BEFORE THE MONTANA COMMISSIONER OF POLITICAL PRACTICES
STATE OF MONTANA, OFFICE OF POLITICAL PRACTICES

VANFOSSEN v. MISSOULA COUNTY REPUBLICAN CENTRAL COMMITTEE, MISSOULA COUNTY REPUBLICANS, INC., GRACE SILOTI TREASURER and ADDITTIONAL MCRCC/MCR., INC. OFFICERS	COPP 2023-CFP-008 COMMISSIONER GALLUS PARTIAL DISMISSAL AND FINDING OF FACTS SUFFICIENT TO SUPPORT VIOLATIONS

Complaint

Jane VanFossen of Missoula, Montana, a Missoula County precinct committeewoman, submitted a proper complaint to the Commissioner through the Office of Political Practices' established procedures (44.11.106, ARM) on June 12, 2023. The complaint alleges that the Missoula County Republican Central Committee (MCRCC) and its officers illegally established and transferred MCRCC funds to a corporation—Missoula County Republicans, Inc. As alleged, the corporation then made direct contributions to candidates in violation of Mont. Code Ann. (MCA) § 13-35-227 and failed to file disclosure reports—either accurately or timely.

This complaint in my first opportunity to address the functions of this office as it relates to campaign finance regulation and presents matters of first impression. Consequently, let me first note that this office is governed by, and adheres to, specifically granted statutory authority. These are primarily contained in Title 13, Chapter 35 or 37, and Montana COPP also adopts regulation where authorized by statute to do so. These are contained in the Administrative Rules of Montana (ARM)--generally ARM 44.11. A Commissioner must also adhere to judicial decisions while enforcing the law, especially where First Amendment speech and associations rights are implicated. In campaign finance law these rights are almost always present. Consequently, decisions by the U.S. Supreme Court are predominant and binding.

I do not address or give credence to matters over which I lack authority. This includes infighting, behavior, or situations where groups have their own internal controls to address such matters. COPP does not adjudicate organizational committee disputes, especially where the responsibility to resolve any disputes rests with the party committee. Buck and Kantorwicz v. Hagan, et al, COPP 2019 CFP-001. COPP is predominantly staffed by compliance specialists rather than prosecutors. "Got you" complaints where complainants mostly seek to enhance

respective political positions or garner media attention, dilute COPP decisions and deplete our resources unnecessarily. Landsgaard v. Peterson, COPP-2014-CFP-008 at 12. Consequently, "got you' complaints are disfavored. *Id.*

COPP will still address substantive portions of any complaint. Under Montana law—MCA § 13-37-121—COPP reviews all of the reports filed with the office and seeks resolution of errors informally. COPP encourage candidates and committees to seek compliance advice, attend training, review published COPP material, and self-identify mistakes. Parties that self-identify errors prior to complaints being filed and parties that correct mistakes identified by COPP through MCA § 13-37-121 typically have a less arduous process that does not result in fines, unless violations are unexplainable or egregious.

Following receipt of the proper complaint in this matter, I acknowledged the complaint to the parties on June 14, 2023, and communicated how matters pertaining to the complaint would proceed. Initially the Commissioner is given the authority to request and receive a response. If a response is provided, the response is posted on the COPP website as required under MCA § 13-37-312. The Commissioner is also allowed to seek additional information from the parties and make inquiries. Here, my initial limited inquiries caused me to determine that an accurate response required involvement by multiple current and former MCRCC officials. As these initial discussions occurred records were requested and readily provided. Typically, at this initial stage the Commissioner determines only whether a complaint shall be dismissed or investigated based on the complaint and the response. Here, however, all of the pertinent information an investigation could reveal was either presented in the complaint, addressed in the response, or contained within the publicly available COPP maintains or has access to.

