

**BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES
STATE OF MONTANA**

In the Matter of the Complaint)	AMENDED SUMMARY OF FACTS,
Against Miller for Governor 2012)	STATEMENT OF FINDINGS,
(Ken Miller))	AND CONCLUSION

Kelly Bishop filed a complaint against Miller for Governor 2012 (Ken Miller) on April 19, 2012. Bishop worked as the finance director for the Miller for Governor Campaign until shortly before filing her complaint. A Summary of Facts and Statement of Findings addressing the complaint was issued June 1, 2012. Ken Miller's campaign publicly distributed information disputing the Commissioner's Summary of Facts and Statement of Findings (see attached Exhibit 1).

After careful consideration of the disputed information, I issue this Amended Summary of Facts and Statement of Findings. The amendments, including clarification, appear in Facts 13, 18, 20 thru 23, 26, 29, 31 and 33.

SUMMARY OF FACTS

1. Ken Miller ran successfully for State Senate in 1994, was re-elected and served eight years.
2. Miller served as Chairman of the Montana Republican Party from 2001-2003.

3. In 2004, Ken Miller ran unsuccessfully for the office of Governor.

4. Ken Miller filed his Form C-1 Statement of Candidate with the Montana Commissioner of Political Practices (hereafter COPP) on July 28, 2010. The C-1 indicated Miller intended to seek the office of Governor in the 2012 election, and designated Patsy Guenther as Treasurer and Vicki Miller Deputy Treasurer.

5. Ken Miller officially filed as a candidate with the Montana Secretary of State on February 1, 2012.

6. As a candidate for office, Ken Miller is required to file reports of all contributions and expenditures with the COPP as set forth in §§ 13-37-229 and 230, Mont. Code Ann.

7. A review of the Miller for Governor 2012 (hereafter "Miller for Governor") Candidate Campaign Finance Reports (Form C-5) filed with COPP indicates Miller has met all reporting deadlines to date.

8. On April 19, 2012, Polson, Montana, resident Kelly Bishop filed a complaint against Miller for Governor alleging violations of the Campaign Finance and Practices statutes.

9. Bishop alleged that Miller for Governor had an obligation to ensure the campaign did not receive a contribution in excess of \$630 per election from any contributor; to ensure any contribution in excess of \$630 was designated to the general election at the time of receipt of the contribution; to report

all contributions and expenditures; and to refuse anonymous contributions.

10. Pursuant to the calculations required in § 13-37-216 (4) (a), Mont. Code Ann., the maximum per election contribution for a gubernatorial candidate prior to October 24, 2011, was \$600. After October 24, 2011, the limit increased to \$630 per election.

11. Miller for Governor has an account on Piryx.com where individuals can contribute to the campaign. Piryx offers a system similar to eBay's PayPal that allows donors to send money directly to a campaign's account via their website Piryx.com. Miller has several accounts on Piryx.com.

12. Miller for Governor has a campaign account with financial institution Altana Federal Credit Union in Billings, Montana.

13. Miller for Governor received the following contributions without designation from the contributor to apply the money to the general election, thereby resulting in excess contributions:

Excess contributions identified from Miller's Piryx account:

23-Jun-11	\$1,200.00	Staley	Susan
30-Jun-11	\$1,200.00	Horst	Roland
9-Dec-11	\$1,000.00	Binger	James
15-Dec-11	\$1,000.00	Lowe	Howard R.

