

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

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In the Matter of the Complaint	)	<b>SUMMARY OF FACTS,</b>
Against The Montana Democratic Party	)	<b>STATEMENT OF FINDINGS</b>
	)	<b>AND CONCLUSION</b>

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Jack Sands (Sands) filed a complaint with the Commissioner of Political Practices (COPP) alleging the Montana Democratic Party (MDP) violated § 13-35-225(1), MCA. The complaint alleges MDP authorized and paid for telephone calls advocating the defeat of Sands in the 2008 general election in Senate District 27, without indicating where the calls came from and who paid for them.

**SUMMARY OF FACTS**

Jack Sands was the Republican nominee for Senate District 27 in the 2008 general election. Sands was defeated in that election.

The complaint alleges MDP authorized and paid for telephone calls advocating the defeat of Sands in the 2008 general election in Senate District 27, without indicating where the calls came from and who paid for them. Sands opponent in the general election had no knowledge of the telephone calls by MDP.

On October 13 and 14, 2008, telephone calls were made advocating the defeat of Sands in the 2008 general election for Senate District 27. The calls, in relevant part, included the following script:

“Hi, I’m calling to make sure you know why State Senate candidate Jack Sands is bad for Billings. Jack Sands is a lawyer who defends drug dealers and now he wants to cut the budget for the state prison. That means some criminals could go free. Jack Sands is wrong. So can we count on you to say no to Jack Sands for Senate?”

MDP hired Winning Connections, Inc., a Washington, D.C. political consulting firm, for a fee of \$3,500, to make the above referenced telephone calls.

The purpose of these commercially funded telephone calls was to expressly advocate for the defeat of Jack Sands in the 2008 general election in State Senate District 27.

The script did not provide the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication.

Sands' complaint alleges, "our investigation has revealed that the calls actually came from the foreign country of Romania." Sands' allegation is based upon the caller ID information for the calls in question.

Sands Complaint further alleges that the calls came from a foreign country. The caller ID information, viewed by the call recipient was "406-000-000". However, Sand's Complaint attached a copy of the Bresnan Communications "trace report", which Sands had obtained through the use of a private investigator, Dale Mortensen. Such "trace report" indicates the number "406-000-000" and has "Romania" in the "Location" column. This "trace report" is attached as **Exhibit 1**.

COPP's investigation revealed that the calls did not originate from Romania, but was indicative of calls made from a phone bank using "spoofing" software for its caller ID. Such software is common practice for phone banks to prevent return calls.

### STATEMENT OF FINDINGS

Section 13-35-225(1), MCA, states;

All 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, internet website, or other form of general political advertising must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication. When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign. *In the case of a political committee, the attribution must be the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer. [Emphasis mine.]*

These commercially funded telephone calls were clearly a “form of general political advertising” with the specific purpose to expressly advocate for the defeat of Jack Sands in the 2008 general election in State Senate District 27. Therefore, pursuant to 13-35-225(1), MCA, MDP had an obligation to provide an attribution with the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer.

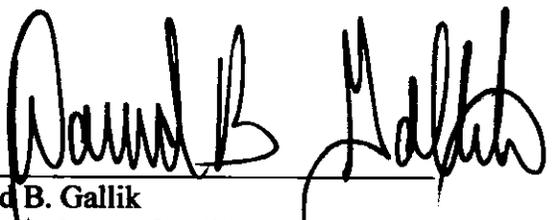
The telephone calls did not provide an attribution with the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer. MDP admitted that the calls were ordered, in one order, by David Hunter, that the calls were made over a two day period and that \$3,500 was paid to Winning Connections. The telephone calls were made in violation of 13-35-225(1), MCA.

Section 13-37-128(1), MCA, provides, “a person who intentionally or negligently violates any of the reporting provisions of this chapter, a provision of 13-35-225, or a provision of Title 13, chapter 35, part 4, is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to \$500 or three times the amount of the unlawful contributions or expenditures, whichever is greater.

### CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings there is sufficient evidence to conclude MDP violated 13-35-225(1), MCA by failing to provide proper attribution for the calls, and that a civil penalty action under § 13-37-128, MCA, is warranted.

DATED this 8<sup>th</sup> day of September, 2011.

