

June 1, 2012.

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COMMISSIONER OF
POLITICAL PRACTICES

2012 JUN 11 A 8:59

Commissioner James Murray
Montana Office of Political Practices
P.O. Box 202401
1205 8th Avenue
Helena, MT 59620-2401

POSTMARKED

JUN 07 2012

Re: *Formal Complaint*

Dear Commissioner Murray,

As per the following, I wish to submit a formal complaint to your office alleging violation of Montana Campaign Finance laws. This complaint is submitted in compliance with Montana statutes and 44.10.307, ARM. My name is *Patrick Logan* and my address is *1251 River Rd. W. Plains, MT. 59859*

I. Violators or Persons with Information Pertaining to Violations:

A. Violators:

1. Sanders County Political Action Committee, P.O. Box 10, Plains, MT 59859; 8 Island View Lane, Plains, MT 59859.
2. Robert Zimmerman, P.O. Box 1304 Thompson Falls, MT 59873; 63 Steamboat Way West, Thompson Falls, MT 59873.
3. Patricia Ingraham, P.O. Box 1151, Thompson Falls, MT 59873; 323 Jefferson, Thompson Falls, MT, 59873.
4. Other Candidates who are officers or active members of the Sanders County Political Action Committee, including but not limited to Rick Seemann, Geni Holden, Candy Fisher and Carol Brooker.

B. Additional Violators or Persons w/ Information Pertaining to Violations:

II. Factual Basis for Complaint:

The Sanders County Political Action Committee sent a mailer prior to this year's June 5, 2012 primary election depicting candidates for office, referencing the primary election and asking that the person receiving the mailer to "seriously consider supporting them with your vote." (See attached Exhibit A). It clearly constitutes express advocacy and violates laws pertaining to reporting as our search of county election recorders shows the group filed a C-2 Statement of Organization, but has failed to file any other reports connected with their activity.

The Sanders County Political Action Committee also sponsored an event on April 14, 2012, at a public venue for citizens to meet and greet "Conservative Candidates" running for office. The cost of the venue and the lunch is not reported. (See attached Exhibit B).

Pat Ingraham is Vice President (See: SC PAC C-2 attached Exhibit C) and an active member of the group. Other candidates for public office depicted in the mailer are active within the organization.

III. Claims and Legal Reference Pertaining to Violations

A person who violates any of the provisions of Montana's campaign finance laws is subject to the civil penalty provisions of MCA § 13-37-128 which provides a penalty of \$500 or three times the amount of contribution or expenditure whichever is greater.

A. Express Advocacy

In applying Buckley v. Valeo, 424 U.S. 1 (1976); Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990); FEC v. Massachusetts Citizens for Life, Inc. 479 U.S. 238 (1986); and Faucher v. FEC, 928 F.2d 468 (1991), your office consistently maintains the standard that speech is "express" if it unmistakable and unambiguous and suggestive of only one plausible meaning and that speech is "advocacy" if there is a clear plea for action. Any reasonable person should be able to interpret communications as ads advocating the election or defeat of a candidate. As Exhibit A indicates there was an unmistakable and unambiguous plea for a vote supporting the named candidates at the primary election with a "vote". Any reasonable person would not interpret the communication as anything else but expressly advocating support for those candidates.

B. Coordination

The expenditures by the Sanders County Political Action Committee are not independent. An independent expenditure means an expenditure for communications containing express advocacy which are not made with the cooperation, consent, or consultation of a candidate or their agents. 44.10.323(3), ARM. In fact, since some of these candidates are active member or officers of the Sanders County PAC, the expenditures are made with the candidate's direct participation. These kinds of coordinated expenditures become and should have been reported as contributions by Sanders County PAC. The candidates and the PAC have failed to file these reports. Depending on the cost of the mailer, event sponsorship, and other activity these contributions may have caused the PAC candidates to exceed contribution limits (Mont. Code Ann. § 13-37-216) and legislative candidates to exceed aggregate limits on PAC contributions (Mont. Code Ann. § 13-37-218).

C. Failure to File Periodic Reports Pursuant to Statutory Requirements

The failure of the persons involved in preparing and disseminating Exhibit A to file any reports results in several other violations of Montana campaign finance laws, including violation of MCA: §13-37-225 (failure to file periodic reports); §13-37-226 (failure to timely

file reports); § 13-37-228 (failure to report pursuant to covered time periods); and § 13-37-230 (manner in which expenditures are to be reported).

D. Non-reporting of Independent Expenditures or In-kind Contributions

Even in the unlikely event that your office determines coordination has not occurred, independent expenditures and in-kind contributions have not been properly reported. ARM 44.10.323 defines "independent expenditure" an expenditure for communications expressly advocating...the defeat of a candidate...which is not made with the cooperation or prior consent or in consultation with, or at the request or suggestion of, a candidate or political committee or an agent of a candidate or political committee. According to ARM 44.10.323(3) independent expenditures are required to be reported as provided in ARM 44.10.531. Pursuant to ARM 44.10.531(4), an independent expenditure shall be reported in accordance with the procedures for reporting other expenditures. "In addition, a person making an independent expenditure shall report the name of the candidate...the independent expenditure was intended to benefit."

IV. Conclusion

This type of campaigning is reprehensible and most importantly illegal. Some of the players involved here are elected to serve the public representing that they know and understand the law-one actually chairs a legislative committee charged with adopting campaign finance laws.

If you need any additional assistance in your investigation, please contact me. Thanks.

Sincerely,

VERIFICATION

STATE OF MONTANA)
) : ss.
County of Sanders)

Patrick Lepard, being first duly sworn, deposes and says as follows:

That she/he is the Complainant in the above entitled case, that she/he has read the complaint, knows the contents thereof, and that the facts and matters contained therein are true, accurate and complete to the best of her/his knowledge and belief. Further, as to any facts which are stated as facts, to which she/he has personal knowledge, the same are hereby verified as being true. Still further the signature on the Complaint is the signature of

Patrick Lepard

On this 7th day of June, 2012, before me, a notary public, personally appeared Patrick Legard known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she/he executed the same.

Patricia Brickzin

Notary Public for the State of Montana
Residing at _____
My commission expires _____