I met with the COPP investigator and the compliance specialist who both reviewed the records provided from the initial request for a response (MCA § 13-37-312), reviewed records filed with COPP pursuant to MCA §§ 13-37-201, 225, 226 and 229, and audited records and reports consistent with our requirements under MCA § 13-37-121. Consequently, I conclude that no additional investigation is necessary as the record is established. The basis of the determination is as follows:

According to the complaint, there are numerous associated violations including deposits, recordkeeping, reporting, timeliness, disclosure, and certification resulting from the Missoula County Central Committee's incorporation. Put another way, the complaint (1) questions whether

MCRCC can create an entity, (2) whether the entity established can operate with a non-profit corporate status, and (3) whether the central committee fully and timely reported their activity.

The complaint further alleges that the statement of organization (C-2) filed by the MCRCC Treasurer, Grace Siloti is false and does not contain accurate information, such as including the name of a deputy treasurer. The complaint asserts and presents evidence that checks drawn from the account were signed by individuals who were not properly appointed and certified. The complaint concludes by presenting internal matters involving the failure to adhere to certain directives, infighting, alleged intimidation, improper use of identity, and failure to adhere to requirements of other government agencies.

Pertinent Montana Law:

Montana law identifies four types of political committees, under ARM 44.11.202, which finds its legal basis in MCA § 13-1-101. Clearly, a "political party committee" is separately recognized and established. ARM 44.11.202(2)(b) and (5). Under 44.11.202(5) "a political party committee" is a political committee formed by a political party organization. MCA § 13-1-101(34) specifically defines a "political party organization" as a political organization that was represented on the official ballot in either of the two most recent statewide general elections; or has met the petition requirements provided in Title 13, chapter 10, part 5. A political party committee means a political committee formed by a political party organization and includes all county and city central committees. MCA § 13-1-101(33). ARM 44.11.204 requires the commissioner to classify a political committee on the basis of information including the statement of organization, and the commissioner must notify the committee of its classification. The commissioner can only classify a political committee as one of the types of committees specified under ARM 44.11.202 (See ARM 44.11.204(2)).

Under Montana law, MCA § 13-37-201 and ARM 44.11.201, political committees, including political party organizations, are required to file a Statement of Organization (Form C-2) with the Office of Political Practices (COPP). ARM 44.11.201 provides that the statement of organization shall include the complete name and address of the political committee, the complete names and addresses of all related or affiliated political committees and the nature of the affiliation, the compete name and address if its treasure and deputy treasurer(s) along with the name and address of any depository (account) it maintains. The C-2 also requires that these political committees provide the complete names, addresses, and title of its officers, a statement of whether

the committee is incorporated, as well as the name, office sought, and party affiliation of each candidate it supports. These are clear and unambiguous requirements of law that serve the fundamental purpose of full public disclosure, which is a recognized compelling interest. Though arguably a burden the interest is legitimate, and enforcement can and is narrowly tailored to serve the interest of full and complete public disclosure. The provision also aides the agency in ascertaining whether this and other legitimate functions are being complied with in accordance with the law. These include contribution limits and disclaimer provisions, for example.

The complainant labels the activity conducted by the respondents as misconduct, funds were transferred, revenues attributed to MCRCC were processed through MCR, Inc., and corporate campaign contributions to candidates resulted. In bringing these matters to the attention of COPP, the complainant filed two separate complaints. For purposes of this determination, I combine them. The first complaint is against the current MCRCC treasurer for false reporting. The second complaint alleges that MCR, Inc. made prohibited corporate contributions to candidates, which is a violation of MCA § 13-35-227. In this regard, with respect to both complaints, essentially, the complainant requests that I classify MCRCC and MCR, Inc. as two separate entities. This I cannot do. The facts presented do not weigh in favor of such a finding, so such a determination would not be supported by law. The complainant is correct that the separate entity was created. Her facts regarding when this occurred are generally accurate. COPP has authority provided by law. I use discretionary authority in accordance with Powell v. Motl (Mont. Supreme Ct. OP 14-0711) to weigh pertinent evidence using statutes, regulations, and controlling case law, which I do now as follows:

