

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

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In the Matter of the	)	SUMMARY OF FACTS
Complaint Against Citizens	)	AND
for an Informed Public	)	STATEMENT OF FINDINGS

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Janice Metzmaker filed a complaint alleging that Citizens for an Informed Public, a political committee, violated Montana campaign finance and practices laws by failing to register and file reports as a political committee.

SUMMARY OF FACTS

1. Gary Elliott is the owner of a business in Whitefish. Elliott is the person who is primarily responsible for forming a political committee known as Citizens for an Informed Public (CIP). According to Elliott, CIP's first meeting was held on September 27, 2001. According to Elliott and others interviewed in the course of the investigation, the group was formed when a number of people in the Whitefish area became upset with the behavior of members of the Whitefish City Council. These people apparently felt that some city council members were rude, used inappropriate language during council meetings, and mistreated members of the public. During the September 27, 2001 meeting, the group that later become known as CIP decided to videotape City Council meetings.

2. Elliott estimated that 20 to 25 people attended the September 27, 2001 CIP meeting. Subsequent meetings were typically held every Wednesday. At one of the meetings following the September 27, 2001 meeting, CIP began accepting monetary contributions from people. CIP did not issue any receipts for any cash contributions it received.

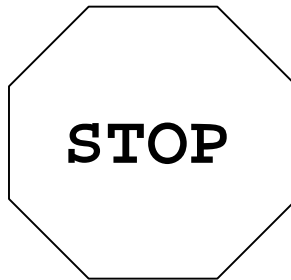
3. Some time in October, 2001, the members of CIP agreed to take a partisan position on the upcoming Whitefish City Council elections. Prior to the election,

CIP purchased a number of newspaper and radio ads supporting candidates Mark Wagner, Erik Garberg, and Doug Adams. CIP also mailed out postcards supporting those candidates.

4. The newspaper ads and post cards contained the following text:

**TIME FOR A CHANGE**

The present City Council has lost touch with  
the citizens of Whitefish



- \* The taking of private property
- \* Forced annexations
- \* Abuse of taxpayers [sic] money
- \* Rude behavior of Council members toward the public

**YES!! IT IS TIME FOR A CHANGE!!**

**ON MARK WAGNER**

**NOVEMBER 6 ERIK GARBERG**

**VOTE DOUG ADAMS**

**FOR:**

**FOR WHITEFISH CITY COUNCIL**

**Paid for by Citizens for an Informed Public  
P.O. Box 756**

**Whitefish, MT 59937**

**Ph: 862-4035 - Fax: 862-6832**

**Watch the Council meetings on Public Television  
Cable Channel 9 on Wednesdays 6 to 8 PM**

5. CIP purchased radio ads on two radio stations, KOFI and KJJR. Marge Fisher and Char Rygg read the scripts for the ads on the radio. No tapes of the actual ads were retained by either CIP or the radio stations. KOFI retained a copy of the script for the Marge Fisher ad, and Char Rygg retained a copy of the script for her ad:

Hi, I'm Marge Fisher, former Mayor of Whitefish and State Legislator, and I'm asking for you to vote for Eric [sic] Garberg, Mark Wagner & Doug Adams at this next election. I've been very concerned about the rising taxes here in the city over the past few years, as well as the arrogance toward the public by some of our present council members and taking of private property rights. So vote for Eric, Mark, & Doug so that we can effect some positive changes.

Hello, my name is Char Rygg. I was born in Whitefish as Charlene Lytle and was married to Phil Rygg who was also a native of Whitefish. I own property and pay taxes in Whitefish. Our elected city leaders should be open-minded servants of the citizens, not arrogant dictators. As a member of Citizens for an Informed Public, I urge the voters of Whitefish to vote on Tuesday for Eric [sic] Garberg, Mark Wagner, and Doug Adams. They will listen to and respect the citizens without demanding to have their own way.

Neither script includes language indicating who paid for the ads. KOFI radio manager Dave Rae stated, however, that KOFI added the information required by Montana Code Annotated § 13-35-225 at the end of each ad. The manager of KJJR also stated that, although the scripts for the ads do not contain an attribution, the station added the information required by the statute when the ads played on the radio.

