

BEFORE THE COMMISSIONER
OF POLITICAL PRACTICES

<p>Hamlett v. Montana Growth Network No. COPP-2012-CFP-053</p> <p>Van Hyning v. Montana Growth Network No. COPP-2013-CFP-005</p> <p>Driscoll v. Montana Growth Network No. COPP-2013-CFP-011</p>	<p>Summary of Facts and Statement of Findings of Sufficient Evidence to Show a Violation of Title 13, Chapters 35 or 37</p>
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On January 11, 2013, Brad Hamlett, a resident of Cascade, Montana, and a 2012 candidate for Senate District 10, Cascade County, filed a complaint against Montana Growth Network (MGN), a 2012 political committee.¹ On January 30, 2013, Dyrck Van Hyning, a resident of Great Falls, Montana filed a complaint against MGN. On March 12, 2013, Robyn Driscoll, a resident of Billings, Montana, and a 2012 candidate for Senate District 26, Yellowstone County, also filed a complaint against MGN. All three complaints allege that MGN engaged in unreported, undisclosed and/or unattributed campaign activity during the 2012 Montana election cycle. These three complaints are combined for decision.

¹ The COPP first began numbering campaign finance complaints in July of 2013. The Hamlett complaint was inadvertently assigned a 2012 complaint number rather than the 2013 number it should have been assigned. The number assigned has no effect on the discussion or findings set out in this Decision.

I. FOUNDATIONAL FINDING OF FACTS AND INTRODUCTION

The following are the foundational facts for a Decision in this Matter:

Finding of Fact No. 1: Montana's 2012 elections took place on June 5, 2012 (primary election) and November 6, 2012 (general election). (Montana Secretary of State (SOS) website).

Finding of Fact No. 2: All candidates addressed in this Decision were on the ballot for election to office at 2012 Montana general and/or primary elections. (SOS website).

Finding of Fact No. 3: MGN was organized as a private non-profit corporation at all times during the 2012 Montana elections addressed in this Decision. (Commissioner's records).

MGN filed campaign finance reports (FOF Nos. 5 and 6, below) disclosing certain independent expenditures in Montana's 2012 elections.² The three Complaints allege that MGN engaged in independent expenditures in Montana's 2012 elections that were not timely reported, attributed and disclosed, as required by Montana law.

MGN responded, through counsel, that it timely filed as a political committee and properly reported those independent expenditures that it was required to report under Montana law.³ The MGN response further asserted that the bulk of its 2012 campaign related activity were issue focused⁴ and therefore did not need to be reported or disclosed under Montana's 2012

² An independent expenditure is that of a third party entity, in this Matter MGN, independent of a candidate, but focused on a candidate in the election. An "independent expenditure" that expressly advocates for or against a candidate must be disclosed, reported, and attributed, albeit by the third party rather than the candidate (44.10.323(3) ARM). An independent expenditure is not subject to contribution limits or to reporting by a candidate.

³ Coordination is not an issue in this Matter. There is no allegation that the MGN expenditures were coordinated with (and therefore attributable as contributions) any candidate.

⁴ An "issue advocacy" election expense is also made by a third party entity independent of a candidate. An issue advocacy use of the money is focused on an issue and not on a candidate.

campaign practice law.⁵

An independent expenditure made by a corporate entity such as MGN may be made in any amount in any Montana election, including the 2012 Montana elections addressed in this Matter.⁶ *Citizens United v. F.E.C.*, 130 S. Ct 876, 175 L.Ed.2d 753 (2010); *American Tradition Partnership v. Bullock*, 132 S. Ct. 1307, 181 L.Ed.2d 1036 (2012). Any independent expenditure made as express advocacy (as contrasted to an issue advocacy expenditure), in a 2012 Montana election must be attributed, disclosed and reported as an election expense. *See* FN 2.

II. DISCUSSION

The three Complaints allege that MGN late filed as a political committee, failed to attribute independent expenditures properly and failed to report all of its independent expenditures.

A. MGN Did Not Timely Register As a Political Committee

MGN is a corporate entity (FOF No. 3). In 2012 Montana law mandated that MGN file as a political committee (“shall file”) and report its express advocacy independent election expenditures, §13-37-226(5) MCA.

