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NANCY SWEENEY  
CLERK DISTRICT COURT

2014 JAN 24 AM 8:01

FILED

BY **C COLBERT**  
DEPUTY

MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

The COMMISSIONER OF POLITICAL  
PRACTICES FOR THE STATE OF  
MONTANA, through JONATHAN R.  
MOTL, acting in his official capacity as the  
Commissioner of Political Practices,

Plaintiff,

v.

RICHARD M. "MIKE" MILLER, and  
JOANNE MILLER.

Defendants.

Cause No. *CDV2014-62*

**COMPLAINT**

**KATHY SEELEY**  
Presiding Judge

Plaintiff, The Commissioner of Political Practices of the State of Montana, acting through Jonathan R. Motl, in his official capacity as current Commissioner, for his cause of action against the Defendants, Richard M. "Mike" Miller and JoAnne Miller, and alleges as follows:

**PARTIES**

1. Jonathan R. Motl, is the duly appointed Commissioner of Political Practices for the State of Montana (hereinafter Commissioner).

2. Defendant, Richard M. "Mike" Miller (hereinafter Mr. Miller) is an individual and resident of the State of Montana, subject to the jurisdiction of this court pursuant to M. R. Civ. P. 4(a)(1) and (b)(1).

3. Mr. Miller the is the presently elected Representative to the Montana Legislature's House of Representatives, District 84 seat for 2013-2014 Legislative Session.

4. Mr. Miller has served the Montana public as a member of the Montana House of Representatives from January 2009 to the present time, and his present term will end January 5, 2015.

5. Mr. Miller filed as a candidate for the 2010 election cycle with the COPP by filing his Form C-1, Statement of Candidate on August 6, 2009. (The COPP's file of Mr. Miller's 2010 Campaign Finance Reports are attached hereto as Exhibit 1, COPPMill 0001-0041).

6. Mr. Miller appointed himself as a deputy campaign treasurer on his Form C-1, Statement of Candidate, filed with the COPP on August 6, 2009.

7. Defendant, JoAnne Miller (hereinafter Ms. Miller) is an individual and resident of the State of Montana, subject to the jurisdiction of this court pursuant to M. Civ. R. P. 4(a)(1) and (b)(1).

8. Mr. Miller appointed Ms. Miller as his campaign treasurer on his Form C-1, Statement of Candidate, filed with the COPP on August 6, 2009.

#### **NOTICE**

**The Commissioner reserves and will bring a separate action against appropriate third parties, including those identified herein, that were involved in Mr. Miller's and other 2010 candidate campaigns.**

## JURISDICTION AND VENUE

9. The Plaintiff realleges all paragraphs set forth above and incorporates them as if set forth fully herein.

10. This Court has jurisdiction pursuant to Mont. Code Ann. § 13-37-113 (2013).

11. The Commissioner has determined that there are sufficient facts to justify civil adjudication under Title 13, Chapters 35 and 37 Montana Code Annotated, pursuant to Mont. Code. Ann. § 13-37-124. See the *Ward v. Miller*, Summary of Facts and Findings of Sufficient Evidence to Show a Violation of Montana's Campaign Practices Act, COPP-2010-CFP-0021, attached hereto as Exhibit 3.

12. All of the campaign finance reporting acts and/or omissions alleged herein occurred in Lewis and Clark County, State of Montana.

13. All of the candidate and candidate campaign acts and/or omissions alleged herein are under the jurisdiction of the Office of the Commissioner of Political Practices (hereinafter COPP) which is located in Lewis and Clark County, State of Montana.

14. All of the candidate and candidate campaign acts and/or omissions alleged herein are under the statutory jurisdiction of the COPP and the county attorney for enforcement of violations of the Campaign Practices and Finance Laws of the State of Montana, Mont. Code Ann. §§ 13-37-111 and 13-37-128.