6. Elliott stated that when CIP made the decision to support and oppose certain candidates, he telephoned the office of the Commissioner of Political Practices (Commissioner) and inquired regarding the committee's reporting responsibilities. According to Elliott, the Commissioner's office sent a packet of information to him, including committee registration and reporting forms and information regarding reporting deadlines. Elliott stated that he became confused when he read through the packet of information, and he decided that as long as CIP was not giving any money directly to candidates it did not have to register or report regarding its activities. Elliott did not

contact the Commissioner's office to ask for clarification or seek further information from that office regarding CIP's reporting responsibilities.

7. Janice Metzmaker filed her complaint on November 9, 2001. A copy of the complaint was sent by certified mail to CIP on November 13, 2001.

8. On November 20, 2001 CIP, through its attorney, John Quatman, filed a C-2 (statement of organization) with the Commissioner's office, designating itself as an incidental political committee. Gary Elliott was listed as the committee treasurer. No deputy treasurer was listed, nor were any additional committee officers listed on the C-2. CIP stated as its purpose:

To disseminate [sic] information to the public regarding the activities, policies, procedures, and actions of public bodies as they affect the interests of taxpayers within Whitefish and the surrounding area.

The C-2 also represented that CIP supported Whitefish City Council candidates Mark Wagner, Doug Adams, and Erik Garberg; and opposed candidates Chet Hope and Shirley Jacobson.

9. On November 20, 2001, CIP also filed through its attorney a C-4, which is an incidental political committee finance report. The C-4, covering the period from September 27 through November 20, 2001, reported total receipts of \$3,625 and total expenditures of \$3,614.63. The C-4 reports that CIP's first contribution was received on October 17, 2001, and its first expenditures were made on the same date.

10. The C-4 filed by CIP reported the following contributions received in the form of cash:

<b>Name</b>	<b>Date</b>	<b>Cash Contribution Amount:</b>
Ron Thornberry	10/19/01	\$500.00
Mark Van Nyhus	10/19/01	\$100.00
Rick Polanski	10/19/01	\$ 50.00
Tom Kraus	10/19/01	\$300.00

As noted in Fact 2, CIP did not issue any receipts for the cash contributions it received.

11. As of the date of this decision, CIP has not filed any reports other than those described above.

12. The C-4 filed by CIP reports the following expenditures for the newspaper ads, radio ads, and postcards supporting Wagner, Garberg, and Adams:

Newspaper ads -- \$1,360

Radio ads -- \$952.40

Postcards -- \$809.73

The C-4 does not report the names of the candidates the expenditures were intended to benefit, nor does it report that the expenditures were independent.

13. The C-4 reports an expenditure of \$450 for "videotaping of city council meetings."

14. On the forms filed with the Commissioner's office, CIP lists its address as Post Office Box 756, Whitefish, Montana. This post office box is rented to Gary Elliott. According to the United States Post Office, rental for a box that size would be \$38 for six months and \$76 for a year. The C-4 filed by CIP does not report an in-kind contribution from Elliott for the rental of the post office box.

15. During the investigation of this matter, a letter dated December 21, 2001 was sent to John Quatman, attorney for Gary Elliott and CIP, requesting copies of "all records retained by CIP," including "any and all notes, correspondence, reports, and any other documents in the possession of CIP." In response Mr. Quatman provided copies of 34 pages of documents, including some bank records, billing statements, receipts, and invoices, and the C-2 and C-4 filed by CIP. When Mr. Elliott was interviewed as part of this investigation, he was shown the 34 pages of documents and asked whether those were copies of all the documents related to CIP in his or CIP's possession. Mr. Elliott's response was "yes."

16. During the investigation it became clear that not all documents related to CIP had been provided by Mr. Quatman or Mr. Elliott. In particular, several documents

obtained from other sources were not included in the 34 pages of documents provided by Mr. Quatman, yet they were clearly within the scope of the documents requested in the letter. Another letter was sent to Mr. Quatman, pointing out the discrepancy and again requesting copies of all documents related to CIP. Mr. Quatman sent a letter in reply that was essentially non-responsive, so another letter was sent to him requesting, by a date certain, copies of “any and all documents and other recorded information, in whatever format, related to the political committee known as [CIP].” Mr. Quatman chose not to respond to the letter, so a subpoena was served on Gary Elliott, requiring production of the information identified in the letters. On December 18, 2002, Mr. Quatman produced 243 pages of documents in response to the subpoena -- more than seven times the volume of documents first produced in response to the letter requesting the information. From a review of the documents, however, it appears that not everything requested has been provided.

