying expenses to the Political Practices office. Yet neither Commissioner Krivec nor Colburg attempted to establish uniformity in lobbyist reporting, or to follow through on delinquent reports. Similarly, while the office has the authority to audit lobbying accounting reports (5-7-212 MCA), such action has never been taken. Even though the Lobbying Disclosure Law passed with an overwhelming show of public support, both Commissioners Krivec and Colburg failed to implement the law in a meaningful way.

Follow-through on campaign violations has also been weak. In our opinion, this has been due to an unwillingness on the part of the Commissioner to follow through on controversial complaints. For instance, Colburg never resolved several complaints around the 1988 elections, including two concerning Initiative 113 (the Bottle Bill). Again, the Commissioner's role of "electoral cop" has been lacking.

## 2. THE SELECTION OF COMMISSIONER CANDIDATES WAS MADE IN VIOLATION OF THE OPEN MEETINGS LAW, AND THE PUBLIC DESERVES REMEDY.

As you may be aware, Common Cause filed a lawsuit against the statutorily-created selection committee and the Governor for violating the Open Meetings Law in the selection of Commissioner candidates. At least one meeting was held by the selection committee, unannounced to the public and without the presence of then Speaker Hal Harper. The Open Meetings Law clearly states that all meetings of legislative committees be open to observation by the public. The remedy for a violation of this law is that any decisions made in the meeting be void.

The case was heard in the First Judicial Court, but the Judge declined to rule on whether there was a violation of the Open Meetings law. Therefore, he declined to order that the selection process be redone. Rather, the Judge noted that:

...Plaintiffs are not left out of the process or without recourse. The appointment of Mr. Argenbright is subject to confirmation by the Senate. If Plaintiffs have concerns with Mr. Argenbright as the commissioner or even with the process, they can express those at the confirmation hearing. Traditionally, that is the forum for airing those concerns.

Today we "air those concerns" and ask that the Senate reject this confirmation in order to ensure that the candidate selection process is redone in a manner that includes participation by the public.

**3. GOVERNOR STEPHENS' APPOINTMENT SHOULD BE REJECTED ON ETHICAL GROUNDS, DUE TO THE PENDING INVESTIGATION OF STEPHENS BY THE COMMISSIONER'S OFFICE.**

On June 5, 1992, Commissioner Colburg filed suit in district court against Governor Stephens and the Republican Governors' Association for five separate violations of Montana's election laws, primarily revolving around Stephens exceeding contribution acceptance limits. The suit asked for a minimum judgement against Stephens of \$48,000 and against the RGA of \$24,000.

The case was not resolved before the end of Commissioner Colburg's term of office. Rather than abstaining from making the Commissioner appointment for the clear and very personal conflict of interest it posed, Governor Stephens chose to quickly appoint Mr. Argenbright in November of last year. In effect, then, Mr. Stephens has chosen his own prosecutor. Mr. Argenbright will now have to follow through with the suit, or dismiss it.

Certainly, how Mr. Argenbright will choose to act on the lawsuit is not now known. However, Common Cause feels that the conflict of interest posed by Governor Stephens making the appointment is so strong, that the Senate should reject this confirmation in order to pass on the appointment to Governor Racicot.

\* \* \* \* \*

4-6-93

SR-6

Madame Chair, members of the Committee, as you consider this appointment, please keep in mind that the Commissioner of Political Practices is NOT an Executive Branch agency head. The Commissioner is not accountable to the Governor, and therefore the Governor cannot be held accountable for his actions. In fact, the Commissioner of Political Practices is accountable only to the public. It is the public's watchdog over the political process.

For this reason, the Commissioner must be able to withstand intense public scrutiny. As the enforcer of our political practices laws, the Commissioner must be uniquely qualified and beyond reproach. There must be no question in the public's mind that the Commission can and will carry out these responsibilities in a competent, thorough, and impartial manner.

We feel that Mr. Argenbright's appointment -- particularly given the process by which he was appointed -- does not meet these standards. Therefore, we urge this committee and the Senate to reject his confirmation. Once again, we call for the selection process to be redone in a manner that is forthright, thorough, and inclusive of the public whom the Commissioner will represent for the next 6 years.

W. M. VAUGHEY, JR.

P.O. BOX 46  
HAVRE, MONTANA 59501-0046

(406) 265-5421

March 22, 1993

STATE SENATE  
LETTER NO. 2  
DATE 4-6-93  
BILL NO. SR6

The Honorable Bob Hockett  
Montana State Senate  
Capitol Station  
Helena, MT 59620

RE: In support of the nomination of Ed Argenbright to serve as  
Commissioner of Political Practices

Dear Bob:

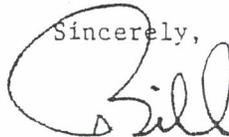
This is written to you because you are my State Senator, but a copy is being directed to Chairman Vaughn and the balance of the State Administration Committee.

