

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Pennington v. Bullock No. COPP 2013-CFP-012	Summary of Facts and Finding of Insufficient Evidence to Show a Violation of Montana's Campaign Practices Act DISMISSAL OF COMPLAINT
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On March 13, 2013, James Pennington, a resident of Billings, Montana filed a complaint against Steve Bullock, the 2012 Democratic candidate for Governor of Montana. Mr. Pennington alleged that Mr. Bullock's 2012 campaign and several other political committees active in 2012 campaigns violated campaign finance laws through coordination of campaign actions.

SUBSTANTIVE ISSUES ADDRESSED

The substantive area of campaign finance law addressed by this decision is that of coordination based on shared vendors and/or associations between individuals and groups.

INTRODUCTION

This is a complaint of many allegations against many parties centered around one assumption. The assumption is that association, by itself, can create coordination. For a number of reasons, including constitutional considerations, such an assumption, if adopted into law and applied equally across the board to all candidate races would have an insidious and far

reaching effect on candidates across Montana.¹ The issue, though, of coordination by association, regardless of merit, is one that has been raised in Montana by people from all political persuasion. For that reason this Complaint, while lacking in merit (see below) is not frivolous as it raises an issue that deserves discussion and resolution for the benefit of Montanans, including those Montanans who are or will become candidates for public office.

DISCUSSION

This complaint does not allege or concern a failure to report or disclose. That is, the complaint accepts that the campaign expenditure amounts discussed in the complaint were fully disclosed and reported as independent expenditures to the people of Montana. Instead, the complaint alleges that the amounts were improperly reported as independent expenditures because coordination in the expenditures existed between “Steve Bullock, his campaign and third party groups” in regard to the expenditures.

Coordination is important because any expenditure reported and disclosed as an independent expenditure by a third party group can become a campaign contribution attributed to a candidate if the expenditure is deemed to be “coordinated” between a candidate (Candidate Bullock in this Matter) and the third party. Because of coordination the independent expenditure status

¹ Application of coordination solely by association would, for example, implicate a number of sitting Montana legislators who were associated with Western (American) Tradition Partnership, an entity that has been found to have engaged in coordination by specific action with a number of 2010 Montana legislative candidates. *Bonogofsky v. Kennedy*, COPP 2010-CFP-015; *Washburn v. Murray*, COPP 2010-CFP-019; *Ward v. Miller*, COPP 2010-CFP-021; *Clark v. Bannan*, COPP 2010-CFP-023; *Bonogofsky v. Boniek*, COPP-2010-CFP-027; *Bonogofsky v. Wittich*, COPP-2010-CFP-031; *Madin v. Sales*, COPP-2010-CFP-029; *Bonogofsky v. Prouse*, COPP-2010-CFP-033, and *Bonogofsky v. Wagman*, COPP-2010-CFP-035.

(which allows unlimited expenditure activity) is lost and the expenditure is treated as though it is a contribution to the candidate's own committee.

Contributions to a candidate, of course, are limited in amount from any source and prohibited completely from a corporate source. (See §§13-35-227, 13-37-216, MCA). Coordination, if shown to exist, would limit or prohibit completely many of the campaign expenditures at issue in this Matter.

The complaint identifies the third party groups engaged in independent expenditures in Montana's 2012 election of governor as the Build Montana PAC, MT AFL-CIO, MEA-MFT, MEA-MFT COPE, MT-JET PAC, Montana Conservation Voters, Planned Parenthood of Montana, Democratic Governor's Association, Montana Democratic Party, Big Sky Democrats, and Forward Montana. The general claim of coordination between the Bullock campaign and the named third party groups was based in part on the use of common vendors by the third parties and the Bullock campaign for governor. The Common Vendors were listed as Hilltop Public Solutions, Three Point Media, Greenlight Media Strategies, Element and NGP Van.

I. Foundational Findings of Fact

The following findings of fact apply to this Decision.

Finding of Fact No. 1: On April 1, 2009, Steve Bullock submitted his "original" C-1 Statement of Candidate form to the Commissioner of Political Practices Office (COPP). The C-1 form was amended on September 8, 2011 and March 19, 2012. During Steve Bullock's 2012 campaign for Governor, the COPP received six folders with approximately 470 pages each of C-5 campaign finance reports (including several amendments to each report). (Commissioner's records).

Finding of Fact No. 2: Build Montana PAC filed the required