25-Jan-12	\$1,000.00	Allen	Nancy
7-Feb-12	\$1,000.00	Spooner	Harry
3-Mar-12	\$1,000.00	Channer	Mark

Excess contributions identified on C-5 campaign reports:

- Thompson PAC contributed \$1,200 on September 26, 2011. This contribution exceeded the PAC contribution limit by \$600.
- During the 3rd Quarter of 2011, Dennis Masbruch made a \$1,000 contribution -- \$400 of that was in excess of the contribution limit. Specifically, that contribution, made August 5, 2011, was not refunded by Miller for Governor for over four months.
- During the 4th Quarter of 2011, Kevin Gibbs made a contribution of \$1,470, which was applied to the general election fund by Miller for Governor. (Gibbs previously contributed \$600 to the primary election fund in the 1st Quarter of 2011.) The \$1,470 contribution to Miller's general election fund exceeded the \$630 contribution limit by \$840. Specifically, that contribution was made November 5, 2011. Nearly five months later, on April 4, 2012, \$150 was refunded by Miller for Governor, leaving an overage of \$690.00. On May 21, 2012, Miller for Governor filed an amended C-5 for the 4th Quarter of 2011 reflecting a contribution of \$1,410.00 from Gibbs - \$60.00 less than the original reported contribution.
- Russell Lowe contributed \$600 on December 21, 2010, and \$600 on April 5, 2011 - the maximum contributions per each election at that time. Lowe did not designate the second contribution for the general election; however, Miller for Governor applied that contribution to the general election fund. Lowe contributed an additional \$100 on August 27, 2011, resulting in an excess contribution, which should have been refused, or refunded immediately. The Miller for Governor campaign did not refund the excess contribution until eight months after receiving it, and after repeated requests from COPP to issue the refund.
- \$120 excess contribution from Daniel Vanderjagt reported on the 1st Quarter 2012 C-5. This excess contribution was

again reported on the March 12th Amended 1st Quarter C-5, and was not addressed on the May 21st Second Amended C-5 for the 1st Quarter.

- \$345 excess contribution from Edwin Halland reported on 1st Quarter 2012 C-5 noting his total to date primary contribution was \$975. No contribution from Janet Halland appears on the original 1st Quarter 2012 C-5. The March 12th Amended 1st Quarter 2012 C-5 continued to report the \$345 excess contribution and reported an additional \$120 from Edwin Halland. The March 12th Amendment also reflects a \$380 primary election contribution from Janet Halland with a total to date of \$380. The May 21st Second Amended 1st Quarter 2012 C-5 reflects a \$380 primary election contribution from Janet Halland with a total to date of \$630, and reports a total to date primary election contribution from Edwin Halland as \$595. While Miller for Governor alleges the \$345 excess contribution noted by COPP was the result of "misidentified contributions by Edwin and Janet Halland," it is clear the campaign failed to correctly report those contributions in violation of the Campaign Finance and Practices statutes.
- \$70 excess contribution from Fred Fowler reported on 1st Quarter 2012 C-5. Miller for Governor responded that the \$70 excess contribution was allocated to the general election fund. However, failed to provide verification that it had that directive from Mr. Fowler at the time the excess contribution was received.
- \$73 excess contribution from Lisa Wamsley reported on 1st Quarter 2012 C-5. Miller for Governor responded that COPP misidentified the contribution as being from Lisa and Mark Wamsley; however, no contribution from Mark Wamsley is reflected on the 1st Quarter 2012 C-5.
- \$630 excess contribution from Marsha Staus reported on 1st Quarter 2012 C-5. Miller for Governor responded that it only received \$275 from this contributor; however, it reported a \$1,260 contribution from Staus on the 1st Quarter 2012 C-5.
- \$630 excess contribution from Mike Gehl reported on 1st Quarter 2012 C-5. Miller for Governor responded that it only received \$160 from this contributor; however, it

reported a \$1,260 contribution from Gehl on its 1st Quarter 2012 C-5.

- \$26.80 excess contribution from Patsy Guenther reported on 1st Quarter 2012 C-5 which reflected a total to date of \$656.80. This excess contribution was again reported on the Amended 1st Quarter 2012 C-5, similarly reflecting a total to date of \$656.80. The Second Amended 1st Quarter C-5 reported a total to date primary contribution of \$546.29 and general contribution of \$114.17. No explanation is provided for the change in contribution totals or re-allocation of funds to the General election fund.
- It is important to note neither the public nor COPP know how much money a campaign receives unless it is accurately and timely reported on the C-5. The campaign's failure to accurately and timely report contributions is a violation of Montana law.