I have known Ed Argenbright for 15 years. While admittedly I met him through the Republican Party due to his effort to be elected State Superintendent of Schools, he has never struck me as a strongly partisan person. As a matter of fact, his nature is such that I am certain he would be a fair, evenhanded, Commissioner of Political Practices.

I am prompted to write by a squib in the Daily carrying charges by Kelly Addy. Honest to goodness, Bob, I don't think any of these charges hold water, but I particularly object to one directed to Ed when he served on the State Republican Central Committee. From having served in that body myself, I know that really only the Party Chairman and Chief of Staff pass on the legality of contributions to the state organization received from the national.

I will go a step further by reminding you of the high regard in which Marc Racicot is held from the standpoint of his own personal values. It is inconceivable to me that he would nominate Ed Argenbright for this position were it not the case based on a number of years of observing Ed that he, the Governor, was anything but convinced that Ed Argenbright would make an honest, strictly judicial and unbiased Commissioner of Political Practices. I certainly urge you as my Senator to vote in support of this nomination.

Sincerely,



W. M. Vaughey, Jr.

cc: State Senator Greg Jergeson  
✓ Balance of the members of the Senate State Administration Committee

SENATE SECRETARIAT  
EXHIBIT NO. 3  
DATE 4-6-93  
FILE NO. 5RL6

1290 East 5th street  
Libby, MT 59923  
March 30, 1993

To: The Honorable Senator Vaughn  
From: A. R. "Rocky" Schauer  
Re: The appointment of Mr. Ed Argenbriert

During my tenure on the Board Of Public Education Mr. Argenbriert was Superintendent of Public Instruction. We often interacted with Mr. Argenbriert - frequently during those years and I found him to be a capable, caring administrator. While we did not always agree he was well researched in his arguments and when a strong case for or against a proposal was presented he was willing to move his position. I feel that his nomination should go forward and be confirmed.

Sincerely,

*A.R. "Rocky" Schauer*  
A.R. "Rocky" Schauer

1290 E. 5th  
Libby, MT 59923

DATE 4-6-93

SENATE COMMITTEE ON State Admin.

BILLS BEING HEARD TODAY: SR 6, SR 7

Name	Representing	Bill No.	Check One Support Oppose	
<i>Victoria Bragdon</i>				
<i>Melie Thaddeus</i>				
<i>Edred Brown</i>				
<i>JAN HEFFERNAN</i>	<i>COMMON CAUSE</i>	<i>SR 6</i>		<input checked="" type="checkbox"/>
<i>Tom Schneider</i>	<i>MPSA</i>	<i>SR 6</i>	<input checked="" type="checkbox"/>	
<i>ROBERT EDD LEE</i>			<input checked="" type="checkbox"/>	
<i>Mary Ann Holt Mason</i>				
<i>Kelly Aldy</i>		<i>SR</i>		<input checked="" type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

## Statutes regarding the Commissioner of Political Practices

**13-37-102. Creation of office -- removal.** (1) There is a commissioner of political practices who is appointed by the governor, subject to confirmation by a majority of the senate. A four-member selection committee composed of the speaker of the house, the president of the senate, and the minority leaders of both houses of the legislature shall submit to the governor a list of not less than two or more than five names of individuals for the governor's consideration. A majority of the members of the selection committee shall agree upon each nomination.

(2) The individual selected to serve as commissioner may be removed by the governor prior to the expiration of the term only for incompetence, malfeasance, or neglect of duty. The governor's decision to remove the commissioner must be stated in writing, and the sufficiency of the governor's stated causes for removing the commissioner is subject to judicial review.

History: En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(1), (5); amd. Sec. 1, Ch. 483, L. 1979; amd. Sec. 19, I.M. No. 85, approved Nov. 4, 1980; amd. Sec. 5, Ch. 479, L. 2005; amd. Sec. 16, Ch. 4, Sp. L. May 2007.

**13-37-103. Term of office.** Subject to the provisions of 13-37-104, the individual selected to serve as commissioner is appointed for a 6-year term and may not be reappointed to serve as commissioner.

**13-37-104. Vacancy.** (1) If for any reason a vacancy occurs in the position of commissioner, a successor must be appointed within 30 days as provided in 13-37-102(1) to serve out the unexpired term. Each nomination must be confirmed by the senate, but a nomination made while the senate is not in session is effective as an appointment until the end of the next session.