15. The County Attorney of Lewis and Clark County has returned this matter to the Commissioner, who is the proper party to bring this civil action in state district court for Lewis and Clark County, pursuant to the provisions of Mont. Code Ann. § 13-37-113.

## INTRODUCTION

16. The Plaintiff realleges the paragraphs set forth above and incorporates them as if set out fully herein.

17. As the Commissioner, Jonathan Motl has the authority and responsibility, along with the county attorneys of this state, to investigate all alleged violations of the election laws contained in Title 13, chapters 35 and 37, Montana Code Annotated, and to enforce those laws, Mont. Code Ann. § 13-37-111(1).

18. Mr. Miller is a currently seated member of the Montana House of Representatives, a position imbued with the public trust, and is required to carry out his duties as a Legislator "for the benefit of the people of the state". Mont. Code Ann § 2-2-103.

19. Similarly, the Commissioner of Political Practices is a position imbued with the public trust, and is required to carry out her or his duties as the Commissioner of Political Practices "for the benefit of the people of the state", Mont. Code Ann § 2-2-103.

20. The Commissioner must investigate ("shall") allegations of violations of Montana's Campaign Finance and Practice Laws, Mont. Code Ann. § 13-37-111. Following an investigation the Commissioner must issue a decision based on the discovered facts and the law ("shall prepare a written summary of facts and statement of findings"), and the decision becomes a public record ("shall be public record")(Admin. R. Mont. 44.10.307(3)(a) and (4)).

21. Once a Commissioner, by issuing a decision, "determines that there appears to be sufficient evidence to justify a civil" adjudication of the Commissioner's

written summary of facts and statement of findings, the discretion the Commissioner may exercise is limited by law and public duty, Mont. Code Ann. § 13-37-124.

22. The Commissioner does not have the ability to close his or her eyes to the violations, rather the Commissioner must work with the party either to settle the dispute, or proceed to court to adjudicate the violations on behalf of the people of Montana.

23. Given the serious and pervasive nature of the violations found in the sufficiency findings in this matter, the Commissioner hereby requests adjudication of this matter in this Court.

24. The baseline facts in this adjudication are:

- a. Defendant, Mr. Miller, was a candidate for the Montana House Representatives, District 84 seat, in the 2010 election cycle. *See* Mont. Code Ann. § 13-1-101(6).
- b. In the 2010 primary election held on June 8, 2010 Mr. Miller defeated his opponent, Republican candidate Joe Dooling, by a vote of 972 to 479.
- c. In the 2010 general election held on November 2, 2010 Mr. Miller went on to defeat his opponent, candidate Ron Vandevender, by a vote of 3,273 to 726.
- d. Mr. Miller was required to register, file, disclose, and report all campaign activities with the COPP as required by Montana's Campaign Finance and Practices laws, Title 13, Montana Code Annotated, chapters 35 and 37, and associated Administrative Rules of Montana.

25. The procedural facts, incident to paragraphs 19-22 hereinabove, are as follows:

- a. A campaign finance complaint was filed by John Ward on June 8, 2010 against Assembly Action Fund. Mr. Ward requested that his complaint be expanded to include allegations against Mr. Miller. The Commissioner opened a separate investigation file against Mr. Miller's campaign pursuant to Mont. Code Ann. § 13-37-111(2)(a) and Mont. Admin. R. 44.10.307(3). The Complaint was styled with the COPP as *Ward v. Miller*, COPP-2010-CFP-0021.
- b. On November 12, 2013 by email, regular mail, and certified return receipt mail, Mr. Miller was notified of the complaint filed with the COPP. Mr. Miller was provided by letter with an opportunity to respond to the complaint, and was informed of the requirement of "production of all 'books, papers, correspondence, memoranda ... or other records' between yourself (or any agent of your campaign) and Christian LeFer, Allison LeFer, Western Tradition Partnership, Direct Mail and Communications Inc., Assembly Action Fund, Montana Citizens for Right to Work and any agent of these people or entities" pursuant to Mont. Code Ann. § 13-37-111.
- c. Mr. Miller was provided with 20 days within which to produce the above referenced documents, or to notify the Commissioner when the records would be available for inspection.
- d. Mr. Miller was provided with a reminder that tampering with any such evidence is punishable by law, Mont. Code Ann. § 45-7-207.