14. Contributors Staley, Horst, Allen, and Spooner

(identified on the Piryx.com account) were not aware of the "per election" limit. They intended their contributions to be applied to the primary election fund, even though they exceeded the limit.

15. Miller for Governor unilaterally decided to keep excess contributions and attribute those monies to the general election fund without designation from contributors. After the Bishop complaint was filed and an investigation initiated, Miller for Governor sought direction from contributors as to application of the excess contribution, i.e., whether to designate it as a general election contribution.

16. Miller for Governor did not report the entire \$1,200 primary election contribution from Susan Staley on its 2nd Quarter

2011 report. Instead, without designation from the contributor, Miller for Governor assigned \$600 of that contribution to its general election fund and reported it that way.

17. Miller for Governor did not report the entire \$1,200.00 primary election contribution from Roland Horst on its 2nd Quarter 2011 report. Instead, without designation from the contributor, Miller for Governor assigned \$600 of that contribution to its general election fund and reported it that way.

18. Miller for Governor did not report a \$1,000.00 primary election contribution from Howard Lowe on its 4th Quarter 2011 report. While the Campaign alleges this was a contribution from Russell Lowe, the Russell Lowe contributions are addressed above in Fact No. 13. This contribution was made in December 2011 in the name of Howard Lowe via the Piryx.com site. If in fact this was a contribution from Russell Lowe, that individual already maxed out his contributions for both the primary and general election.

19. Miller for Governor did not report a \$1,000.00 primary election contribution from James Binger on its 4th Quarter 2011 C-5. Instead, without designation from the contributor, Miller for Governor assigned the contribution to its general election fund and reported that on the 4th Quarter 2011 C-5. In the amended C-5, the Binger contribution was split \$630 for the primary and

\$370 for the general; however, there is nothing in writing from the contributor making that designation.

20. Miller for Governor did not report a \$1,000.00 contribution from Nancy Allen on its 1st Quarter 2012 report. The contribution was reported on a Second Amended C-5; however, the late reporting does not cure the violation.

21. Miller for Governor did not report a \$1,000.00 contribution from Harry Spooner on its 1st Quarter 2012 report. The contribution was reported on a Second Amended C-5; however, the late reporting does not cure the violation.

22. On January 5, 2012, Miller for Governor received two \$250 contributions - one from Jeff Melugin and one from Lucy Melugin, both of Billings. (The campaign recorded the contributions as \$125 each on January 10, 2012, on its internal records.) The contribution was reported on a Second Amended C-5; however, the late reporting does not cure the violation.

23. The Mark Channer contribution noted in Fact 13 above was reported on the original April 5, 2012, C-5; however, it was reported incorrectly. Originally, Miller for Governor reported the \$1,000 contribution as Primary Election \$601.65, General Election \$353.35. The campaign reported a corresponding expenditure for the Piryx processing fee of \$45.90. The entire \$1,000 contribution should have been reported, and there should have been a designation from Channer of how to apply the

contribution. The amended C-5 reports the contribution as \$630 for the Primary and \$370 for the General election.

24. On March 30, 2012, Miller for Governor issued check number 1202 to Marissa Stockton for wages in the amount of \$905.50. The \$905.50 expenditure to Marissa Stockton for wages was not reported on the original C-5 filed April 5, 2012. The expenditure was reported on the amended C-5 filed May 21, 2012. COPP has no authority to require state and federal withholdings from employee paychecks; however, any withholding expenses paid by the campaign are required to be reported as a campaign expense. The April 5 through May 21, 2012, C-5 reported expenses paid to the Montana Department of Revenue, Montana Unemployment Insurance, and Montana State Fund relative to withholding expenses. However, the March 15, 2012, check to Melissa Stockton for \$1,000 (properly reported as an expense) did not similarly report withholding expenses.

25. Miller for Governor reported one \$50 "anonymous" contribution on its 4th Quarter 2011 C-5. Miller for Governor reported six "anonymous" contributions on its 1st Quarter 2012 C-5 totaling \$502.33.

