

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

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In the Matter of the Complaint )  
Against Brian Close, the Better )  
Bozeman Coalition, Joe Frost, )  
the Joe Frost for Commission )  
campaign, Richard Noonan, )  
Crazy Mountain Lineworks, and )  
Jon Gerster. )

**SUMMARY OF FACTS  
AND  
STATEMENT OF FINDINGS**

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Kurt Shull, deputy treasurer of the political committee known as People for Responsible Government, filed a complaint against Brian Close, the Better Bozeman Coalition, Joe Frost, the Joe Frost for Commission Campaign, Richard Noonan, Crazy Mountain Lineworks, and Jon Gerster. The complaint alleges the following violations of Montana campaign finance and practices laws:

Claim 1: Brian Close and/or his law office failed to report in-kind contributions to a) the Joe Frost for Commission campaign, and b) the Better Bozeman Coalition, for services rendered by Close to the campaign and to the Better Bozeman Coalition.

Claim 2: The law office of Brian Close failed to file a Statement of Organization.

Claim 3: Brian Close's alleged in-kind contributions to the Joe Frost for Commission campaign exceeded the statutory limitation for local candidates.

Claim 4: Brian Close's \$100 contribution to the Better Bozeman Coalition was either a contribution in the name of an undisclosed principal or a contribution that was not properly reported as an earmarked contribution.

Claim 5: The Joe Frost for Commission campaign accepted \$1,500 pursuant to a settlement agreement, and Brian Close, deputy treasurer of the campaign, pledged that amount to the Better Bozeman Coalition. Brian Close failed to report the pledge or transfer of those funds to another political committee (the Better Bozeman Coalition).

Claim 6: The Better Bozeman Coalition failed to report the in-kind contributions described in Claim 1.

Claim 7: The Better Bozeman Coalition failed to report the \$1,500 pledge or transfer from the Joe Frost for Commission Campaign described in Claim 5.

Claim 8: The Better Bozeman Coalition violated Montana's naming and labeling statute for political committees.

Claim 9: The Better Bozeman Coalition failed to maintain proper and accurate campaign finance records, failed to file its campaign finance reports in a timely manner, and filed inaccurate and incomplete reports.

Claim 10: Joe Frost violated the Code of Fair Campaign Practices when he undertook and condoned dishonest or unethical practices by failing to timely and accurately disclose contributions and expenditures connected with his campaign.

Claim 11: The Joe Frost for Commission Campaign failed to report the in-kind contributions described in Claim 1.

Claim 12: The Joe Frost for Commission Campaign failed to report in-kind contributions from Crazy Mountain Lineworks.

Claim 13: The Joe Frost for Commission Campaign accepted \$1,500 pursuant to a settlement agreement, and deputy treasurer Brian Close pledged that amount to the Better Bozeman Coalition. (See Claim 5). The Joe Frost for Commission Campaign failed to report the pledge or transfer of those funds to another political committee (the Better Bozeman Coalition).

Claim 14: The Joe Frost for Commission Campaign failed to file its campaign finance reports in a timely manner, and filed inaccurate and incomplete reports.

Claim 15: The Joe Frost for Commission Campaign failed to maintain proper and accurate campaign finance records.

Claim 16: The Joe Frost for Commission Campaign failed to permit PRG to inspect its records.

Claim 17: The Joe Frost for Commission Campaign violated Montana's surplus campaign funds statute, Montana Code Annotated § 13-37-240, when it received the \$1,500 settlement amount referenced in Claims 5, 7, and 13, and pledged that amount to the Better Bozeman Coalition.

Claim 18: Richard Noonan failed to register Crazy Mountain Lineworks as a political committee and failed to file periodic campaign finance reports for the committee.

Claim 19: Jon Gerster, as an officer of the Better Bozeman Coalition, is responsible for any violations attributable to the Better Bozeman Coalition based on the failure to timely and accurately report contributions and expenditures.

## **SUMMARY OF FACTS**

### The Parties

1. Brian Close is an attorney practicing law in Bozeman, Montana. Close primarily practices as a tax attorney.

2. Close's law practice is not incorporated or otherwise organized as a separate legal entity. Close operates his law practice as a sole proprietorship. He has a one-room office with no administrative staff.