- e. The COPP conducted an investigation of the *Ward v. Miller* Complaint.
- f. On December 3, 2013, Mr. Miller provided a response and 6 documents from his 2010 campaign to the COPP, consisting of “the records that the campaign is required by statute to keep for a period of 4 years” (attached hereto as Exhibit 2, COPPMill 0042-0049).
- g. On December 18, 2013 the COPP issued a Summary of Facts and Findings of Sufficient Evidence to Show a Violation of Montana’s Campaign Practices Act by Mr. Miller and his candidate campaign (hereinafter Sufficiency Decision). See Mont. Admin. R. 44.10.307, (attached hereto as Exhibit 3, COPPMill 0050- 0107). The Sufficiency Decision in *Ward v. Murry*, COPP-2010-CFP-0021 is incorporated by reference herein as if set out in full (hereinafter Sufficiency Decision).
- h. In the Sufficiency Decision the Commissioner considered the facts of the matter, and found sufficient facts to support adjudication of the ten separate findings against Mr. Miller and his campaign:
1. “...for accepting illegal corporate contributions to his 2010 HD 84 campaign in the form of coordinated in-kind expenses made by a corporation in connection with the WIFE letter”,
  2. “...for failing to disclose and report as in-kind contributions election related expenses associated with the WIFE letter”,
  3. “...for accepting illegal corporate contributions to his 2010 HD 84 campaign in the form of coordinated in-kind expenses made by a corporation in connection with the Intro and closing letters”,

4. "...for failing to disclose and report as in-kind contributions election related expenses associated with the Intro and closing letters",
5. "...for accepting illegal corporate in-kind contributions to his 2010 HD 84 campaign in the form of coordinated in-kind expenses made by a corporation in connection with the issue ID'd letters",
6. "...for failing to disclose and report as in-kind contributions election related expenses associated with the issue ID'd letters",
7. "...for accepting illegal in-kind corporate contributions to his 2010 HD 84 campaign in the form of in-kind coordinated expenses made by a corporation in connection with the [Western Tradition Partnership/Assembly Action Fund Slick, the Taxpayers for Liberty Slick, the WTP attack letter and the Montana Citizens for Right To Work attack letter]",
8. "...for failing to disclose and report as in-kind contributions election related expenses associated with the [Western Tradition Partnership/Assembly Action Fund Slick, the Taxpayers for Liberty Slick, the WTP attack letter and the Montana Citizens for Right To Work attack letter]",
9. "...for failing to attribute election related expenses in connection with 1034 Slicks", and
10. "...failing to maintain campaign records for the four year period of time set out in Title 13 of the Montana Code".

- i. The Commissioner further determined that the following persons and entities are/were agents of Western Tradition Partnership in Mr. Miller's 2010 legislative campaign: Direct Mail, Allison LeFer, Christian LeFer, Montana Citizens for Right to Work, Assembly Action Fund, and Taxpayers for Liberty. See Sufficiency Decision pages 7 – 11, and 32.
- j. On December 18, 2013 the COPP provided the Lewis and Clark County Attorney, Mr. Leo Gallagher, with a copy of the *Ward v. Miller* Sufficiency Decision as required by Mont. Code Ann. § 13-37-124.
- k. The Lewis and Clark County Attorney waived the County's right to prosecute the sufficiency based violations on December 24, 2013, pursuant to the provisions of Mont. Code Ann. § 13-37-124, thereby authorizing the Commissioner to prosecute the violations.
- l. The Commissioner has determined that there are sufficient facts to justify a civil adjudication in District Court, pursuant to Mont. Code Ann. § 13-37-124. (See Sufficiency Decision, Exhibit 3).
- m. The Commissioner has brought this Complaint to the Court for its consideration of this matter *de novo*.