17. One of the documents that was not initially provided by Mr. Elliott or Mr. Quatman, but was obtained from another source,<sup>1</sup> is a one-page letter written by Mr. Elliott. Although the letter does not specifically name any of the council members or candidates for a seat on the council, the letter is highly critical of the “incumbent” city council members, referring to “smear tactics” and the “worst possible behavior” allegedly engaged in by those council members. The letter states:

Please do not be taken in by the underhanded tactics engaged in by the incumbents. Vote for a change . . . The candidates that we endorse are not beholden to us for anything! We simply believe that they would be better stewards for our community.

At the bottom of the letter is the notation: “Gary Elliott, Sec/Treas, Citizens for an Informed Public.” Mr. Elliott stated that he prepared the letter using his own resources, and distributed approximately 100 copies to people entering and leaving the Food

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<sup>1</sup> A copy was eventually provided as one of the 243 pages of documents produced in response to the subpoena.

Depot in Whitefish, prior to the election. The C-4 filed by CIP does not report an in-kind contribution for the value of the letter.

18. Documents provided in response to the subpoena disclose that CIP received, accepted, and deposited several contributions from corporations:

a. CIP's C-4 reports a \$100 contribution from Adolph Solvie. Bank records provided by CIP show that the check was written on the account of Courtesy Land and Livestock Company, a corporation in good standing according to records in the Secretary of State's Office.

b. CIP's C-4 reports a \$100 contribution from Chris Hyatt. Bank records provided by CIP show that the check was written on the account of S.M.S., Inc., dba Ski Mountain Sports, a corporation in good standing according to records in the Secretary of State's Office.

c. Although CIP's C-4 does not include the information, bank records provided by CIP show that CIP received a check from "David Johnson - Creative Services" in the amount of \$500. The check was deposited in CIP's bank account on December 11, 2001. According to records in the California Secretary of State's Office, David Johnson - Creative Services is a corporation in good standing in the state of California.

19. CIP's C-4 reported a \$300 contribution from Tom Kraus, who was listed as the manager of the Mountain Mall. Bank records provided by CIP disclosed that the check was written on the account of the "Mall Association" in Whitefish, Montana. The Mall Association is not listed as a corporation on the records in the Secretary of State's Office. The check was signed by Christina Carter who, in 2001, worked for the Chamber of Commerce which had an office located in the Mountain Mall. According to Carter, the businesses in the mall belong to the Mall Association and pay dues. Tom Kraus was the manager of the mall and worked for a California company that owns the

mall property. Carter recalls that Kraus asked her to sign checks that he would write on the Mall Association's account, because he felt that someone other than the mall manager should sign the checks.

20. CIP's C-4 reported a \$100 contribution from Gary Elliott. Bank records provided by CIP disclose that the check for the contribution was written on the joint checking account of Gary R. Elliott and Beverly E. Elliott. The check was signed by Beverly E. Elliott.

## STATEMENT OF FINDINGS

### The Length of this Investigation

It has taken 15 months to complete this investigation and to issue this decision. While my office accepts some responsibility for the delay,<sup>2</sup> the respondents in this investigation are primarily responsible. In particular CIP, through its main spokesman, Gary Elliott, and its attorney, John Quatman, have for months resisted and delayed providing important information and documentation requested during the investigation. Facts 15 and 16 describe the efforts to obtain crucial information and the evasive responses and incomplete information provided by Mr. Elliott and Mr. Quatman. At this time there is no way to determine whether all relevant information and documentation has been provided. Should this matter ultimately be filed in a District Court, discovery requests and, if necessary, subpoenas will be utilized to obtain everything that bears on the issues in this case.

### Statement of Organization

Montana Code Annotated § 13-37-201 requires each political committee to file an organizational statement, certifying the appointment of a campaign treasurer and the full name and address of the treasurer "within 5 days after it makes an expenditure . . . ."

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<sup>2</sup> My office has experienced a significant increase in the number of campaign finance and practices complaints filed against local candidates and local political committees within the past year and a half. My office is currently reviewing 18 formal complaints. In addition, during the same time period my office has been engaged in an extensive review and revision to the rules governing reporting of lobbying expenses.



CIP made its first expenditures on October 17, 2001, but it did not file a C-2 (statement of organization) until November 20, 2001. CIP's C-2 should have been filed within five days after October 17, 2001.