3. The Better Bozeman Coalition (BBC) is a political committee whose purpose is listed as follows: "Defend democracy and free elections in Bozeman. To support a healthy community and community values." The BBC was first formed as a loose-knit organization in January, 2002. The BBC filed as a political committee with the office of the Commissioner of Political Practices (Commissioner) on November 18, 2002. Close is the treasurer and chief of staff of the BBC.

4. Joe Frost was an unsuccessful candidate for the Bozeman City

Commission in 2001 and 2003. His campaign organization was known as the Joe Frost for Commission Campaign (Frost campaign). Frost was the chairman of the BBC between November 15, 2002 and April 28, 2003, when he resigned to again run for the City Commission.

5. Richard Noonan is an architect who does work under the assumed business name Crazy Mountain Lineworks. Noonan was the treasurer of the Frost campaign from July 2, 2001 until December 5, 2001. Noonan was the deputy treasurer of the Frost campaign from December 6, 2001 to December 12, 2001. Frost became the treasurer of the Frost campaign on December 6, 2001.

6. Close became the deputy treasurer of the Frost campaign on December 13, 2001.

7. Jon Gerster was the vice-chairman of the BBC between November 15, 2002 and April 28, 2003. Gerster became chairman of the BBC on April 29, 2003, after Frost stepped down to run for the Bozeman City Commission.

### The Allegations and Facts Related to the Allegations

#### Brian Close and His Law Firm

8. The Complaint makes the following allegations regarding Brian Close:
- Close failed to report in-kind contributions to the Frost campaign and to the BBC (Claim 1);
  - Close's law office failed to file a Statement of Organization (Claim 2);
  - Close's alleged in-kind contributions to the Frost campaign exceeded the statutory limitation for local candidates (Claim 3);
  - Close made a contribution to the BBC that was either a contribution in the name

of an undisclosed principal or was not properly reported as an earmarked contribution (Claim 4);

- Close, acting as attorney and deputy treasurer of the Frost campaign, accepted \$1,500 in settlement of a lawsuit and pledged that amount to the BBC. Close failed to report the pledge or transfer of the funds to another political committee (Claim 5);

9. Close became deputy treasurer of the Frost campaign on December 13, 2001. He accepted the position so that he would be authorized to inspect the records of an opposing political committee pursuant to Montana Code Annotated § 13-37-209.

10. After being appointed deputy treasurer of the Frost campaign, Close sought the right to inspect the records of two political committees: People for Responsible Government (PRG) and the Gallatin Valley Licensed Beverage Association, also known as the Gallatin Valley Tavern Association (GVTA).

11. Close acted as attorney of record in pursuing, on behalf of the Frost campaign, the inspection of the records of PRG and the GVTA. Close stated that he “volunteered” his time to pursue the inspection of the records. He estimated the costs associated with his effort to pursue the requested inspections at \$70, which included costs for postage and paper, his office telephone, computer, copier, fax machine, and a process server. This estimate does not include the value of any time Close spent as an attorney working on the case.

12. Close stated that all of his time devoted to the effort to inspect the records of PRG and the GTVA occurred after the November 2001 election, therefore his activities could not have influenced the election.

13. In August 2002, on behalf of the Frost campaign, Close filed a mandamus action against the GVTA in the District Court of the Montana Eighteenth Judicial District, based on the GVTA's alleged refusal to permit the Frost campaign to inspect the GVTA's records.

14. In October, 2002, the mandamus action was settled. In lieu of providing Close and the Frost campaign with access to its records, GVTA offered to settle the mandamus litigation by paying money to the Frost campaign and/or Close. Pursuant to the settlement agreement, the GVTA paid \$1,500 to the Frost campaign for its attorney fees. The check was made out to "Joe Frost, Treasurer, and Brian Close." Frost then endorsed the check over to Close. Close states that the \$1,500 fully reimbursed him for his attorney time and expenses related to his work on the case (including the costs described in Fact 11).

15. There is no evidence that there was a pre-existing agreement between Close and the Frost campaign that Close would be reimbursed for the time he spent rendering legal services pertaining to the post-election records inspection effort. It appears that at the outset Close intended to volunteer his time to the campaign and he did not expect to be reimbursed or paid for his services. However, when the GVTA offered to pay the Frost campaign's attorney fees and costs to resolve the mandamus action, the Frost campaign and Close mutually agreed to that resolution.

16. There is no evidence that Close or the Frost campaign intended to accomplish anything related to the Frost campaign other than to inspect the records of the GVTA. There is no evidence that at the time of the inspection efforts Close or the Frost campaign intended to challenge the 2001 election results or to obtain information

to use in a future election campaign.