26. In December 2011 and January 2012, COPP Program Supervisor Mary Baker notified Miller for Governor that it had to either identify a contributor for the anonymous contribution, or donate that money to a non-profit organization. On May 7,

2012, Miller for Governor issued a check to the Laurel FFA for \$200 as a donation of some of the anonymous contributions it had received. The amended C-5 for the 1st Quarter 2012 reflects one "anonymous" contribution on February 3, 2012, for \$20, with a total-to-date for anonymous contributions of \$135.00. There is no explanation in Schedule D for this amendment.

Miller for Governor claims designating as "anonymous" contributions received from Pass the Hat functions is an acceptable way of reporting these funds. Miller's claims are incorrect. Anonymous contributions are prohibited pursuant to § 13-37-217, Mont. Code Ann. See also the Commissioner's decision in Garver v. Tussing (2007) which states, "[c]andidates therefore have an obligation to employ whatever means are necessary to ensure that any contributions they receive do not exceed the statutory limitations." (Garver at p. 8.)

27. Miller for Governor received comped (free of charge) motel rooms from the Super 8 Motel in Missoula, Montana, on 21 occasions.

28. Super 8 Motels of Missoula is an assumed business name and corporate owned. Super 8 Motels of Missoula is a business owned by a corporation named A M S Ranch, Inc., in Conrad, Montana. The corporation is registered with the Montana Secretary of State and is organized under the laws of the state.

of Montana. Its officers and owners are Sonya Quackenbush, Dorothy Skelton, and Steven Skelton.

29. Miller for Governor paid nothing for the rooms Miller stayed in at the Super 8 Motel in Missoula. Ms. Quackenbush was unable to provide a rate sheet for the room charges. Further, Ms. Quackenbush stated that, had she charged Miller, she would have charged him the "regular customer" rate of \$40.00 per night, plus tax. When pressed for the "fair market value" of those contributions, Ms. Quackenbush stated room rates change all the time and it would be difficult to figure out what the actual rate was. On request, Quackenbush failed to submit proof via any kind of rate sheet that \$40.00 per night is a regular rate charged customers who stay with the Super 8 Motel on a regular basis. Accordingly, the procedure utilized by COPP in determining the *fair market value* set forth below is acceptable.

30. An internet search of rooms at the Super 8 Motel Missoula revealed room charges ranging from \$59.58 per night for a minimum three-night stay; \$63.31 for a minimum two-night stay; and \$74.48 for one night. Of the 21 nights Miller stayed at the Super 8 Motel in Missoula: on two occasions he had three-night stays (\$59.58 per night = \$357.48 not including tax); on three occasions he had two-night stays (\$63.31 per night = \$379.86 not including tax); and nine one-night stays (\$74.48 per night =

\$670.32 not including tax) for a total fair market value of \$1,407.66 not including tax.

31. Miller for Governor Candidate Ken Miller, and his wife Peggy, were authorized signatories on the campaign account even though neither was designated a Treasurer or Deputy Treasurer on the account prior to the Bishop complaint. The account was opened in July 2010. The majority of expenditures were paid by check or debit card authorized by Ken or Peggy Miller, not by the Treasurer or Deputy Treasurer. Very few expenditures were paid by Campaign Treasurer Patsy Guenther. Miller for Governor claims "all records for all payments by both credit card and checks have been meticulously maintained and are fully transparent to the COPP and the public." However, the alleged transparency does not alleviate the violation of unauthorized expenditures from the campaign account.

32. Ken Miller and his wife Peggy maintained control of the campaign checkbook, invoices, and receipts. They would not give the check register, invoices, and receipts to Treasurer Guenther, thereby preventing her from having access to relevant information and severely hampering her ability to perform her duties as Treasurer.