(2) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served 3 years or more of an unexpired term is not eligible for reappointment.

(3) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served less than 3 years may be reappointed for a 6-year term as provided in 13-37-102(1).

History: En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(3); amd. Sec. 4, Ch. 483, L. 1979; amd. Sec. 116, Ch. 56, L. 2009.

CBPP  
History

# History

Year	Changes	Commissioner
1975	Office of Commissioner of Campaign Finances & Practices: established for full disclosure and reporting of the sources and disposition of funds used to influence elections in Montana	<b>John H. Hanson</b> (served 6-year term)
1981	Additional responsibilities added to Office of Commissioner of Political Practices: both lobbying disclosure and disclosure of business interests of elected officials	<b>Peg Krivec</b> (served 6-year term)
1987		<b>Dolores Colburg</b> (served 6-year term)
1993 1994 1995	Code of Ethics enacted: responsibility added for the administration of ethical standards of conduct for legislators, public officers, and state employees	<b>Ed Argenbright</b> (served 6-year term)
1999		<b>Linda Vaughey</b> (served 6-year term)
2005 2006 2007 2008 2009 2010	2008: Campaign practice complaints dramatically increase in number. The complaint docket becomes increasingly large with 40 or more complaints routinely listed on docket. Up to this time COPP has a four person staff consisting of the Commissioner and 3 staff. All legal work has been handled by outside counsel working under contract with COPP.  2010: Investigator position added to COPP staff, increasing staff size to five.	<b>Gordon Higgins</b> (through July 2006) <i>Confirmed in '05</i>  <b>Dennis Unsworth</b> (name submitted by leg committee) (from Sept. 2006) <i>Confirmed in '07</i>
2011 2012 2013 2014 2015 2016	In-house counsel position added to COPP staff, increasing staff size to six.	<b>Jennifer L. Hensley</b> (name submitted by leg committee – not confirmed) (through May 2011)  <b>David B. Gallik</b> (name not submitted by leg committee, resigned) (through Jan. 2012)

Year	Changes	Commissioner
		<p><b>James W. "Jim" Murry</b> (name submitted by leg committee, resigned) (through April 2013)</p> <p><b>Jonathan Motl</b> (name submitted by leg comm) (June 10, 2013 to current time)</p>



Montana Legislative Services Division  
Office of the Executive Director

PO BOX 201706  
Helena, MT 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

August 23, 2006

Governor Brian Schweitzer  
State Capitol  
Helena, Montana 59620

Dear Governor Schweitzer:

On behalf of the Legislative Committee charged with the responsibility of submitting names to you for the position of the Commissioner of Political Practices, we submit the following names for your consideration:

Gail Abercrombie  
Don Avery  
Dennis Unsworth

I have provided Patti Keebler, Board and Commission Advisor, with a complete packet of letters of interest, resumes, and answers to questions posed to each interested person for your information.

Sincerely,

A handwritten signature in cursive script that reads "Susan Byorth Fox".

Susan Byorth Fox  
Executive Director

cc: Senator Jon Tester, President of the Senate  
Senator Bob Keenan, Senate Minority Leader  
Representative Gary Matthews, Speaker of the House  
Representative Roy Brown, House Republican Leader  
Patti Keebler, Board and Commission Advisor, Office of the Governor

CI0425 6235sfxa.



## Unsworth named political commish

AUGUST 30, 2006 11:00 PM • MIKE DENNISON - IR STATE BUREAU - 08/31/06

HELENA -- Dennis Unsworth, a former state public-affairs officer, was appointed Wednesday as the state's new political practices commissioner, whose office helps enforce campaign laws and maintains campaign-finance records.

Gov. Brian Schweitzer appointed Unsworth from among a dozen applicants, saying he's the right person to take the state political practices office "from the stone age to the digital age."

Unsworth, 51, said he'll focus on converting the office's record-keeping duties to "electronic, paperless" form that can be accessed by the public.

"An important part of the work is not only to make the (filing) process easier, but to make that transparent," he said Wednesday. "The public has a right to know what's there."

"I'm optimistic that it can be done sooner rather than later. I've got just four years to do what I can do, and I'd like to get it well on the way during my term."

Unsworth also comes on board in the heat of a political season, just two months before the Nov. 7 general election.

He said one of the items he expects to address soon is a pending complaint against the supporters of a trio of ballot measures aiming to restrict government. The complaint accuses the backers of Constitutional initiatives 97 and 98 and Initiative 154 of improperly concealing their financial backers.

CI-97 proposes to limit state spending; CI-98 would make it easier to recall judges; I-154 would allow property owners to seek payment from the government if they think government action devalued their property.