  
David B. Gallik  
Commissioner of Political Practices

# EXHIBIT 1

Calls - Digital Phone

Page 1 of 3

Welcome bubba4061  
406.652.3844

*It's personal*

**BRESNAN**

Main

Calls

Features

Voice Mail

FAQ | Preferences | Logout

Inbound Calls
Number of calls: 65
Total duration: 1:11:19
Most frequent callers: 406.256.8431 (9 calls) 406.861.5842 (7 calls) 406.000.0000 (6 calls) 406.248.8857 (5 calls)

Outbound Calls
Number of calls: 65
Total duration: 2:28:31
Most frequently called: 406.861.5842 (12 calls) 406.248.8857 (6 calls) 406.860.7001 (6 calls) 406.256.8431 (5 calls)

Period: 2008-10-12 to 2008-10-15  
 Number of calls: 131  
 Period starting: 2008-10-12   
 ending: 2008-10-15   
 Ordering: most recent first

Calls (all dates/times MDT) 1 - 180 of 131 >>

Date	Time	From/To	Location	Duration/Status
Tuesday	5:38 PM	from 406.570.4889	BOZEMAN MT	01:37
Tuesday	5:35 PM	from unknown		No answer
Tuesday	5:10 PM	to 406.248.8857	BILLINGS MT	01:58
Tuesday	5:06 PM	to 406.860.7001	BILLINGS MT	03:41
Tuesday	4:52 PM	from 406.860.7001	BILLINGS MT	00:31
Tuesday	4:49 PM	from 508.462.9241	SPOKANE WA	00:12
Tuesday	4:47 PM	from 406.256.8431	BILLINGS MT	01:10
Tuesday	4:08 PM	from 406.256.8431	BILLINGS MT	01:01
Tuesday	4:01 PM	from 406.857.1241	BILLINGS MT	00:33
Tuesday	3:18 PM	from 800.793.0282	8NN call	00:12
Tuesday	2:00 PM	from unknown		00:04
Tuesday	1:48 PM	from 406.579.8764	BOZEMAN MT	03:11
Tuesday	1:01 PM	to 406.861.2221	BILLINGS MT	00:08
Tuesday	1:00 PM	from 406.886.2224	BILLINGS MT	00:08
Tuesday	1:00 PM	from 406.886.2224	BILLINGS MT	00:02
Tuesday	1:00 PM	to 406.886.2224	BILLINGS MT	No answer
Tuesday	12:25 PM	to 406.855.1026	BILLINGS MT	09:22
Tuesday	11:46 AM	from 818.870.5029	CANOGAPARK CA	00:46
Tuesday	9:16 AM	to 508.278.5515	DEER PARK WA	08:58
Tuesday	8:34 AM	from blocked		00:46
Tuesday	8:33 AM	to 406.248.8857	BILLINGS MT	01:36
Tuesday	8:31 AM	to 406.579.8764	BOZEMAN MT	00:26
Tuesday	8:30 AM	to 406.861.5842	BILLINGS MT	00:16
Tuesday	8:22 AM	to 406.672.0409	BILLINGS MT	00:35
Tuesday	8:21 AM	to 406.857.3155	BILLINGS MT	00:18
Tuesday	8:20 AM	to 406.857.3150	BILLINGS MT	00:14
Tuesday	8:20 AM	to 406.252.6306	BILLINGS MT	01:07
Tuesday	8:18 AM	to 406.252.9355	BILLINGS MT	02:07
Tuesday	8:11 AM	to 406.247.3350	BILLINGS MT	01:51
Tuesday	8:09 AM	to 406.857.7000	BILLINGS MT	00:13
Tuesday	7:53 AM	from 406.245.2381	BILLINGS MT	03:33
Monday	9:05 PM	from 406.861.5842	BILLINGS MT	05:42
Monday	8:58 PM	from 406.248.8857	BILLINGS MT	00:58
Monday	8:58 PM	to 406.248.8857	BILLINGS MT	00:14
Monday	8:57 PM	from 406.248.8857	BILLINGS MT	00:12
Monday	8:57 PM	from 406.248.8857	BILLINGS MT	10:41

<https://myaccount.nct.net2phone.com/bresnan/jsp/activity.jsp?pstart=2008-10-12&pend=>