#### Committee Classification

CIP filed its C-2, classifying itself as an incidental political committee. Administrative Rules of Montana (ARM) 44.10.327(2)(c) defines an incidental committee as:

. . . a political committee that is not specifically organized or maintained for the primary purpose of influencing elections but that may incidentally become a political committee by making a contribution or expenditure to support or oppose a candidate and/or issue.

An independent political committee is defined as:

. . . a political committee that is not specifically organized to support or oppose any particular candidate or issue but one that is organized for the primary purpose of supporting or opposing various candidates and/or issues.

ARM 44.10.327(2)(b). A political action committee, or "PAC," is an independent political committee that is "composed of individuals who contribute their money for the purpose of supporting or opposing candidates or issues upon which the committee agrees." ARM 44.10.327(2)(b)(i). "Primary purpose" is determined based on factors including "allocation of budget, staff or members' activity, and the statement of purpose or goals of the individuals or person." ARM 44.10.327(3).

As noted in Fact 8, on its C-2 CIP listed as its purpose:

To deseminat[e] [sic] information to the public regarding the activities, policies, procedures, and actions of public bodies as they affect the interests of taxpayers within Whitefish and the surrounding area.

The C-2 also, however, represented that CIP supported candidates Mark Wagner, Doug Adams, and Erik Garberg, and opposed candidates Chet Hope and Shirley Jacobson. According to Elliott, the original intent of CIP was to videotape city council meetings.

The campaign finance report filed by CIP discloses that the committee spent only \$450, or approximately 12% of its total expenditures, videotaping city council meetings. According to its report, CIP spent more than 85% of its available funds for the purpose of supporting candidates Wagner, Garberg, and Adams.

Based on the amount of money CIP spent supporting or opposing candidates and its representation on the C-2 that it supported and opposed those candidates, CIP is an independent political committee, specifically, a PAC, and not an incidental political committee. Pursuant to ARM 44.10.329, CIP is notified that the Commissioner has classified it as an independent committee. CIP will not be required to file an amended C-2 or an amended campaign finance report for its activities related to the 2001 election. CIP, however, should determine whether it is required to file any additional reports pursuant to the requirements of ARM 44.10.409.

#### Late Filing of Campaign Finance Report

As an independent political committee, CIP was required to file a pre-election report twelve days prior to the election to report all contributions received and expenditures made five or more days prior to the date of filing. Montana Code Annotated §§ 13-37-226(5)(a) and 13-37-228(1). Thus, any contributions received or expenditures made by CIP on or before October 20, 2001, should have been reported by October 25, 2001. To the extent that CIP's campaign finance report filed on November 20, 2001 discloses both contributions received and expenditures made prior to October 20, 2001, a report should have been filed by October 25, 2001.

#### Filing of Additional Reports

As noted in Fact 9, CIP's C-4 reports contributions and expenditures for the period from September 27 through November 20, 2001. CIP's bank records show additional contributions received and expenditures made after November 20, 2001, including activity in November and December, 2001 as well as activity during the first six months of 2002. ARM 44.10.409(1) requires independent political committees that are

not incidental committees to file a year-end closing report by January 31 following the end of the calendar year. Subsection (2) of the rule states:

No committee shall be required to file the report required by (1) if the committee was required to file a post-election report pursuant to 13-37-226(5)(b), MCA, during the second half of a calendar year and no further expenditures to support or oppose a candidate or ballot issue have been made by it between the closing date of books for the post-election report and December 31. The post-election report shall be considered as its closing report and the closing date of books for that report shall be used as the cutoff date for the purpose of aggregating contributions and expenditures for future reports.

Although CIP did not file a post-election report (because its pre-election report was filed several weeks late, after the election), the C-4 that it did file reports campaign activity for the period up to and including November 20, 2001. This resulted in the reporting of campaign activity through the period of time that would have been required to be covered in a post-election report. Pursuant to ARM 44.10.409(2), quoted above, CIP was only required to file a year-end closing report on January 31, 2002, (for calendar year 2001) or January 31, 2003 (for calendar year 2002) if it made "further expenditures to support or oppose a candidate or ballot issue" after November 20, 2001. CIP is directed to review its records and to determine whether additional reports must be filed to comply with this rule. CIP is reminded that, pursuant to ARM 44.10.409(3), an independent committee that does not intend to participate in future elections and wishes to terminate its status as a reporting committee may file a statement of termination with any closing report it files.