Unsworth succeeds former Political Practices Commissioner Gordon Higgins, who was appointed in late 2004 by then-Gov. Judy Martz.

Higgins resigned this summer to become deputy state auditor. Unsworth will fill out the remaining four-plus years of Higgins' term.

Unsworth has a journalism degree from the University of Montana and worked as a news director and radio announcer before spending 15 years as a public-affairs officer at the state Department of Transportation.

He left the department several years ago and has worked since as a communications consultant.

He managed the re-election campaign for Supreme Court Justice Jim Nelson in 2004.

Schweitzer noted that Unsworth had the support of top legislative leaders from both parties, and that previous governors had appointed commissioners who weren't among the applicants for the job.

Under state law, legislative leaders can vote their approval or disapproval of applicants for the commissioner job, but the governor is under no obligation to make his or her pick from the pool of applicants.

The political practices office maintains campaign-finance records for candidates running for state office, such as governor and legislator, ballot committees, and political-action committees that spend money on state races. The records are filed on paper at the office one block from the state Capitol and are not available on the Internet.

Unsworth said he worked on projects at the Transportation Department that converted paper records to electronic systems, and hopes to do the same at political practices.

Schweitzer said Wednesday that his administration would support whatever funding is needed to help the project along, but that it's the Legislature's decision on appropriations.



Montana Legislative Services Division  
Office of the Executive Director

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December 14, 2010

Honorable Brian Schweitzer  
State Capitol  
Helena Montana 59620

Dear Governor Schweitzer:

As provided for in 13-37-102, MCA, a selection committee composed of President of the Senate Robert Story, Senator Carol Williams, Speaker Bob Bergren, and House Republican Leader Representative Scott Sales nominated four individuals for your consideration of appointment as the Commissioner of Political Practices. Each committee member nominated one person and the four names were approved unanimously.

The nominees are:

1. By Representative Scott Sales, Bradley Johnson
2. By Senator Carol Williams, Jaime MacNaughton
3. By Senator Robert Story, Edwin Jonas III
4. By Representative Bob Bergren, Jennifer Hensley

Please find attached the information that each candidate submitted for the committees review. I also have forwarded a complete packet of all of the individuals who expressed interest to Patty Keebler.

Please accept this letter on behalf of the selection committee.

Sincerely,

Susan Byorth Fox  
Executive Director



## GOP Senate won't vote on state's political cop's nomination



APRIL 27, 2011 6:22 PM • BY CHARLES S. JOHNSON  
GAZETTE STATE BUREAU

HELENA — The Republican-controlled Senate is preparing to let Gov. Brian Schweitzer's nomination of Jennifer Hensley, a former Democratic activist and wife of a Democratic senator, as state political practices commissioner, die in committee without a vote.

In December, Schweitzer picked Hensley, wife of Sen. Steve Gallus, D-Butte, to a six-year full-time job as political practices

commissioner, a post that pays \$57,689 a year. She was one of four people recommended by four Democratic and Republican leaders from the 2009 Legislature.

The commissioner regulates campaign finances reporting, lobbyist expense disclosure and ethics complaints against elected officials.

The Senate Judiciary Committee had a brief hearing on her nomination April 19. It hasn't voted on it and doesn't plan to do so, said Chairman Terry Murphy, R-Cardwell, who sponsored the bill for her nomination.

"She doesn't have the votes," Murphy said. "She was not going to be confirmed. We felt it was better to quietly end it without a vote."

That gives Schweitzer the power to appoint someone else, or Hensley, for that matter, to serve until his term ends in early January 2013, Murphy said. The next governor would appoint a new commissioner.

"Had we voted and rejected her, then she's done instantly," Murphy said.

Asked what the objections were to Hensley's appointment, Murphy said she is "too partisan, a real down-in-the-trenches party worker. We don't want to politicize that office that much."

Hensley declined comment, except to say, "I want to give them the opportunity to do the right thing, and they have one more opportunity to do the right thing."

Schweitzer said past commissioners have been heavily involved in politics. He said the four-legislator committee also sent him the name of former Secretary of State Brad Johnson, who also ran for Congress.

"If they didn't want people that had been involved in partisan politics, why did they send me two names that had been involved in partisan politics?" he said.

Schweitzer said he finds the whole episode "a little bit curious."

"If they feel as though Jen is not qualified for the job, why did they nominate her?" he said. "If they feel she is not qualified for the job, the constitution says they can reject her and they can explain to the people of Montana their actions."

Senate Minority Leader Carol Williams, D-Missoula, was upset about the way Hensley's nomination has been handed.

"This is one more inappropriate thing that has happened this session," she said. "People deserve better. I feel really bad. I think she is intelligent and has had great experience and has been a great commissioner."