*Exhibit 1*

Monday	8:41 PM	from 406.248.8957	BILLINGS MT	07:53
Monday	8:14 PM	to 406.258.7034	BILLINGS MT	01:41
Monday	8:11 PM	to 406.861.5842	BILLINGS MT	00:04
Monday	8:04 PM	to 406.866.0916	BILLINGS MT	00:28
Monday	8:03 PM	to 406.880.7001	BILLINGS MT	03:55
Monday	7:58 PM	from 406.000.0000	Romania	00:37
Monday	7:52 PM	from 406.671.2741	BILLINGS MT	00:31
Monday	7:45 PM	to 508.276.5515	DEER PARK WA	00:47
Monday	7:42 PM	to 406.671.2741	BILLINGS MT	00:36
Monday	7:41 PM	to 406.880.5249	BILLINGS MT	00:01
Monday	7:40 PM	to 406.258.8431	BILLINGS MT	00:04
Monday	7:35 PM	to 406.579.6764	BOZEMAN MT	08:05
Monday	7:27 PM	from 406.000.0000	Romania	00:14
Monday	7:27 PM	from 406.579.6764	BOZEMAN MT	01:05
Monday	7:23 PM	from 406.579.6764	BOZEMAN MT	00:08
Monday	7:21 PM	from 406.671.2741	BILLINGS MT	00:25
Monday	7:07 PM	to 508.580.3675	SPOKANE WA	11:58
Monday	7:05 PM	from 817.925.1573	FORT WORTH TX	00:05
Monday	6:55 PM	from 406.000.0000	Romania	00:12
Monday	6:54 PM	to 406.579.6764	BOZEMAN MT	00:03
Monday	6:51 PM	from 772.617.0121	VERO BEACH FL	00:08
Monday	6:44 PM	to 406.880.7001	BILLINGS MT	03:08
Monday	6:23 PM	from 406.000.0000	Romania	00:12
Monday	6:18 PM	to 318.446.0611	ALEXANDRIA LA	01:42
Monday	6:13 PM	from 318.446.0611	ALEXANDRIA LA	00:31
Monday	6:13 PM	to 406.570.4889	BOZEMAN MT	02:30
Monday	6:12 PM	from 318.446.0611	ALEXANDRIA LA	00:47
Monday	6:10 PM	to 406.579.6764	BOZEMAN MT	00:02
Monday	6:09 PM	to 406.579.6764	BOZEMAN MT	No answer
Monday	5:28 PM	from 406.000.0000	Romania	00:27
Monday	5:25 PM	to 406.861.5842	BILLINGS MT	04:16
Monday	5:20 PM	from 406.238.8638	BILLINGS MT	00:02
Monday	5:20 PM	from 406.861.5842	BILLINGS MT	00:12
Monday	5:13 PM	to 406.861.5842	BILLINGS MT	00:05
Monday	5:03 PM	to 406.861.5842	BILLINGS MT	00:05
Monday	5:02 PM	from 406.258.8431	BILLINGS MT	01:01
Monday	5:00 PM	to 406.258.8431	BILLINGS MT	00:37
Monday	4:04 PM	from 406.000.0000	Romania	00:05
Monday	3:44 PM	from 442070875238	United Kingdom et al.	No answer
Monday	3:21 PM	from 800.793.0282	8NN call	00:12
Monday	2:43 PM	from 757.209.2010	WILLIAMSBG VA	00:40
Monday	2:25 PM	to 406.861.5842	BILLINGS MT	02:29
Monday	2:16 PM	from 301.223.0027	WILLIAMSPY MD	00:12
Monday	1:17 PM	from 406.579.6764	BOZEMAN MT	00:12
Monday	1:16 PM	from 406.294.0150	BILLINGS MT	02:53
Monday	12:58 PM	from 406.294.0150	BILLINGS MT	00:13
Monday	11:05 AM	from 800.793.0282	8NN call	No answer
Monday	10:58 AM	from 406.258.8234	BILLINGS MT	00:12
Monday	10:52 AM	from 508.276.5515	DEER PARK WA	01:08
Monday	10:23 AM	from 508.580.3675	SPOKANE WA	00:31
Monday	9:16 AM	from 201.257.4210	HASBROUGHTS NJ	00:12
Monday	8:05 AM	to 406.838.3807	BILLINGS MT	00:03
Monday	8:04 AM	to 406.861.5842	BILLINGS MT	02:23

<https://myaccount.nct.net2phone.com/bresnan/jsp/activity.jsp?pstart=2008-10-12&pend=...> 10/17/2008

Sunday	9:07 PM	to 406.889.7001	BILLINGS MT	12:40
Sunday	8:54 PM	to 406.871.2741	BILLINGS MT	01:02
Sunday	8:53 PM	to 406.889.5249	BILLINGS MT	No answer
Sunday	8:52 PM	to 406.258.6431	BILLINGS MT	00:04
Sunday	8:51 PM	to 406.861.5942	BILLINGS MT	02:14
Sunday	8:48 PM	from 406.861.5942	BILLINGS MT	00:12
Sunday	8:45 PM	to 406.248.8857	BILLINGS MT	01:24
Sunday	8:43 PM	to 406.208.5425	BILLINGS MT	01:08
Sunday	8:37 PM	to 406.861.5942	BILLINGS MT	00:09
Sunday	8:11 PM	to 406.839.3507	BILLINGS MT	00:03
Sunday	8:10 PM	to 406.697.1168	BILLINGS MT	05:31

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<https://myaccount.nct.net2phone.com/bresnan/jsp/activity.jsp?pstart=2008-10-12&pend=...> 10/17/2008