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BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
OF THE STATE OF MONTANA

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COMMISSIONER OF  
POLITICAL PRACTICES

<i>David E. Wanzenried,</i>  Complainant and Requestor,  v.  <i>Raphael Graybill,</i>  Respondent.	Cause No. COPP-2020-DR-0001  STATEMENT OF MATTERS OFFICIALLY NOTICED
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**PROCEDURAL BACKGROUND**

On February 2, 2020, at 1:12 pm, the Office of the Commissioner of Political Practices received a Campaign Finance and Practices Complaint from Mr. Wanzenried against Mr. Graybill.

Around 2:00 pm, Commissioner Mangan provided both Mr. Graybill and Mr. Wanzenried with notice that the Commissioner would review the complaint for sufficiency under Montana's Campaign Finance laws, and assigned the Complaint an initial Campaign Finance Complaint Cause Number COPP-2020-CFP-002. At 3:30 pm, the Commissioner emailed the parties, and notified them that this request might be more appropriate for a declaratory ruling, and that the Commissioner would treat the complaint as such upon request of either party in writing.

Around 4:12 pm, the COPP received Mr. Graybill's initial response to the complaint. Mr. Graybill also noted that he was considering the offer to transform the complaint into a request for a declaratory ruling, and that he would notify the COPP shortly of his decision.

On Tuesday, February 4, 2020, the COPP received Mr. Wanzenried's request to treat his campaign finance complaint as a request for a formal declaratory ruling. Around 11 am, the Commissioner accepted Mr. Wanzenried's request, notified both

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parties, and requested any additional facts for the record to be submitted no later than February 7, 2020.

This statement of matters officially noticed for the Commissioner's declaratory ruling proceeding follows, Mont. Code Ann. § 2-4-501, *et. seq.* and Mont. Admin. R. 1.3.227(4)(a).

**STATEMENT OF MATTERS OFFICIALLY NOTICED  
FOR DECLARATORY RULING**

1. Mr. Wanzenried's request for declaratory ruling (former campaign finance complaint) alleges a potential violation of Montana's deceptive election practices statute, Mont. Code Ann. § 13-35-207(4).
  2. The request alleges that Mr. Graybill does not meet the Constitutional qualifications to campaign for the Office of the Montana Attorney General which provide that:
    - (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.
    - (2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.
- Mont. Const. Art. VI, Sec. 3, (1) and (2).
3. The request alleges that Montana's Campaign Finance and Practices Act's definition of "election" applies to the provisions of the Montana Constitution, Mont. Code Ann. § 13-1-101(12).
  4. The request alleges that Mr. Graybill has not actively practiced law for five years as required by the Constitution. Specifically, the request alleges that neither Mr. Graybill's experience clerking for the Ninth Circuit, nor his experience in practice of law outside of Montana constitutes active practice of law in Montana.

5. Mr. Wanzenried asserts that these issues are of statewide importance and should be resolved prior to the closing of candidate filing with the SOS in March 2020, prior to the primary election in June, or no later than the November 3, general election.


### **SUPPLEMENTAL NOTICE**

The Commissioner accepts the parties' representations that these issues are of statewide importance and must be resolved as expeditiously as possible. The parties are provided with notice that the Commissioner will not be engaged in an investigation under Mont. Code Ann. § 13-37-111.

As of this morning, the campaign finance complaint will be treated as a formal request for a declaratory ruling. The Commissioner will take judicial notice of any material evidence offered by the parties to this matter which are relevant to the matters which have been officially noticed above, Mont. Admin. R. 1.3.227(2)(b).

Any supplemental legal argument or factual evidence the parties wish to have as a part of the agency record shall be submitted to the Commissioner electronically no later **Friday, February 7, 2020, at 5 pm**. Any further communications of additional information or argument are to be submitted to the other party at the same time they are submitted to the Commissioner for consideration.

DATED this 4<sup>th</sup> day of February, 2020.

  
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Commissioner Jeffrey Mangan

cc: David E. Wanzenried, Complainant and Requestor  
Raphael Graybill, Respondent