At the Judiciary Committee hearing, Hensley drew the support of three lobbyists with whom she had worked.

The lone opponent was Jake Eaton, a Republican political operative, who called Hensley a "professional partisan operative."

"I think we're setting a dangerous precedent," he said. "That's what I am. I doubt there's too many members of the opposite side of the aisle that would like me appointed."

Hensley told the Judiciary Committee that she believes she has done a good job as commissioner and will have cut in half the office's 57-complaint back caseload by late May.

"I have been involved in the Democratic Party and worked on political campaigns, both partisan and nonpartisan," she said. "I'm not the first commissioner with a partisan past."

In a Gazette State Bureau interview last month, Hensley said, "I'm married to a sitting senator and appointed by a governor. I will have to work harder to prove I'm a capable administrator and will issue decisions with an even hand. I'm tougher than I look."

A University of Montana graduate, Hensley has held a variety of jobs, including as a field representative to U.S. Sen. Jon Tester, the head paralegal for a Butte law firm, a staffer for several initiative campaigns and as an employee for Change that Works, affiliated with the Service Employees International Union. Last year, she worked on a Democratic congressional campaign in Louisiana. In 2005, she was an unsuccessful candidate for vice chairwoman of the Montana Democratic Party.



Montana Legislative Services Division  
Office of the Executive Director

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May 13, 2011

Honorable Brian Schweitzer  
State Capitol  
Helena Montana 59620

Dear Governor Schweitzer:

As provided for in 13-37-102, MCA, a selection committee composed of President of the Senate Jim Peterson, Senator Carol Williams, Senate Minority Leader, Speaker Mike Milburn, and Representative Jon Sess0, House Minority Leader, nominated three individuals for your consideration of appointment as the Commissioner of Political Practices. The three names were approved unanimously.

The nominees are:

1. By Senator Peterson and Representative Milburn, Mary Baker
2. By Senator Carol Williams, Jaime MacNaughton
3. By Representative Jon Sesso, Lee LaBreche

Please find attached the information that each candidate submitted for the committees review. I also have forwarded a complete packet of all of the individuals who expressed interest to Patty Keebler.

Please accept this letter on behalf of the selection committee.

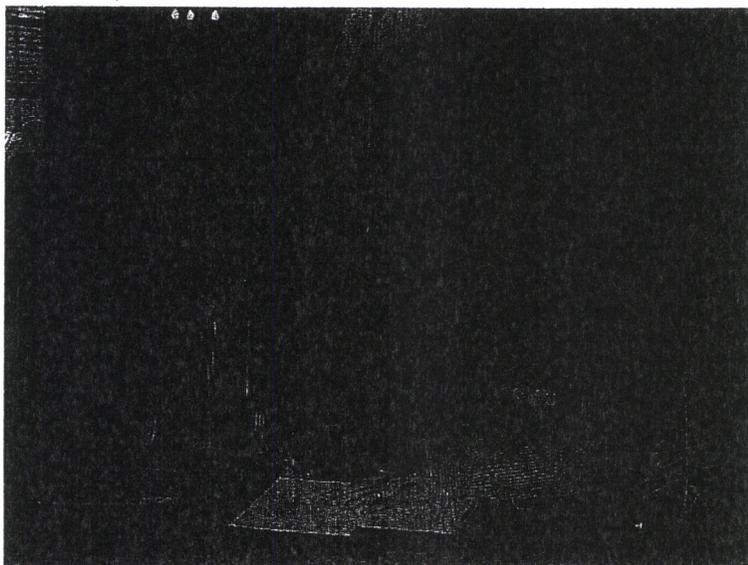
Sincerely,

A handwritten signature in cursive script that reads "Susan Byorth Fox".

Susan Byorth Fox  
Executive Director



CONTINUOUS NEWS(/CATEGORY/CONTINUOUS-NEWS/)



(#)0(#)

(mailto:?body=http%2Fwww.kxlf.com%2Fnews%2Fgallik-appointed-as-mt-commissioner-of-political-practices%2F%23.VMFFdpYQ51Q.mail%20appointed%20as%20MT%20Commissioner%20of%20Political%20Practices%20%7C%20Butte%2C%20MT)

(#) (#)

(#) (#)

May 13, 2011 4:44 PM by Marnee Banks/David Sherman

**Gallik appointed as MT Commissioner of Political Practices**

Governor Brian Schweitzer on Friday appointed Dave Gallik to serve as the Montana Commissioner of Political Practices.

Gallik grew up in Great Falls and graduated from CMR High School, earning his undergraduate degree in 1977 and law degree in 1980.