17. A January 4, 2003 article in the Bozeman Daily Chronicle attributes the following statements to Close regarding the settlement:

“We had to decide whether we were going to fight this for 18 more months or take some cash and apply it toward the next election,” Close said. The tavern association “cut us a check for \$1,500 for attorney fees and I have pledged that money to the Better Bozeman Coalition.”

18. Close concedes that he publicly pledged to contribute the \$1,500 settlement money from the mandamus action to the BBC. He contends, however, that the pledge was not definite as to when the payment would actually be made, and it was always contingent on the status of Close’s own financial resources, as well as whether others would contribute money to the BBC.

19. Close contends he was unable to follow through with his previous pledge to contribute the \$1,500 to the BBC because his own income declined. He expected to receive income from a legal case he was working on in January and February, 2003, but he did not get paid and was later fired. Close found it necessary to use the \$1,500 to pay for his own expenses, and the money was never contributed to the BBC.

20. Close’s bank records and statements establish that he never paid \$1,500 to the BBC, and that on October 24, 2002 he deposited most of the settlement money directly into his own bank account (minus \$100 cash back, which he used for immediate personal expenses).

21. Aside from his efforts related to inspection of the records of PRG and the GVTA, Close did not engage in any activities in support of the Frost campaign, nor did he use his office equipment for that purpose. Close recalls contributing \$20 to the Frost campaign some time prior to the 2001 election, but aside from that contribution he did

not actively support Frost's candidacy.

22. On November 15, 2002, Close contributed \$100 to the BBC with a check drawn on Close's personal bank account. A review of Close's bank records confirms that the \$100 check was the only amount that Close paid to the BBC.

23. Close states he contributed the \$100 to the BBC to enable the political committee to open a bank account. He states that the BBC has not made any campaign expenditures or taken any campaign-related actions. BBC's campaign finance reports, while they disclose the receipt of several contributions (including the one from Close), do not show any expenditures.

24. There is no evidence that any of the \$1,500 received by Close in settlement of the mandamus action against the GVTA was paid to the BBC.

25. Close occasionally used his office equipment and office resources to support the organizational and reporting activities of the BBC. The initial C-6 campaign finance report filed by the BBC did not report any in-kind contributions from Close or his law firm. Beginning in October, 2003, Close exchanged email communications with the Commissioner's office, inquiring about how to allocate the value of his law office resources such as rent, computer, email, postage, stationary, etc., for reporting purposes. Later campaign finance reports filed by the BBC reflect an effort by Close to estimate the value of those resources to the extent they were used to support the BBC.

26. In early November, 2001, prior to becoming deputy treasurer of the Frost campaign, Close filed campaign finance and practices complaints against PRG and the GVTA. The complaint filed by Shull alleges that Close filed these two complaints "at the request or suggestion of the Frost campaign." Both Close and Frost deny that Close



filed the complaints at the request or suggestion of Frost or the Frost campaign, and there is no evidence to support the contention in the complaint.

### BBC

27. The complaint makes the following allegations regarding the BBC:

- The BBC failed to report in-kind contributions from Brian Close and/or his law office, as described in Claim 1 (Claim 6)
- The BBC failed to report the \$1,500 pledge or transfer of funds from the Frost campaign, as described in Claim 5 (Claim 7)
- The BBC violated Montana's naming and labeling statute for political committees (Claim 8)
- The BBC failed to maintain proper and accurate campaign finance records, failed to file its reports in a timely manner, and filed inaccurate and incomplete reports (Claim 9)

28. The concept for formation of the BBC as a political committee was discussed informally beginning in January, 2002, by Close, Frost, Jon Gerster, and several others. For the first several months the organizers discussed possible names for the organization. Around the middle of May, 2002, they settled on the name "Better Bozeman Coalition."

29. Close contributed \$100 to the BBC on November 15, 2002, to enable the political committee to open a bank account. Close stated he contributed the \$100 because it was his understanding that the rules of the Commissioner's office require a political committee to have a bank account. The BBC filed its C-2 Statement of Organization with the Commissioner's office on November 18, 2002.

30. During the reporting period from January 30 to October 21, 2003, the BBC received several additional contributions, all of which appear to have been properly and accurately reported:

- Jon Gerster contributed \$40. Gerster listed his occupation as “inn-keeper.”
- Chris Nixon contributed \$40. Nixon listed his occupation as “inn-keeper.”
- J.P. Pomnichowski contributed \$100. Pomnichowski listed his occupation as “computer specialist.”