Are MCRCC and MCR, Inc. The Same Entity (Central Committee of Missoula County)

I must first determine if MCRCC and MCR, Inc., are affiliated sufficiently to operate as a single entity, or if they are separate entities as alleged by the complainant. My conclusion is that MCRCC and MCR, Inc., are a single affiliated entity. The law and facts support this. With reference to the Montana code sections and ARMS cited above, the determination is based on the following:

The major, principal, or important goal, function, or reason both MCRCC and MCR, Inc. exist is essentially one in the same. Both support Republican candidates, platforms, policies, and ideas. ARM 44.11.203(1). An essential legally recognized function inherent to a political party is

that they exist to fundraise and make contributions to their own candidates. Using the criteria established in ARM 44.11.203(2), I can easily determine from the factual record that the source and allocation of MCRCC and MCR, Inc. budget is the same. So too is their activity, purpose, bylaws, and goals. Each must disclose the same information on their campaign finance disclosure reports. Each maintains, or should maintain, the same uniform system of accounts required under ARM 44.11.301. Each is subject to campaign contribution limits and operated in accordance with those provisions by recognizing the limits and adhering to them. MCA § 13-37-216 and ARM 44.11.222, 225 and 227. The history, contributions, fundraising appeals, expenditures, and candidate or interactions with other political committees is constant and essentially unchanged. The ordinary business conducted is, likewise, exactly the same. Finally, even as a corporate entity MCR, Inc. was created and maintained by MCRCC as provided by law, which MCA § 13-37-101(33) clearly permits. As established in ARM 44.11.202(2)(a), a political party committee is one of four types of committees recognized in Montana. A political party organization includes central committees, and a political party committee includes clubs and any other political committee that was formed by a political party organization. ARM 44.11.202(5).

In O'Hara v. Cascade County Republican Central Committee, COPP 2016-CFP-004 and 013, the Commissioner addressed the role and function of political party committees. A political party is authorized to make its own rules and perform all other functions inherent in a political party organization. MCA § 13-38-101(1) and (9). Central committees have the same authority so long as the rules are consistent with state election laws and the rules of its state political party. MCA § 13-38-203.

Here it is helpful to make limited reference to the MCRCC bylaws. COPP merely looks at bylaws in a rudimentary way to see that the entity has them and that the bylaws contain actual or conceivable authorities, together with a mission or purpose statement. It is important to note that both MCRCC and MRI, Inc., which MCRCC created, operate under the exact same set of bylaws. Those bylaws are recorded and on file with the appropriate authorities, MCA § 13-38-105. Membership in MCRCC consists of the duly elected committee precinct committeemen and committeewomen and the MCRCC officers. Missoula Republican Party (MRP) (Rules) Article IV Sections A and B. Only elected or properly appointed precinct people are allowed to participate and vote. They elect officers who are not required to be from the body of elected or appointed precinct committee representatives, although they must be Missoula County registered voters.

Officers include the County Chair, Vice Chair(s), Secretary, Treasurer and other positions. Article IV. B. 1(a)(1 through 11).

There is an Executive Committee that consists of all central committee elected officers, including the Treasurer. MRPR Article X. A fair reading of Article X is that the Executive Committee performs "assigned work" and makes recommendations to the membership body. The Chair may request that the Treasurer provide a report, the Treasurer will prepare such a report and it must include all reports filed with the COPP, which are kept by the Secretary. To perform, even these reporting functions, it is clear that the Treasurer must be the one that is assigned work with respect to the day-to-day financial operating functions of the entity. Article V. B(2)(f)(1) through (3). MRP Article VIII. provides that all funds collected for the MCRCC shall be deposited for the MCRCC by the Treasurer or Chair. Funds shall be used "to support the Mission of the Central Committee in its support of the Republican Party candidates and the normal course of business."