#### **VIOLATIONS OF MONTANA'S CAMPAIGN FINANCE AND PRACTICES ACT**

26. The Plaintiff realleges all paragraphs set forth above and incorporates them as if set forth fully herein.

27. As a candidate, Mr. Miller had an obligation to comply with and adhere to Montana's Campaign Finance and Practices laws, Title 13, Montana Code Annotated, chapters 35 and 37, and associated Administrative Rules of Montana.

28. As campaign treasurer and deputy treasurer, Mr. Miller and Ms. Miller also had an obligation to comply with and adhere to Montana's Campaign Finance and Practices laws, Title 13, Montana Code Annotated, chapters 35 and 37, and associated Administrative Rules of Montana.

29. Mont. Code Ann § 13-37-128 provides:

**Cause of action created.** (1) A person who intentionally or negligently violates any of the reporting provisions of this chapter, a provision of 13-35-225, or a provision of Title 13, chapter 35, part 4, is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to \$500 or three times the amount of the unlawful contributions or expenditures, whichever is greater.

(2) a person who makes or receives a contribution or expenditure in violation of 13-35-227, 13-35-228, or this chapter or who violates 13-35-226 is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlines in 13-37-124 and 13-37-125 for an amount up to \$500 or three times the amount of the unlawful contributions or expenditure, whichever is greater. (Emphasis added).

### **1. Failure to Maintain Campaign Records**

30. The Plaintiff realleges all paragraphs set forth above and incorporates them as if set forth fully herein.

31. As campaign treasurer and deputy treasurer, the Defendants had an obligation to preserve a record of Mr. Miller's campaign accounts for a period of 4 years, pursuant to Mont. Code Ann. § 13-37-208(3) and § 13-37-231(2). Preserving the record of the campaign activity serves the public trust because it allows the public, and the Commissioner, to assess and determine the validity, or lack thereof, of a claim of Campaign Practice violations.

32. Mr. Miller and Ms. Miller have violated the requirement of maintaining a record for Mr. Miller's 2010 campaign for a seat in the Legislature by:

- a. Failing to keep and/or produce his 2010 campaign records:
  1. In his December 3, 2013 response Mr. Miller asserted that “[a]t the beginning of my 2012 campaign, as my files were getting full of material that no longer had any value, I disposed of the material from previous campaigns like letters and flyers”.
  2. Also in his December 3, 2013 response, Mr. Miller stated “[t]he computer I had used since 2005 and used in the 2010 campaign died in Oct. 2011”.
- b. Mr. Miller only produced a total of 6 pages as his campaign records for his 2010 campaign for the House of Representatives, *see* Exhibit 2. The Defendant’s failed to produce Mr. Miller’s complete campaign record, including but not limited to, copies of the eight campaign letters and slick that he signed and partially paid for.

33. The failure of the Defendants to preserve a detailed record of their accounts, statements and reports for a period of four years is a violation of Mont. Code Ann. § 13-37-208 and § 13-37-231. This violation warrants a joint and several civil penalty against Mr. Miller and Ms. Miller pursuant to Mont. Code Ann. § 13-37-128.

## **2. Illegal Acceptance of Corporate Contributions**

34. The Plaintiff realleges all paragraphs set forth above and incorporates them as if set forth fully herein.

35. Mr. Miller was prohibited from accepting or receiving a contribution from a corporation, pursuant to Mont. Code Ann. § 13-35-227. Montanans have over 100 years of history of laws and stories demonstrating Montana’s state interest in

prohibiting corporations from making direct contributions to a candidate or political party to prevent corruption and the appearance of corruption.