31. Close was named treasurer of the BBC, and he is also known as the chief of staff.

32. Frost was the chairman of the BBC between November 15, 2002 and April 28, 2003, when he resigned after deciding to again run for the Bozeman City Commission.

33. Gerster was the vice-chairman of the BBC between November 15, 2002 and April 28, 2003. Gerster assumed the role of chairman of the BBC on April 29, 2003, after Frost stepped down to run for the City Commission.

34. The complaint alleges the BBC’s initial campaign finance report was filed three days late. The BBC’s initial C-6 political committee finance report was postmarked on January 31, 2003 and received and filed with the Commissioner’s office on February 3, 2003. The due date for filing the report was January 31, 2003.

35. In his response to the complaint Close contends the BBC’s C-6 was faxed to the Commissioner’s office on January 31, 2003, and that therefore it was timely filed. The records of the Commissioner’s office do not show that the C-6 was faxed to the office.

36. The complaint alleges the BBC failed to report in-kind contributions from Brian Close or his law firm. As noted in Fact 23, Close occasionally used his office equipment and office resources to engage in organizing and reporting activities relating to the BBC. While the initial campaign finance reports filed by the BBC did not disclose in-kind contributions, in later reports Close made an effort to properly and accurately report the value of his law office resources that were utilized for purposes of supporting the activities of the BBC.

#### Joe Frost and the Frost Campaign

37. The complaint makes the following allegations regarding Joe Frost and the Frost campaign:

- Frost violated the Code of Fair Campaign Practices (Claim 10)
- The Frost campaign failed to report in-kind contributions from Close and/or Close's law firm (Claim 11)
- The Frost campaign failed to report in-kind contributions from Crazy Mountain Lineworks (Claim 12)
- The Frost campaign failed to report the transfer of funds (\$1,500) to another political committee, the BBC (Claim 13)
- The Frost campaign failed to file its campaign finance reports in a timely manner, and filed inaccurate and incomplete reports (Claim 14)
- The Frost campaign failed to maintain proper and accurate campaign finance records (Claim 15)
- The Frost campaign failed to permit PRG to inspect its records (Claim 16)
- The Frost campaign violated Montana's surplus campaign funds statute when it

received the \$1,500 settlement amount referenced in Claims 5, 7, and 13, and pledged that amount to the BBC (Claim 17)

38. As noted in Fact 11, Close estimated the costs associated with his efforts to pursue the requested inspections of the records of PRG and the GVTA at \$70, which included costs for postage and paper, Close's office telephone, computer, copier, fax machine, and a process server. His activities related to the inspection efforts occurred after the 2001 election. None of those costs were reported by the Frost campaign as in-kind contributions, nor did Close or his law office file campaign finance reports as an incidental political committee.

39. As noted in Fact 19, aside from his efforts related to inspection of the records of PRG and GVTA, Close did not engage in any activities in support of the Frost campaign, nor did he use his office equipment for that purpose. Close does recall contributing \$20 to the Frost campaign prior to the November, 2001 election.

40. Close did not transfer any of the \$1,500 received in settlement of the mandamus action against the GVTA to the BBC. See Facts 14-18, 22.

41. Crazy Mountain Lineworks is an assumed business name for Richard Noonan's work as an architect. The name was first registered with the Secretary of State's office on December 6, 2002, prior to the period of time that Noonan served as treasurer of the Frost campaign.

42. Noonan volunteered his time while serving as treasurer of the Frost campaign. He did not charge the Frost campaign for his services, nor did the Frost campaign pay Noonan for his work as treasurer.

43. At the time of the events relating to the allegations in the complaint,

Noonan had no employees and worked out of his home office. Noonan had home office equipment, including a computer, fax machine, and telephone, which he used for his business as well as his personal use. Although he uses the equipment for his business, Noonan considers it his personal equipment, not “Crazy Mountain Lineworks” equipment. While serving as treasurer of the Frost campaign, Noonan occasionally used his home office equipment for the Frost campaign, but he did not itemize his use or keep track of the extent of or value of the use of that equipment.