After several years in the private practice of law, he was appointed to be a State Staff Director for the U.S. Senate. Gallik then accepted the position of Staff Attorney for the Montana State Insurance Commissioner.

In 1995, Gallik re-entered private legal practice concentrating in areas involving state government and representing the rights of individuals.

Gallik served for several years in the Montana House of Representatives; he unsuccessfully sought a MT Senate seat in the 2010 election, losing to fellow Democrat Mary Caferro in the primary.

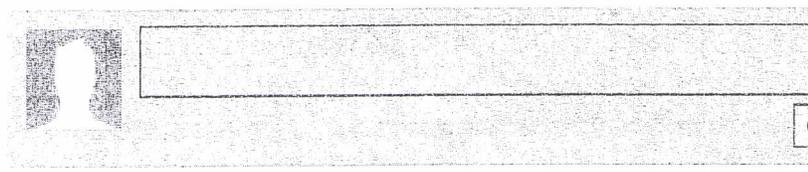
The Commissioner is appointed to serve one six-year term and requires Senate confirmation.

Gallik will serve in the position beginning Monday, May 23, 2011.

The salary is \$57,689.

Photo above is from Gallik's campaign website.

## COMMENTS



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## MOST POPULAR



Montana Legislative Services Division  
Office of the Executive Director

PO BOX 201706  
Helena, MT 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

February 2, 2012

Honorable Brian Schweitzer  
State Capitol  
Helena Montana 59620

Dear Governor Schweitzer:

As provided for in 13-37-102, MCA, a selection committee composed of President of the Senate Jim Peterson, Senator Carol Williams, Senate Minority Leader, Speaker Mike Milburn, and Representative Jon Sesso, House Minority Leader, nominated four individuals for your consideration of appointment as the Commissioner of Political Practices. The four names were approved unanimously. The nominees are Johnny Walker, Susan Witte, Jim Murry, and Colleen Urquhart-Fillner.

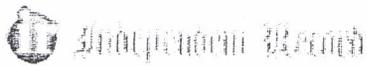
Please find attached the information that each candidate submitted for the committees review. Information on all of the persons who expressed interest has been posted to the Legislative website at: <http://leg.mt.gov/css/cpp-candidates2012.asp>

Please accept this letter on behalf of the selection committee.

Sincerely,

A handwritten signature in cursive script that reads "Susan B. Fox".

Susan Byorth Fox  
Executive Director



## Gov. Schweitzer Appoints Murry as Commissioner of Political Practices

FEBRUARY 06, 2012 5:00 PM

(HELENA) - Governor Brian Schweitzer today appointed James W. "Jim" Murry to serve as the Commissioner of Political Practices. The Governor made the appointment after interviewing 2 of the candidates recommended by the legislature - Murry and Colleen Urquhart-Fillner.

Murry comes with a wealth of knowledge and experience for the position. He has years of labor management and bipartisan experience including advocating for fair campaign practices laws and has filed extensive reports with the political practices office.

Murry currently lives in Clancy and has experience directing staff in private, public and nonprofit settings. He has interpreted both state and federal laws while applying them to work settings. He is an experienced speaker and has testified before the public, the congress, and the legislature.

Murry is committed to implementing electronic filing and working together. The Commissioner is appointed to fill the remainder of a 6-year term and requires Senate confirmation, the term ends December 31st 2016. Murry will serve in the position effective Tuesday, February 7th, 2012. The salary is \$57,689.



## Montana political practices chief won't seek full term

MARCH 25, 2013 4:17 PM • ASSOCIATED PRESS

HELENA — Political Practices Commissioner Jim Murry says he won't seek confirmation by the state Senate.

Gov. Brian Schweitzer appointed Murry on Feb. 6, 2012, and he has been working as the state's campaign finance and ethics chief while the Legislature was out of session.

Lawmakers had scheduled a confirmation hearing for Monday.

Murry said in a letter dated Monday that because of his age and health considerations it was never his intention to serve in that capacity for an extended period of time.

Murry said he came to the office during turbulent times, and he hoped to restore confidence in the office and improve the decision-making process.

The previous commissioner, David Gallik, resigned amid a dispute with staff over his work time.