36. Mr. Miller accepted illegal corporate contributions to his 2010 Legislative campaign. After an investigation, the Commissioner found sufficient evidence of corporate contributions to Mr. Miller in the following forms:

- a. Mr. Miller's coordinated campaign mailers from corporations including but not limited to, Western Tradition Partnership and Montana Citizens for Right to Work attack letters, and Assembly Action Fund and Taxpayers for Liberty slicks.
- b. The eight letters prepared by Western Tradition Partnership/Direct Mail, including but not limited to the costs of services, preparation, design, layout, editing, handling, paper, ink, envelopes, and mailing costs. (See Sufficiency Decision, Findings of Fact 4, 5, 6, 9, 10 13, and 14).
- c. Mr. Miller knew of, consulted on, consented to the production of, and participated in illegal coordinated campaign materials with third parties corporate entitles which include the following: Western Tradition Partnership (n.k.a. American Tradition Partnership), Direct Mail and Communications, Assembly Action Fund, Taxpayers for Liberty, Montana Citizens for Right to Work, National Gun Owners Alliance, or an undiscovered third party or third party entity. (See Sufficiency Decision, Findings of Fact 7, 8, 11, 12, 15, 16, and 17-20).

37. The violation of Montana's Campaign Practices Act by Mr. Miller in accepting or allowing coordinated illegal corporate contributions to his 2010 HD

campaign were violations of Mont. Code Ann. § 13-35-227 and Mont. Admin R. 44.10.323, and 513. The COPP requests the court to find against Mr. Miller, for a civil penalty judgment in the amount of \$500 or three times the amount of each separate unlawful coordinated corporate 3<sup>rd</sup> party contribution and expenditure made by Mr. Miller's 2010 campaign, whichever is greater, in accordance with Mont. Code Ann. § 13-37-128(1) and (2).

### **3. Failure to Report**

38. The Plaintiff realleges all paragraphs set forth above and incorporates them as if set forth fully herein.

39. As campaign treasurer and deputy treasurer, the Defendants had an obligation to maintain current and accurate campaign accounts disclosing all campaign contributions and expenditures, Mont. Code Ann. § 13-37-201, *et. seq.* and Mont. Admin. R. 44.20.501, *et seq.* The Defendants disclosure obligations to the public and fellow candidates serve the public trust by providing an even playing field in Montana's elections and by disclosing information to voters.

40. The Defendant's certified each campaign finance report filed with the COPP in the 2010 election as true and correct, Mont. Code Ann. § 13-37-231.

41. Mr. Miller's campaign violated the above statutory provisions and associated administrative rules by failing to fully report the following campaign activity:

- a. Mr. Miller's campaign ordered and allowed intro letters to be sent to absentee voters and to potential primary voters, 4 issue identified letters, a wife letter, and a final letter from Direct Mail for a total of 4,375 campaign pieces. (*See Exhibit 2*).

- b. By consenting to, receiving and coordinating with third party corporate entities to pay less than fair market value for the campaign mailers and the services provided by the third party entities, the excess value to Mr. Miller became in-kind contributions to Mr. Miller's campaign.
- c. Mr. Miller's coordination with the third party mailings became in-kind contributions to Mr. Miller's 2010 campaign, and the Defendants were required to report them to the COPP.
- d. Mr. Miller had an obligation to not only report the value of his campaign mailings that his campaign paid for, but also to report the fair market value of the in-kind contributions that he received from Western Tradition Partnership/Direct Mail and any associated 3<sup>rd</sup> party entity.
- e. As a direct result of the Defendants' failure to report all contributions to Mr. Miller's 2010 campaign, Mr. Miller not only received an unfair advantage in the contest for his Legislative seat, but deceived the people of Montana by failing to fully report all campaign contributions.

44. The COPP requests the court to enter a joint and several a civil penalty judgment against the Defendant's in the amount of \$500 or three times the amount of the violation for each separate failure to report, whichever is greater, in accordance with § 13-37-128(1) Mont. Code Ann.