44. The Frost campaign did not report any in-kind contributions from Noonan or from Crazy Mountain Lineworks.

45. Crazy Mountain Lineworks did not file campaign reports as an incidental political committee.

46. The complaint alleges the Frost campaign failed to file campaign finance reports in a timely manner, and filed inaccurate and incomplete reports. The complaint also alleges that the Frost campaign failed to maintain proper and accurate campaign finance records. The complaint alleges that the occupation or employer of contributor Daniel Bolles was not disclosed.

47. In response, the Frost campaign admits that two forms that were required to be filed with the Commissioner’s office were filed “one or two days late.” The response also admits that the campaign was unable to determine the status of one of the contributors, a Mr. Bolles. The campaign denies that it failed to keep accurate campaign finance records.

48. A review of the Frost campaign’s campaign finance reporting files discloses that its initial C-5 campaign finance report was filed on August 31, 2001, one

day late. Another C-5 was filed on October 26, 2001, which was also a day late. The Frost campaign filed a C-7 on October 30, 2001, reporting a \$100 contribution made by Susan Johnson on October 25, 2001. The C-7 report of contribution should have been filed within 48 hours.

49. A C-5 filed on November 26, 2001 reports a \$100 contribution from “Daniel Bolles” of Bozeman. The report does not list the occupation or employer of Bolles. The Frost campaign apparently attempted to obtain further information, as reflected in a notation on the C-5 stating “letter sent for info.” Close states that the campaign checked the telephone book, checked property tax records, and may have even knocked on Bolles’s door, but was unable to obtain the information.

50. The campaign finance reports for Frost’s 2003 campaign list a contributor named “Daniel Guggenheim,” and list Guggenheim’s occupation as self-employed software engineer. Guggenheim, whose address listed on the 2003 report matches the address listed for Daniel Bolles on the 2001 report, is married to Marilyn Bolles. Thus, the contributor’s name may have inadvertently been entered as “Daniel Bolles” rather than “Daniel Guggenheim” on the November 26, 2001 report.

51. On June 7, 2001 Frost signed a C-3 form, agreeing to abide by Montana’s Code of Fair Campaign Practices in Montana Code Annotated § 13-35-301. The complaint alleges that Frost violated the Code of Fair Campaign Practices by violating campaign finance and reporting statutes and rules and engaging in dishonest or unethical practices by not accurately disclosing contributions and expenditures.

52. On June 4, 2003, Kurt Shull, Deputy Treasurer of PRG, sent a letter to Close requesting an inspection of the Frost campaign’s records, pursuant to Montana

Code Annotated § 13-37-209. The complaint alleges the Frost campaign unreasonably refused to permit the inspection.

53. Following Shull's request for inspection, Close and Chris Gallus, attorney for PRG, exchanged correspondence in an effort to arrange a time for the inspection. Despite the efforts, apparently the inspection never occurred.

Richard Noonan and Jon Gerster

54. The complaint alleges that Richard Noonan failed to register Crazy Mountain Lineworks as an incidental political committee and failed to file periodic campaign finance reports for the committee (Claim 18). The facts related to these allegations are set out in Facts 39 through 43.

55. The complaint alleges that Jon Gerster, as an officer of the BBC, is responsible for any violations attributable to the BBC (Claim 19). The facts related to allegations against the BBC are set out in Facts 25 through 34.

**STATEMENT OF FINDINGS**

Claims Against Brian Close and His Law Firm

Claims 1, 2, and 3

The complaint alleges that when Close provided legal services to secure the right of the Frost campaign to inspect the records of PRG and the GVTA, the value of those services (and any related costs associated with the use of Close's law office and its resources) should have been reported as an in-kind contribution to the Frost campaign. The complaint alleges that as a result of the in-kind contribution Close's law office became an incidental political committee and should have filed a Statement of Organization. The complaint also alleges that the in-kind contributions from Close and

his law firm exceeded the statutory contribution limitations for local candidates.

Montana law defines “contribution” as follows:

- (i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;
- (ii) a transfer of funds between political committees;
- (iii) 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.

Montana Code Annotated § 13-1-101(7)(a) (emphasis added). Close contends that because his legal services were rendered after the election, nothing was expended to “influence an election,” therefore there were no contributions to the Frost campaign.