#### Corporate Contributions

Montana Code Annotated § 13-35-227 prohibits direct corporate contributions and expenditures in connection with a candidate. Prior to discussing the corporate contributions received by CIP, it is necessary to discuss the version of Montana Code Annotated § 13-35-227 that was in effect and enforceable during the latter part of 2001.

Initiative 125 (I-125) was passed by the Montana electorate in 1996. I-125 amended Montana Code Annotated § 13-35-227, which prior to the amendment prohibited direct corporate contributions in connection with 1) candidates, 2) political committees that support or oppose candidates, and 3) political parties. The amendments enacted by I-125 added ballot issues to the list of restricted corporate contributions and expenditures. Corporations retained the right to make political contributions and expenditures through separate, segregated funds set up and administered by the corporations. Moreover, I-125 provided that the restrictions did not apply to a nonprofit corporation formed for the purpose, among others, of promoting political ideas, and that:

- (a) does not engage in business activities;
- (b) has no shareholders or other affiliated persons who have a private claim on the corporation's assets or earnings;
- (c) does not accept foreign or domestic for-profit corporations as members; and
- (d) does not accept in the aggregate more than 5% annually of its total revenue from foreign or domestic for-profit corporations.

I-125 was conceived based primarily on the United States Supreme Court's decision in Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990). In Austin the Court recognized a new type of corruption, distinguishable from the so-called "financial *quid pro quo*" corruption that had been identified by the Court as a justification for restrictions on large monetary contributions to candidates from individual contributors to secure political favors. The Court observed that this new type of corruption justified restrictions on corporate contributions to candidates, because the regulation sought to deal with "the corrosive and distorting effects of immense aggregations of wealth that are

accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas." Austin, 494 U.S. at 659-60. The Court had previously referred to this different type of corruption in FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (1986) (MCFL).

The Montana Chamber of Commerce and several other Montana incorporated entities filed a complaint in Federal District Court in Helena in February 1997, seeking a declaration that I-125 was unconstitutional. A two-week bench trial was held in October 1998. Judge Charles Lovell ruled from the bench on October 22, 1998, concluding that I-125 violates the First Amendment, and permanently enjoined its enforcement. The Ninth Circuit Court of Appeals affirmed, and the United States Supreme Court denied certiorari. Montana Chamber of Commerce, et al. v. Ed Argenbright, et al., 28 F. Supp.2d 593 (D. Mont. 1998); *aff'd* 226 F.3d 1049 (9<sup>th</sup> Cir. 2000); *cert. denied* 122 S. Ct. 46 (2001).

As noted, I-125 was declared unconstitutional in October, 1998. An unconstitutional statute enacted to take the place of a prior statute does not affect the prior statute. See, e.g., Application of O'Sullivan, 117 Mont. 295, 304, 158 P.2d 306, 310 (1945). Thus, when I-125 was declared unconstitutional, the valid, enforceable version of Montana Code Annotated § 13-35-227 that was in effect was the version that existed prior to its amendment by I-125:

**Prohibited contributions from corporations.** (1) A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee which supports or opposes a candidate or a political party.

(2) A person, candidate, or political committee may not accept or receive a corporate contribution described in subsection (1).

(3) This section does not prohibit the establishment or administration of a separate, segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee, or member of the corporation.

(4) A person who violates this section is subject to the civil penalty provisions of 13-37-128.

This statute prohibits corporations from making contributions or expenditures “in connection with a candidate or a political committee which supports or opposes a candidate” other than through a separate, segregated fund that qualifies under subsection (3) of the statute. Subsection (2) of the statute also provides that a political committee “may not accept or receive a corporate contribution” described in subsection (1) of the statute. As set forth in Fact 18, CIP, a political committee that supported and opposed candidates, accepted three illegal corporate contributions totaling \$700, in violation of Montana Code Annotated § 13-35-227(2). In addition, Courtesy Land and Livestock Company, S.M.S., Inc., and David Johnson - Creative Services made illegal corporate contributions to CIP in violation of Montana Code Annotated § 13-35-227(1).<sup>3</sup>

#### Inaccurate Reporting of Contributions

Montana Code Annotated § 13-37-229(2) requires reports of contributions and expenditures to state the “full name, . . . of each person who has made aggregate contributions, other than loans, of \$35 or more to a . . . political committee . . . .”

Montana Code Annotated § 13-37-217 states:

**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 by whom it was actually furnished.* (Emphasis added).

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<sup>3</sup> Although the three corporations were not subjects of the complaint in this matter, in view of these findings copies of this decision will be served on each corporation.