33. Miller for Governor alleges it was advised by COPP that it would be acceptable for the campaign to allocate excess primary contributions to the general election, with the

instruction that the campaign should contact the donors, albeit after the fact, and receive authorization for the reallocation. Miller for Governor claims to have taken remediation steps to correct previously identified errors. That assertion is misleading. In May 2012 Miller for Governor received the following communication from COPP: Thank you for forwarding the emails from contributors who donated in excess of the limit for the primary election. While those contributors have now given direction as to how their contribution should be applied, it does not alleviate a violation for originally accepting an excess contribution. When an excess contribution is received the excess must be returned to the contributor with an explanation that it is over the limit for the primary and information that they may contribute that amount toward the general if they wish. If they choose to send that money back to the campaign for use on the general election, that is fine.

STATEMENT OF FINDINGS

This is not Miller's first experience with campaigns. Prior to the instant statewide campaign, Miller was involved in two state district campaigns and one statewide campaign.

Alleged violation of § 13-37-216, Mont. Code Ann. That statute provides, in pertinent part,

Limitations on contributions -- adjustment. (1) (a)
Subject to adjustment as provided for in subsection (4), aggregate contributions for each election in a campaign by

a political committee or by an individual, other than the candidate, to a candidate are limited as follows:

(i) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed \$500;

(4) (a) The commissioner shall adjust the limitations in subsections (1) and (3) by multiplying each limit by an inflation factor, which is determined by dividing the consumer price index for June of the year prior to the year in which a general election is held by the consumer price index for June 2002.

(5) **A candidate may not accept any contributions, including in-kind contributions, in excess of the limits in this section.**

(Emphasis added.) ARM 44.10.330 provides in pertinent part:

DESIGNATION OF CONTRIBUTIONS FOR PRIMARY AND GENERAL ELECTIONS (1) Aggregate contributions for each election in a campaign are limited according to 13-37-216, MCA. An "election" in a campaign, for the purposes of 13-37-216, MCA, is defined as either a primary election or a general election.

(2) For purposes of applying aggregate contribution limits per election the following apply:

(a) Aggregate contribution limits for each election, as set forth in 13-37-216, MCA, apply to a primary election and to a general election as defined in ARM 44.10.334; (b) Time periods for filing reports of contributions and expenditures are set forth in 13-37-226 and 13-37-228, MCA. As a general rule, **contributions received by a candidate prior to and on the day of a primary election are designated for the primary election** and are subject to the aggregate contribution limits for the primary election; however, a candidate in a contested primary may receive contributions **designated for the general election** during the primary election period (except for in-kind contributions) subject to the contribution limits for the general election.

(Emphasis added.)

As set forth in Paragraph 13 of the Summary of Facts, Miller for Governor received contributions that exceeded the contribution limitations established by law. The contributions

were received prior to the primary election and, importantly, were not designated by the contributors for the general election at the time they were made. While Miller later obtained designations from contributors after the complaint was filed, that does not nullify the violations.

Alleged violation of §§ 13-37-225, 13-37-229, and 13-37-230,

Mont. Code Ann. § 13-37-225, Mont. Code Ann. provides, in pertinent part:

Reports of contributions and expenditures required. (1) Except as provided in 13-37-206, each candidate and political committee shall file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee.

§ 13-37-229, Mont. Code Ann. provides, in pertinent part:

Disclosure of contributions received. Each report required by this chapter shall disclose the following information:

(1) the amount of cash on hand at the beginning of the reporting period;

(2) the full name, mailing address, occupation, and employer, if any, of each person who has made aggregate contributions, other than loans, of \$35 or more to a candidate or political committee, including the purchase of tickets and other items for events, such as dinners, luncheons, rallies, and similar fundraising events;

(3) for each person identified under subsection (2), the aggregate amount of contributions made by that person *within the reporting period* and the total amount of contributions made by that person for all reporting periods;

(4) the total sum of individual contributions made to or for a political committee or candidate and not reported under subsections (2) and (3).

(Emphasis added.)