Close stated he volunteered his time while acting as an attorney for the Frost campaign in its efforts to inspect the records of PRG and the GVTA. Montana Code Annotated § 13-1-101(7)(b)(i) exempts from the definition of the term contribution “services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate . . . .” Close did not initially receive any payment from the Frost campaign for his legal services. However, as part of the settlement of the mandamus action filed by the Frost campaign, the GVTA paid \$1,500 to “Joe Frost, Treasurer, and Brian Close” to compensate the Frost campaign and Close for “attorney fees and costs” associated with the Frost campaign’s efforts to inspect the GVTA’s records. Frost, who was treasurer of the Frost campaign, then endorsed the settlement check over to Close. Close stated that the \$1,500 fully reimbursed him for his attorney time and expenses related to his work on the case. Close retained the entire \$1,500 and used it for his own personal expenses.

As noted in Facts 15 and 16, there was no pre-existing agreement between



Close and the Frost campaign that Close would be reimbursed for his efforts related to the inspection of GVTA's records. There is also no evidence that Frost or Close intended to obtain information based on the records inspection that would be used to challenge the election results or to support a future campaign. The settlement money received from the GVTA was obviously not a contribution from the GVTA to the Frost campaign; it was a payment to settle a lawsuit that the Frost campaign had filed against the GVTA. While the Frost campaign's decision to permit Close to retain the entire amount as reimbursement for his time and expenses related to the inspection efforts may have changed the nature of Close's services from voluntary to paid, it did not result in a reportable campaign finance transaction for either the Frost campaign or Close. The payment for Close's legal services was not a payment made "to influence an election," therefore it was not a "contribution" under Montana law. Based on the specific and rather unique facts of this case, no in-kind contributions from Close or his law firm to the Frost campaign occurred. Close's law firm did not become an incidental political committee, and the contribution limitations in Montana Code Annotated § 13-37-216 were not exceeded.

#### Claims 4 and 5

The complaint alleges that the \$100 contributed by Close to the BBC was either a contribution in the name of an undisclosed principal (the Frost campaign) or was not properly reported as an earmarked contribution. The complaint also alleges that Close, as deputy treasurer of the Frost campaign, failed to report the pledge of \$1,500 from the Frost campaign to the BBC. The facts pertaining to these allegations are described in the Summary of Facts. On November 15, 2002, Close contributed \$100 to the BBC.

An examination of Close's bank records discloses that Close contributed his own money to the BBC, not money from the Frost campaign. Moreover, although Close publicly stated that the \$1,500 received in settlement of the mandamus action against the GVTA would be given to the BBC, Close's bank records establish that Close never followed through with that promise. The evidence therefore does not support a finding that Close committed violations as alleged in Claims 4 and 5.

### BBC

#### Claims 6 and 7

The complaint alleges that the BBC failed to report in-kind contributions from Close or his law firm, and that the BBC failed to report the \$1,500 pledge from the Frost campaign.

The allegation regarding the BBC's failure to report the \$1,500 pledge from the Frost campaign has been addressed above. Since the money was never transferred to the BBC's account, there is no violation.

In-kind contributions are defined as follows:

The term "in-kind contribution" means 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 for the purpose of supporting or opposing any candidate, ballot issues or political committee, except as provided in 13-1-101(6)(a)(iii) or (6)(b)(i), MCA.

ARM 44.10.321(2). Montana Code Annotated § 13-1-101(6)(b)(i) sets forth the individual volunteer exception to Montana's definition of the term "contribution." While an individual, such as Close, may escape reporting an in-kind contribution by volunteering his or her time, if campaign-related work by an individual also involves the use of equipment or property, such as FAX machines, telephones, office space, etc.,

the fair market value of the equipment and property must be reported. See Summary of Facts and Statement of Findings in Complaint Against Montanans for Common Sense Water Laws, et al., at 75-76 (April 30, 1998).

As set out in Facts 23 and 34, Close occasionally used his office equipment and office resources to engage in the organizing and reporting activities of the BBC, and initially failed to report those in-kind contributions. Later, after Close consulted with the Commissioner's office, the BBC filed reports listing in-kind contributions from Close reflecting the proportional value of his office equipment and resources used for BBC-related activities. To the extent that Close used his office equipment during earlier reporting periods and that use was not reported as an in-kind contribution, there was a violation.

#### Claim 8

The complaint alleges that the BBC violated Montana's naming and labeling statute for political committees. Montana Code Annotated § 13-37-210 states:

**Naming and labeling of political committees.** (1) Any political committee filing a certification and organizational statement pursuant to 13-37-201 shall:

(a) name and identify itself in its organizational statement using a name or phrase:

(i) that clearly identifies the economic or other special interest, if identifiable, of a majority of its contributors; and

(ii) if a majority of its contributors share a common employer, that identifies the employer; and

(b) label any media advertisement or other paid public statement it makes or causes to be made in support of or opposition to any candidate or ballot measure by printing or broadcasting its name, as provided under subsection (1)(a), and position in support of or opposition to the candidate or ballot measure as a part of the media advertisement or other paid

public statement.