⁵ An “issue advocacy” independent expenditure made in the 2012 Montana elections did need not be reported or disclosed. Issue advocacy expenditures will, however, need to be reported and disclosed in Montana’s 2016 elections. The 2015 Montana Legislative session passed a new law (now codified into Title 13) that requires reporting and disclosure of any election expense, including issue advocacy, made within 60 days of the start date of voting in an election.

⁶ This notation is necessary because Montana law has historically banned candidate election expenditures, including independent expenditures, by a group operating as a corporation, such as MGN. *See* §13-35-227 MCA and *see also* the history of this law set out in *Western Tradition Partnership, Inc. v. State of Montana*, 2011 MT 328, 363 Mont. 220, 271 P.3d 1.

Finding of Fact No. 4: On May 17, 2012 MGN registered with the COPP, becoming a political committee by filing a C-2 form. MGN's filing disclosed (or did not disclose) the following information:

- a. Jason Priest was listed as the MGN treasurer.
 - b. MGN was listed as an incidental political committee.
 - c. No candidate was disclosed as supported or opposed.
- (Commissioner's records).

Montana law required that MGN file as a political committee within 5 days of making its first express advocacy independent expenditure and report independent expenditures thereafter, 13-37-201 MCA.⁷ In order for its registration to be timely, MGN's May 17, 2012 date of registration implicitly asserts a first express advocacy independent expenditure date of May 12, 2012. Both the May 16, 2012 MGN email (from Counsel Gallus) and its February 22, 2013 response to the Hamlett Complaint argue that MGN executed a planned and controlled registration date based on the first date of express advocacy expenditure, claimed to be either May 11 (Gallus emails) or May 19 (MGN response).⁸

The Commissioner determines that the circumstances and facts do not support MGN's arguments. On May 15, 2012, COPP staffer Mary Baker called Jason Priest, the person she thought most likely to be responsible for MGN activity (COPP records, Baker notes).⁹ Baker advised Mr. Priest that

⁷ Under Montana law independent expenditures "must be reported in accordance with the procedure for reporting other expenditures". *Hanes v. Bianco*, ARM 44.10.323(3) and ARM 44.10.531(4).

⁸ The MGN response is signed by Chris Gallus and Chris Gober, an Austin, Texas attorney retained by MGN.

⁹ Mary Baker routinely contacts candidates and committees to informally notify them that they may be missing reporting or disclosure obligations. Baker does this because Montana law and COPP policy is designed to assist candidates and committees to report and disclose properly. Baker, as the COPP's Director of Candidate and Committee Services, assists candidates and

information received by the COPP indicated that MGN had carried out 2012 election activity such that it needed to register “ASAP” with the COPP. Over the next two days MGN appeared through counsel¹⁰ who sent emails with backdated dates¹¹ and faxed registration forms.¹² The Commissioner determines that MGN’s May 17, 2012 political committee registration was not planned but was instead an unorganized, reactive response to contact by the COPP.

The facts set out in MGN’s own campaign reports refute MGN’s claim of timely registration. MGN’s campaign finance report discloses an April 4, 2012 date for the start of reportable independent expenditures and a May 9, 2012 date of expense for an admitted express advocacy independent expenditure. Both the April 4 and the May 9 date contradict the May 11, 2012 first expenditure date claimed in the email from counsel. Further, even the May 11 date would leave MGN one day late in registration as a political committee.

Sufficiency Finding No. 1. The Commissioner determines that there are sufficient facts to show that MGN did not timely register as a political committee, as required by Montana law.

MGN had a right to spend independently in Montana’s 2012 elections. But Montana law tied MGN’s right to spend independently with an accompanying responsibility to report and disclose the express advocacy portion of those

committees to fully and timely report and disclose.

¹⁰ The name of Chris Gallus, a Helena attorney, appeared on all MGN communications.

¹¹ An email received by the COPP on May 16 was dated May 11 in the body of the email.

¹² The original C-2 form was promised but never received by the COPP. The C-2 form on file with the COPP is the faxed copy received on May 17, 2012.