§ 13-37-230, Mont. Code Ann. provides, in pertinent part:

Disclosure of expenditures made. (1) Except as provided in subsection (3), each report required by this chapter must disclose the following information:

(a) the full name and mailing address (occupation and the principal place of business, if any) of each person to whom expenditures have been made by the committee or candidate during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person;

(b) the full name and mailing addresses (occupation and the principal place of business, if any) of each person to whom an expenditure for personal services, salaries, and reimbursed expenses have been made, including the amount, date, and purpose of that expenditure and the total amount of expenditures made to each person;

ARM 44.10.511 provides in pertinent part:

CONTRIBUTIONS, REPORTING (1) A contribution becomes a contribution on the date it is received; or, in the case of an in-kind contribution, on the date the consideration is received by the candidate or political committee.

(2) A contribution received by check drawn on a joint checking account shall be deemed and reported as a contribution from the person signing the check, unless otherwise specified in writing at the time the contribution is received.

(3) In the case of property held jointly by a candidate and another, a contribution therefrom will be presumed to be a contribution from the candidate so long as the property was owned jointly prior to the time that the candidate became a candidate as defined in 13-1-101(5), MCA.

(4) A contribution shall be reported for the reporting period during which it is received.

(Emphasis added.)

ARM 44.10.531 provides, in pertinent part:

EXPENDITURES, REPORTING (1) An expenditure is made on the date payment is made, or in the case of an in-kind expenditure, on the date the consideration is given.

(2) An expenditure shall be reported on the date and for the reporting period during which it is made.

(3) Expenditures made from the petty cash fund need not be reported, except that an accounting shall be maintained pursuant to ARM 44.10.503.

As noted in Paragraphs 18, 20, 21, and 22 of the Summary of Facts, Miller for Governor failed to report contributions.

As noted in Paragraph 24 of the Summary of Facts, Miller for Governor failed to timely report expenditures, i.e., the March 30, 2012, expenditures for payroll withholding expenses related to Marissa Stockton's employment with the campaign should have been reported on the original C-5.

Alleged violation of § 13-37-217 Mont. Code Ann. That statute provides, in pertinent part:

Contributions in name of undisclosed principal. A person may not make a contribution of the person's 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 the money. A person may not knowingly receive a contribution or enter or cause the contribution to be entered in the person's accounts or records in another name than that of the person by whom it was actually furnished.

As noted in Paragraph 25 of the Summary of Facts, Miller for Governor accepted and reported six anonymous contributions.

Violations of § 13-35-227 Mont. Code Ann. identified during investigation. That statute provides, in pertinent part:

Prohibited contributions from corporations.

(1) A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee that 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).

As noted in Paragraphs 27 through 30 of the Summary of Facts, Ken Miller accepted a direct corporate contribution. Furthermore, Super 8 Motel, Missoula, Montana, made a direct corporate contribution to a candidate.

ARM 44.10.503, provides, in pertinent part:

DEPOSITS AND EXPENDITURES, ONLY BY CAMPAIGN TREASURER, THROUGH DEPOSITORY (1) No contribution received or expenditure made by a candidate or political committee shall be deposited or expended except by the appointed campaign treasurer or duly authorized deputy treasurer through the designated primary or secondary depository.

As noted in Paragraph 31 of the Summary of Facts, Ken and Peggy Miller paid the majority of expenses prior to the investigation herein, even though neither was a Treasurer of the campaign.

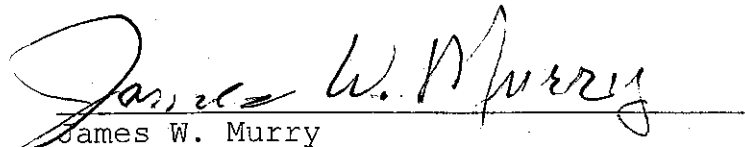
CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is sufficient evidence to conclude Miller for Governor violated Montana campaign and finance reporting and disclosure laws, with the violations summarized below, and a civil penalty action under § 13-37-128, Mont. Code Ann. is warranted.