(2) The naming and labeling requirements in subsection (1) are reporting requirements for purposes of enforcement under 13-37-128.

The Commissioner has issued an Opinion explaining the office's interpretation and enforcement of the naming and labeling statute. The Opinion, which may be accessed on the Commissioner's website, states:

1. A violation of the naming and labeling statute occurs if a majority of the contributors to a political committee share an identifiable economic or special interest. The source of the majority of the contributions received is not the test for determining if a violation has occurred.

2. Determinations of shared economic or special interest will be based on the "name of the employer" and "occupation" information provided by the contributor and listed in the political committee's C-6 report.

Brian Close made the first contribution to the BBC on November 15, 2002. He listed his occupation as a self-employed attorney. Close was the only contributor during the reporting period from November 15, 2002 to January 31, 2003. During the reporting period from January 31, 2003 to October 21, 2003, the BBC's campaign finance report listed four contributors:

Jon Gerster, self-employed innkeeper

Chris Nixon, self-employed innkeeper

J.P. Pomnichowski, self-employed computer specialist

Brian Close, self-employed attorney

On the report for the period ending October 21, 2003, Close apparently listed his name not to reflect an additional monetary contribution to the committee, but to report the in-kind contributions resulting from the use of his office equipment and office resources. During the reporting period from October 21, 2003 to January 30, 2004, the BBC reported no new contributions.

It is apparent from the information set forth above that the BBC did not violate the naming and labeling statute. There was no reporting period during which a majority of the contributors to the BBC shared an identifiable economic or other special interest, based on the employer and occupation information reported on the committee's C-6 reports. The complaint notes that during the first reporting period Brian Close, an attorney, was the only contributor. However, the fact that Close works as an attorney does not result in a conclusion that he has an identifiable economic or special interest that triggered the naming requirements of the statute.

#### Claim 9

The complaint alleges that the BBC failed to maintain accurate campaign finance records, that it filed inaccurate and incomplete reports, and that it failed to file its reports in a timely manner.

An examination of the BBC's campaign finance records maintained in the Commissioner's office reflect what appear to be accurate and complete reports, with the exception of the initial failure to report in-kind contributions, as discussed above. As found in Facts 32 and 33, the BBC's initial C-6 campaign finance report, which was required to be filed by January 31, 2003, was filed three days late, on February 3, 2003.

#### Joe Frost and the Frost for Commission Campaign

#### Claim 10

The complaint alleges that Frost violated Montana's Code of Fair Campaign Practices. The Code of Fair Campaign Practices (the Code) is codified in Montana Code Annotated §§ 13-35-301 and 13-35-302. A candidate may voluntarily subscribe to the Code. The Commissioner's office has the responsibility to prepare a form that sets

forth the Code and send a copy of the form to each candidate required to file reports and other information with the Commissioner's office. A candidate's failure or refusal to sign the form is not a violation of the election laws. Montana Code Annotated § 13-35-302. Moreover, the Commissioner has no authority to take any action if a candidate is alleged to have violated the Code, unless the alleged violation also constitutes a violation of another statute or rule within the jurisdiction of the Commissioner. See Matter of the Complaint Against Terry Utter, Summary of Facts and Statement of Findings (1995).

#### Claim 11

The complaint alleges that the Frost campaign failed to report in-kind contributions from Close and or his law firm. As discussed above in the Findings related to Claims 1 through 3, there were no reportable in-kind contributions from Close or his law firm to the Frost campaign.

#### Claim 12

Facts 39 through 43 discuss Richard Noonan's involvement as treasurer of the Frost campaign, and his occasional use of his home office equipment for purposes related to the Frost campaign. Noonan volunteered his time while serving as treasurer. However, as discussed above in relation to Claim 7, if campaign-related work by an individual who volunteers his time also involves the use of equipment or property, such as FAX machines, telephones, office space, etc., the fair market value of the equipment and property must be reported. See Summary of Facts and Statement of Findings in Complaint Against Montanans for Common Sense Water Laws, et al., at 75-76 (April 30, 1998). The Frost campaign should have reported the in-kind contributions from

Noonan.