CIP inaccurately reported the following contributions, thereby violating Montana Code Annotated §§ 13-37-217 and 13-37-229(3):

- A \$100 contribution from the Courtesy Land and Livestock Company was incorrectly reported as a contribution from Adolph Solvie. (See Fact 18).
- A \$100 contribution from S.M.S., Inc. was incorrectly reported as a contribution from Chris Hyatt. (See Fact 18).
- A \$300 contribution from the Mall Association was incorrectly reported as a contribution from Tom Kraus. (See Fact 19).
- A \$100 contribution from Beverly E. Elliott was incorrectly reported as a contribution from Gary Elliott. (See Fact 20). According to Administrative Rules of Montana (ARM) 44.10.511(2), a contribution received by check drawn on a joint checking account is to be deemed and shall be reported as a contribution from the person who signed the check, unless otherwise specified in writing at the time the contribution is received.

CIP's C-4 did not report the \$500 contribution from the California corporation known as "David Johnson - Creative Services." The check for the contribution is dated November 3, 2001, but it was not deposited into CIP's account until December 11, 2001. As an independent political committee, CIP was required to file a pre-election report listing all contributions received on or before October 20, 2001. (See discussion above under "Late Filing of Campaign Finance Report). Thus, the contribution from David Johnson - Creative Services was not required to be included on CIP's pre-election report.<sup>4</sup>

#### Attribution on Political Ads

Montana Code Annotated § 13-35-225(1) states, in relevant part:

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<sup>4</sup> As discussed herein, CIP's first report was filed several weeks late; nevertheless it was not required to include in that report contributions received after October 20, 2001. Even though the contribution from David Johnson - Creative Services was an illegal corporate contribution (see discussion above), CIP is still obligated to report it on its next report.

**Election materials not to be anonymous.** (1) Whenever a person makes an expenditure for the purpose of financing 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, or other form of general political advertising, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, *including in the case of a political committee, the name and address of the treasurer.* (Emphasis added).

CIP's newspaper ads and post cards, which clearly advocated the success of candidates Wagner, Garberg, and Adams, did not include the name of CIP's treasurer.

#### Failure to Issue Receipts

ARM 44.10.505 states that no political committee "shall receive a cash contribution in excess of \$25 unless the . . . political committee prepares a receipt." The receipt is required to include detailed information regarding the contributor and the contribution received. As noted in Facts 2 and 10, CIP received four cash contributions in excess of \$25 without issuing receipts for the contributions.

#### Incomplete Reporting of Independent Expenditures

ARM 44.10.531(4) provides:

Independent expenditures, as defined in ARM 44.10.323, shall be reported in accordance with the procedures for reporting other expenditures. *In addition, the person making an independent expenditure shall report the name of the candidate or committee the independent expenditure was intended to benefit, and the fact that the expenditure was independent.* The candidate or political committee benefiting from the independent expenditure does not have to report the expenditure. (Emphasis added).

CIP's campaign finance report listed expenditures of at least \$3,122.13 intended to benefit Whitefish City Council candidates Mark Wagner, Erik Garberg, and Doug Adams. The report does not provide the names of the candidates these expenditures were intended to benefit, nor does it specify that the expenditures were independent.

#### Failure to Report In-Kind Contribution

An "in-kind contribution" is defined as:



. . . 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 issue or political committee, . . .

ARM 44.10.321(2). ARM 44.10.513 states that in-kind contributions must be reported on the appropriate reporting schedule, and provides several alternative methods of determining the value of an in-kind contribution for reporting purposes. Fact 14 notes that CIP used a post office box rented to Gary Elliott. The use of that box by CIP constitutes an in-kind contribution by Elliott to CIP. CIP's campaign finance report does not report the in-kind contribution for the value of the post office box rental.

In addition, CIP failed to report the value of the approximately 100 copies of a letter that opposed the incumbent city council members and urged support for CIP's preferred candidates. (See Fact 17).

#### CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is substantial evidence to conclude that Citizens for an Informed Public, the individual treasurer and committee members of Citizens for an Informed Public, and three corporations violated Montana's campaign practices and campaign finance reporting and disclosure laws, and that a civil penalty action under Montana Code Annotated § 13-37-128 is warranted.

DATED this \_\_\_\_\_ day of February, 2003.

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Linda L. Vaughey  
Commissioner of Political Practices