#### **4. Failure to Attribute**

45. The Plaintiff realleges all paragraphs set forth above and incorporates them as if set forth fully herein.

46. Mr. Miller failed to properly attribute the 8 letters that he partially paid for with WTP/Direct Mail, and allowed a slick that he paid for to be sent to the public that was attributed to a third party, Taxpayers for Liberty, in violation of Mont. Code Ann. § 13-35-225, and all associated Administrative Rules of Montana. Attribution requires election communications to include a disclosure which includes the phrase "paid for by" followed by the name and address of the person who made or financed the communication, Mont. Code Ann. § 13-35-225(1). Attribution of campaign materials provides the public with information as to who is asserting a message during an election cycle, allows the public to assess the trustworthiness of the information, and facilitates the public's determination whether or not to take the message contained in the communication into consideration when casting their ballots.

47. Mr. Miller's campaign violated the above statutory provisions and associated administrative rules by failing to fully attribute election communications in the following ways:

- a. Mr. Miller ordered and allowed 8 campaign communications to be sent to voters without the proper attribution of who made or financed the communication, including intro letters to be sent to absentee voters and to potential primary voters, 4 issue identified letters, a WIFE letter, and a final letter from Direct Mail for a total of 4,375 campaign pieces. (*See Exhibit 2*).
- b. WTP's records from the 2010 election cycle included a second slick that attacked Mr. Dooling and were sent under the name Taxpayers for Liberty. Mr. Miller paid Direct Mail for a portion of the costs for 1,034 slicks that were mailed to voters under the name of Taxpayers for Liberty.

48. The COPP requests the court to enter a civil penalty judgment against Mr. Miller in the amount of \$500 or three times the amount of each separate attribution violation of Mont. Code Ann. § 13-35-225, whichever is greater, in accordance with Mont. Code Ann. § 13-37-128(1), and all associated Administrative Rules of Montana.

**PRAYER FOR RELIEF**

Wherefore, the Commissioner of Political Practices, in his official capacity, respectfully requests the Court to enter a joint and several judgment against Mr. Richard M. "Mike" Miller and/or JoAnne Miller as follows:

1. For each separate violation Montana's Campaign Finance and Practices laws, Title 13, Montana Code Annotated, chapters 35 and 37, and associated Administrative Rules of Montana:

- a. failure to maintain campaign records,
- b. illegal acceptance of corporate contributions,
- c. failures to report, and
- d. failures to attribute,

as set out herein above, that a joint and several civil penalty be assessed against the named Defendants in an amount equal to three times the amount each violation as shown at trial, or \$500 whichever is greater; and

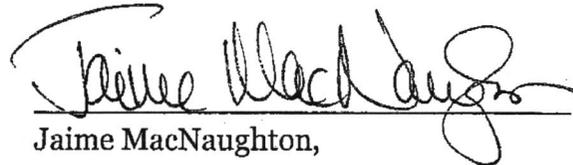
2. As an integral part of this pleading upon adjudication of the above issues against Mr. Miller, on behalf of the people of Montana, the Commissioner requests if Mr. Miller is found by the Court to have violated any provision of Title 13, Montana Code Annotated, that the Court then consider removal of Mr. Miller from his elected position as Representative of House District 84 for the remainder of his 2013-2014 term. Such consideration is mandated by Montana Law: "in addition to other penalties

prescribed by law...if an elected official...is adjudicated to have violated any provision of this title, except 13-35-207(9), the individual must be removed from office" Mont. Code Ann. § 13-35-106(3) (emphasis added).

3. The costs incurred by the Office of the Commissioner of Political Practices in bringing this action, and

4. For such other and further relief as the Court may deem just and appropriate.

Respectfully submitted this 24<sup>th</sup> day of January, 2014.



Jaime MacNaughton,  
Attorney for the Commissioner of Political Practices