- Miller for Governor accepted excess contributions in violation of § 13-37-216, Mont. Code Ann. and ARM 44.10.330;

- Miller for Governor failed to report contributions in violation of §§ 13-37-225 and 229, Mont. Code Ann. and ARM 44.10.511;
- Miller for Governor failed to report expenditures in violation of §§ 13-37-225 and 230, Mont. Code Ann. and ARM 44.10.531;
- Miller for Governor accepted anonymous contributions in violation of § 13-37-217, Mont. Code Ann.;
- Miller for Governor accepted direct corporate contributions in violation of § 13-35-227, Mont. Code Ann.;
- Miller for Governor made expenditures by persons other than the by the appointed campaign treasurer or duly authorized deputy treasurer; and
- Sonya Quackenbush, d/b/a Super 8 Motel of Missoula, made a corporate contribution directly to a candidate in violation of § 13-35-227, Mont. Code Ann.;

DATED this 20th day of June, 2012.


James W. Murry
Commissioner of Political Practices

C: Kelly Bishop
Miller for Governor 2012 (Ken Miller)
John and Sonya Quackenbush, d/b/a Super 8 Motel

The MT Commissioner of Political Practices has issued a complaint against the Miller for Governor 2012 campaign for reporting violations. These allegations are unfair and largely untrue, as indicated by the detailed answer for each of the allegations shown below.

I am a retired CFO, with experience in data management. Several weeks ago, the Miller campaign asked me to audit their records and make sure that their reporting is complete and accurate.

I found that the campaign has, from the outset, maintained a complete, detailed and accurate set of income and expenditure records. It has maintained transparency and has communicated and fully cooperated with the COPP.

Most of the COPP's complaints relate to excess contributions per individual for the primary election period. I audited the Miller campaign's records and set up new data tests, which identified a few contributions which were not allocated to the correct election period. The campaign contacted the COPP for instructions. The COPP stated that it would be acceptable for the Miller campaign to allocate excess primary contributions to the general election, with the instruction that the campaign should contact these donors, albeit after the fact, and receive authorization for the reallocation.

The Miller campaign followed the COPP instructions. All excess contributions have either been refunded or re-allocated to be in compliance, and those contributors have been contacted for authorization.

Other minor infractions have been alleged by the COPP. All of the alleged violations in the COPP's findings are either refuted or explained below. Please note that all of the records that the COPP claims to be "unreported" are easily found on their own website, www.politicalpractices.mt.gov.

#13 – The complaint states that the Miller campaign received the following contributions without designation from the contributor to apply them only to the general election, thereby resulting in excess contributions:

6/23/11	\$1200	Susan Staley	\$600 allocated to General Election
6/30/11	\$1200	Roland Horst	\$600 allocated to General Election
12/9/11	\$1000	James Binger	\$370 allocated to General Election
12/15/11	\$1000	Russell Lowe	\$600 allocated to General Election
1/25/12	\$1000	Nancy Allen	\$370 allocated to General Election
2/7/12	\$1000	Harry Spooner	\$370 allocated to General Election
3/3/12	\$1000	Mark Channer	\$370 allocated to General Election
9/26/11	\$1200	Thompson PAC	\$600 allocated to General Election

Exhibit 1

8/5/11	\$1000	Dennis Masbruch	\$400 refunded by General Election
11/5/11	\$1410	Kevin Gibbs	\$630 allocated to General Election, \$150 refunded by check 1203
8/27/11	\$100	Russell Lowe	Refunded by check 1206
4/26/12	\$120	Daniel Vanderjagt	\$200 allocated to General Election
	\$345	Edwin Halland	COPP misidentified contributions by Edwin and Janet Halland
10/23/11	\$70	Fred Fowler	\$70 allocated to General Election
	\$73	Lisa Wamsley	COPP misidentified contributions by Lisa and Mark Wamsley
	\$630	Marsha Staus	Miller campaign only received \$275 from this contributor
	\$630	Mike Gehl (Gale)	Miller campaign only received \$160 from this contributor
	\$27	Patsy Guenther	COPP misidentified contributions by Patsy and Tim Guenther

#14 – The complaint states that contributors Staley, Horst, Allen and Spooner were not contacted in advance for authorization to allocate parts of their contributions to the general election. These contributors were contacted after the fact, per the COPP's instructions.