Montana Legislative Services Division  
Office of the Executive Director

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May 3, 2013

The Honorable Governor Steve Bullock  
State Capitol  
Helena, Montana 59620

Dear Governor Bullock:

On behalf of the Legislative Committee charged pursuant to section 13-37-102, MCA, with the responsibility of submitting names to you for consideration for the position of the Commissioner of Political Practices, Senate President Jeff Essmann, House Speaker Mark Blasdel, Senate Minority Leader Jon Sesso, and House Minority Leader Chuck Hunter submit the following names for your consideration:

Ms. Ellen Bush, Helena, Montana  
Mr. Robert Hoffman, Butte, Montana  
Mr. Jonathan Motl, Helena, Montana  
Mr. Dan Ritter, Lakeside and Helena, Montana  
Ms. Colleen Urquhart-Filner, Helena, Montana

I have provided Stacey Otterstrom, Board and Commission Advisor, with a complete packet of letters of interest, resumes, and answers to questions posed to each interested person for your information.

Sincerely,

A handwritten signature in cursive script that reads "Susan Byorth Fox". To the right of the signature, the initials "DB" are written.

Susan Byorth Fox  
Executive Director

2013Interim\050313a-LetterGov\_COPP13.wpd

cc: Senator Jeff Essmann, President of the Senate  
Senator Jon Sesso, Senate Minority Leader  
Representative Mark Blasdel, Speaker of the House  
Representative Chuck Hunter, House Minority Leader  
Stacey Otterstrom, Board and Commission Advisor, Office of the Governor  
Candidates

## Helena attorney picked as new commissioner of political practices



MAY 20, 2013 2:49 PM • BY CHARLES S. JOHNSON IR  
STATE BUREAU

Gov. Steve Bullock on Monday appointed Helena lawyer Jonathan Motl to be the state's next political practices commissioner.

The commissioner is in charge of enforcing state laws dealing with campaign finances and practices, ethics and legislative lobbying.

"I think he'll do a great job," Bullock said. "I think the whole state will benefit from his experience and his work ethic."

Bullock said legislative leaders sent him a list of talented individuals, but that Motl rose to the top based on his experience and background.

Motl, who will wrap up his longtime private law practice, will begin the new job by June 10. His starting salary as commissioner will be \$62,500 a year.

"I am so happy," Motl said in an interview. "I'm delighted and grateful."

He will fill the remainder of the six-year term that ends on Jan. 1, 2017. His appointment is subject to Senate confirmation.

Motl will be the fourth person appointed to fill out the six-year term since Commissioner Dennis Unsworth's term expired at the end of 2010.

Three Democratic commissioners appointed by former Gov. Brian Schweitzer did not go through the confirmation process in the Republican-controlled Senate for various reasons.

Eleven people applied for the latest vacancy. A panel of the top four legislative leaders from both political parties narrowed the field to five and after interviews recommended all of them to Bullock.

The governor, who was free to choose anyone he wanted, also interviewed all five finalists last week.

Motl is partner in the Helena law firm of Morrison, Motl and Sherwood. He received his law degree in 1975 from William Mitchell College of Law in St. Paul, Minn.

As a private lawyer, he has practiced extensively before past political practices commissioners, representing ballot issue proponents and opponents and candidates and their campaign committees.

Motl has donated \$6,800 to Montana political campaigns since 1992, according to the National Institute on Money in State Politics. Discounting contributions to ballot issue campaigns and nonpartisan judicial races, Motl has given slightly more than \$5,000 in partisan statewide and legislative races, all to Democrats. That includes \$790 to Bullock in his races for attorney general and governor.

House Minority Leader Chuck Hunter, D-Helena, who sat on the interview committee, praised Motl's appointment.

"Having known Jonathan as an attorney, I think he's a great choice," Hunter said. "I believe in Jonathan Motl's professionalism and his ability to separate one thing from another.

"He really understands the process. He had a very thoughtful analysis of when is a conflict (of interest) a conflict."

Senate President Jeff Essmann, R-Billings, said he's been critical of how the commissioner's office is set up, with the same person serving as prosecutor, judge and jury.

"I had been hopeful that the governor would pick someone who is perceived as less partisan and more even-handed until we can get the office restructured in the future," Essmann said. "This is the fourth consecutive pick where the selected commissioner has had close political ties to the governor.

"It's quite doubtful that any Republican who is subject to a negative verdict from the new commissioner is going to feel like he got a fair shake from an impartial judge, which is what he deserved."

As commissioner, Motl said, "The main thing is the office is nonpartisan, and it is independent. I view my function as serving the people of Montana and following the law. That is the way I will carry out the work. I fully understand there is a very dedicated staff there. It will be a joint effort by the people on the staff there and me."

Motl said he was "inclined not to recuse myself, but would if necessary." The office has a "limited budget and tremendous workload" so the commissioner must do his share of the work, he said.

"I'm going to be disinclined to spend the public's money on an outside attorney," Motl said.