### Claim 13

The complaint alleges that the Frost campaign failed to report the transfer of \$1,500 in settlement funds to another political committee, the BBC. As discussed in the Findings related to Claims 4 and 5, there is no basis to conclude that this alleged violation occurred.

### Claims 14 and 15

The complaint alleges the Frost campaign failed to file its campaign finance reports in a timely manner, filed inaccurate and incomplete reports, and failed to maintain proper and accurate campaign finance records. As set out in Fact 46, on two occasions (August 31, 2001 and October 26, 2001), the Frost campaign was one day late filing its C-5 reports. In addition, a C-7 reporting a \$100 contribution received by the Frost campaign on October 25, 2001, should have been filed no later than October 29, 2001. See ARM 44.10.511(5). The C-7 was filed one day late, on October 30, 2001.

Regarding the accuracy and completeness of the reports filed by the Frost campaign, a C-5 filed on November 26, 2001 did not list the occupation and employer of contributor Daniel Bolles. See Facts 47 and 48. And, as discussed in relation to Claim 12, the Frost campaign should have reported in-kind contributions resulting from treasurer Richard Noonan's occasional use of his home office equipment for campaign purposes. With the exception of these infractions, the Frost campaign appears to have maintained proper and accurate campaign finance records.

### Claim 16

The complaint alleges the Frost campaign failed to permit PRG to inspect its campaign finance records, in violation of Montana Code Annotated § 13-37-209. That statute provides:

**Inspection of records.** Accounts kept by the campaign treasurer of a candidate or political committee may be inspected under reasonable circumstances before, during, or after the election to which the accounts refer by the campaign treasurer of any opposing candidate or political committee in the same electoral district. The right of inspection may be enforced by appropriate writ issued by any court of competent jurisdiction. The campaign treasurers of political committees supporting a candidate may be joined with the campaign treasurer of the candidate as respondents in such a proceeding. (Emphasis added).

The statute provides a remedy if a political committee or candidate refuses to permit inspection by a campaign treasurer of an eligible opposing committee or candidate - a writ issued by a court of competent jurisdiction. The statute does not grant the Commissioner any authority to enforce the right of inspection.

#### Claim 17

The complaint alleges the Frost campaign violated Montana's surplus campaign funds statute, Montana Code Annotated § 13-37-240, when it pledged the \$1,500 received in settlement of its mandamus action against the GVTA to the BBC. Montana Code Annotated § 13-37-240 places certain restrictions on the disposal of a candidate's surplus campaign funds. Among the listed restrictions are a) the prohibition against contribution of surplus funds to another campaign, and b) use of surplus funds by the candidate for "personal benefit." As discussed in the Findings related to Claims 5, 7, and 13, the \$1,500 received in settlement of the court action was never transferred to the BBC. Therefore, there was no violation of the surplus campaign funds statute.

#### Claim 18



The complaint alleges that Richard Noonan, as treasurer of the Frost campaign, is responsible for the violations attributable to the Frost campaign. The complaint also alleges that Noonan failed to register Crazy Mountain Lineworks as an incidental political committee and failed to file periodic campaign finance reports for the committee.

The violations committed by the Frost campaign, as discussed above, are attributable to Noonan if they occurred while he was serving as treasurer or deputy treasurer, just as they are attributable to the candidate and the campaign organization. There was no need for Noonan to register Crazy Mountain Lineworks as an incidental political committee or to file reports for Crazy Mountain Lineworks. Noonan's use of his personal home office equipment to support the activities of the Frost campaign did not constitute use of equipment specifically owned by Crazy Mountain Lineworks. Nevertheless, as noted in the discussion relating to Claim 12, the in-kind contributions resulting from that use should have been reported by the Frost campaign.

#### Claim 19

The complaint alleges that Jon Gerster, as an officer of the BBC, is responsible for any violations attributable to the BBC. To the extent that any violations pertaining to the BBC's activities were found, as discussed in the Findings related to Claims 6 through 9, the officers of the BBC and the political committee itself are responsible for those violations.

### **CONCLUSION**

Based on the preceding Summary of Facts and Statement of Findings, there is sufficient evidence to conclude that the respondents violated Montana campaign

finance and practices laws, as discussed above in relation to Claims 6, 9, 12, 14, 15, 18, and 19.

Dated this \_\_\_\_\_ day of March, 2005.

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Gordon Higgins  
Commissioner