#15 #16 #17 #19 #20 #21 – The complaint states that the Miller campaign sought authorization from contributors to allocate excess contributions to the general election after they were received. The Miller campaign followed the remediation prescribed by the COPP and was assured that this process was acceptable as part of the audit and correction process.

#18 – The complaint states contributions from Howard Lowe remain unreported. As part of the normalization of the data in the Miller campaign's updated reporting, these contributions were reported as Russell Lowe. Part of the process was identifying contributions from donors who names were reported with slight inconsistencies. The complaint states that Lowe's contributions remain unreported, but they can be found on the Commission's website on the C-5 reports for 10/1/10 through 12/31/10 and 4/1/11 through 6/30/11.

#20 #21 - The complaint states that the Nancy Allen and Harry Spooner contributions remain unreported. They can be found on the COPP C-5 report of political contributions for Ken Miller, 1/1/12 through 3/5/12; Allen on page 20 and Spooner on page 10.

#22 – The complaint states that the Miller campaign received two contributions for \$250 each - one from Jeff Melugin and one from Lucy Melugin, and that those

contributions remain unreported. This is untrue. The Miller campaign records, and the Pyrix, Inc. online records, show one contribution received through Pyrix, Inc. from Jeff and Lucy Melugin in the amount of \$250 on 1/18/12. Since the donation stated it was from both contributors, the campaign appropriately split the amount between Jeff and Lucy, \$125 each. Jeff Melugin's contribution is reported on page 12 and Lucy's on page 17 of the state's C-5 report for 1/1/12 through 3/5/12.

#23 – The complaint states that the Miller campaign allocated a \$1000 contribution from Mark Channer as \$370 for the primary election and \$630 for the general election. This is incorrect; the allocation is exactly the opposite per their own records on their website, as evidenced by the C-5 report from 3/6/12 through 4/5/12. A minor reporting error regarding the Pyrix processing fee in the amount of \$45.90 was corrected when discovered.

#24 – The complaint states that the Miller campaign issued a payroll check to Marissa Stockton on 3/30/12 and there was improper reporting of the payroll expense, tax withholding, and employer payroll tax expenses. These payroll transactions were posted a few days later on the campaign's records, and have been correctly reported to the COPP.

#25 #26 – The complaint states that the Miller campaign reported \$502.33 in anonymous contributions. Some of these were "pass the hat" contributions, and the COPP has acknowledged that this is a normal and acceptable practice. The state points to a \$50 anonymous mail contribution reported by the Miller campaign. This, and other, anonymous contributions were donated to charity by the campaign. But it should be noted – if the Miller campaign was intent on "hiding" contributions, it certainly would not have reported anonymous cash to the COPP.

#27 #28 #29 #30 – The complaint states that the Miller campaign accepted donations in kind of free lodging from the Super 8 Motel in Missoula, a corporation. When the campaign became aware of the contributor's corporate status, it issued a check for the value of the lodging, based on the discounted rate the Motel routinely offers candidates, according to the owner. The state disputes the fact that motels offer discounted rates to frequent visitors and political candidates, which is unsubstantiated and false.

#31 #32 – The complaint states that Ken and Peggy Miller made unauthorized payments for expenses of the campaign. All records for all payments by both credit card and checks have been meticulously maintained and are fully transparent to the COPP and the public. Like most travelling candidates, charges are routinely made on the campaign's credit card. If all of the expenses have been reported, the nature of the complaint is unclear. The state further claims that the campaign did not provide its treasurer, Patsy Guenthner, access to its check register, invoices, and receipts. If that were the case, the treasurer would not have been able to submit timely C-5 reports to

the COPP, and there is no claim that expenses were not reported on a timely and complete basis. More importantly, Mrs. Guenther vehemently denies the state's claim that she was denied any information. So this claim is unsubstantiated and false.