Additional Documents

SENATE: State Administration

SENATE JUDICIARY

MacNaughton, Jaime

Date: 4-20-2015

Exhibit No. 3

Bill No. SR 53

Date: 3/2/15

Bill No. HB 460

From:

Motl, Jonathan

Sent:

Thursday, February 26, 2015 8:39 AM

To:

'bennettforhouse@gmail.com'; 'brownformontana@gmail.com'; Court, Virginia (Rep); Curdy, Willis (Rep); 'kimberly.dudik@gmail.com'; Dunwell, Mary Ann (Rep); 'jennyeck4mt@gmail.com'; Ellis, Janet (Rep); Funk, Moffie (Rep); Hayman, Denise (Rep); 'elliemillhd94@gmail.com'; Hunter, Chad (Rep); 'tomjacobsonmt@gmail.com'; Karjala, Jessica (Rep); Kelker, Kathy (Rep); Klob, George (Rep); 'liesered@yahoo.com'; 'kelly@kellyformontana.org'; 'edienocclaffery@gmail.com'; McConnell, Nate (Rep); 'mehier@yahoo.com'; 'noonan73@yahoo.com'; Olsen, Andrea (Rep); Pease-Lopez, Carolyn (Rep); Pope, Christopher (Rep); 'jeanbigskybigwin@gmail.com'; Peppers, Rae (Rep); Perry, Zac (Rep); 'james.a.person@gmail.com'; Pierson, Gordon (Rep); Schreiner, Casey (Rep); 'repbsmith@gmail.com'; 'mtsteenbergbresnan.net'; Swanson, Kathy (Rep); 'tropical@mt.net'; Rep Susan Webber@gmail.com; KathleenHD61@bresnan.net; 'nwillsonhd95@gmail.com'; 'tomwoods4mt@gmail.com'

Cc:

Baker, Mary; MacNaughton, Jaime; Sanddal, Vanessa

Subject:

Mike Miller speech on the floor yesterday.

Dear Democratic House Member:

I just listened to Representative Mike Miller's floor speech on HB 446. It makes several stunningly false statements. These are as follows:

1. That "47 legislators" paid a \$100 fine because of a computer crash. That is false. There was no COPP computer crash, Miller is referring to a statewide computer server outage that occurred on June 23, 2014, affecting everyone dealing with the State. The \$100 fine originated from the *Bowen Greenwood v. Hoklin* complaint filed months later (August 4, 2014) against one candidate for failure to file a campaign finance report. Because there were a number of additional candidates (of both parties) who had failed to file their campaign finance reports we expanded the complaint to cover all candidates. We did this because a failure to file a campaign finance reports results in the candidate being removed from the ballot (see 13-37-126) and the date to file was August 14, 2014. The complaint was fortunate because each candidate could be notified and provided an opportunity to file the missing report and stay on the ballot. There were 42 candidates for public office (legislature, JP, other offices) addressed by the Decision. Three candidates were removed from the ballot and six were found to have properly filed (or were excused) leaving 33 candidates at issue, all of whom filed the missing reports and stayed on the ballot. Of those 33 candidates, 28 have paid a fine (uniformly set at \$100 a missing report) and 5 are outstanding.
2. That Mr. Miller was treated unfairly in litigation. That too is remarkably false. Mr. Miller's Sufficiency Decision concerned the 2010 elections and it was advanced to litigation in order to conform to statute of limitations requirements. Mr. Miller was provided a courtesy copy of the complaint prior to filing and provided an opportunity to accept service by mail. Mr. Miller did not accept service and it took almost three months involving a half dozen failed contacts by the COPP investigator (and eventually retention of a process server) before Mr. Miller was even served with the complaint. Mr. Miller's claim of cooperative document production is also false. Mr. Miller did not produce documents during the COPP investigation but only did so after litigation was joined.
3. Please note that the COPP has consistently declined to discuss Mr. Miller's settlement with this office, out of respect for the fact that the Legislature was in session.

additional doc  
Hinkle

Additional Documents  
SENATE: State Administration  
Date: \_\_\_\_\_  
Bill No. \_\_\_\_\_

I cannot tell you how disappointed I am in this speech by Representative Miller. The COPP regards candidates as one of the two distinct groups of people we serve, the other being the people of Montana. In that sense the staff of this Office will respond immediately to candidate phone calls, assist in filing reports and do whatever we can to keep candidates in line with reporting and disclosure. The "47 legislators" comment is just wrong and any disrespect for Mr. Miller during litigation is simply false.

I am in depositions all day today and I cannot come to the House to talk about this. Mary Baker, Jaime MacNaughton and Vanessa Sanddal are coming over however and will be in the lobby to talk to anyone who wishes about this.

Jonathan Motl  
Commissioner of Political Practices