Regardless of the exact manner in which MCR, Inc. was established, and whether it should have only occurred following recommendation to the full MCRCC committee, is a matter that is unclear and inconsequential to me, I can establish that the funds deposited, transferred, used, and maintained by MCRCC or MCR, Inc. were always done in a manner that supported the Mission of the central committee in Missoula County to Republican Party candidates or in the normal course of business.

Carole Minjares, the former MCRCC Treasurer who established MCR, Inc. acted within her authority to establish and maintain functional political committee accounts as part of her assigned work. The intentions were to operate MCRCC and MCR, Inc. as the same entity. COPP Records, MCR Response filed June 27, 2023, at 1. The COPP in a phone call determined that Ms. Minjares with the concurrence of Missoula central committee executive officers created MCR Inc. for liability protection. Ms. Minjares was also instructed to create a corporate entity by her bank while attempting to establish a new account. COPP confirmed that both entities used the same EIN. All funds associated with the Missoula Republican Central Committee were continuously under the control of the appropriate officers and ultimately the control of the member of the central committee. The public and candidates viewed the entity as one in the same, as evidenced by the reports and the fact that numerous candidates over a period of two election cycles accepted and deposited central committee's contributions without question. Treasurer Grace Siloti continued to operate the entity in this manner and all her actions establish that she operated in a manner that

fulfilled her fiduciary responsibility to protect and maintain the funds for the central committee in a manner that fulfilled the mission of the central committee.

Consequently, based on the record, law, and my analysis, I am compelled to conclude that MCRCC and MCR, Inc. are one in the same because they function and operate as the political party central committee for Republicans in Missoula County. ARM 44.11.203(4). Of further note and influence is the fact that both operate pursuant to Title 13, chapter 38, and the membership as well as officers are the same or substantially similar with respect to control.

Can a Political Party Organization/Committee Operate Through a Created Corporate Entity

Corporate Speech Under Campaign Finance Law:

Having established that MCRCC and MCR, Inc. are one in the same and operating as the central committee in Missoula County, it is now imperative to determine whether, as alleged by the complainant, this results in activity prohibited under Montana law because the established functioning entity, MCR, Inc., is a corporation. Because this is my first discussion of such matters as Commissioner, I believe it is necessary to provider a wide rationale with respect to these laws.

Montana law prohibits corporations from making direct contributions to candidates under MCA § 13-35-227, which is a central and longstanding component of Montana's Corrupt Practices Act. Mont. Code Ann. 13-35-227, reads as follows:

> Prohibited contributions from corporations and unions. (1) A corporation or union may not make a contribution to a candidate directly or through an intermediary. (2) A candidate may not accept or receive a corporate or union contribution described in subsection (1). (3) a political committee that is not a corporation or union may establish a fund to be used for making contributions to candidates if the fund consists only of funds solicited from noncorporate and nonunion sources. (4) A corporation or union may establish a separate, segregated fund to be used for making political contributions to candidates if the fund consists of only voluntary contributions solicited from an individual who is a shareholder, employee, or member of the corporation or union. (5) A person who violates this section is subject to the civil penalty provisions of 13-37-128.

Federal law, as regulated by the Federal Election Commission (FEC), enforces a similar ban on direct candidate contributions coming from corporations or unions. Referring to the similar provisions of federal law and the enforcement provisions is important here because the federal case law pertaining to corporate and union contributions is vitally important in context of the First Amendment. Consequently, adhering to an overly simplified reading of any statute, including

MCA § 13-35-227, as urged by the complainant, has significant potential impacts on government agencies seeking to absentmindedly apply them. Canyon Ferry v. Unsworth, 556 F.3d 1021 (2009) and Butcher v. Knudsen, 38 F.4th 1163 (2022) (regarding political committees), Sanders County Republican Central Committee v. Bullock, 698 F.3d 741 (2012) at 745 and 746 (political parties and endorsements), Montana Citizens for Right to Work v. Mangan, 580 F. Supp. 3d 911 (2022) (content-based restrictions), and National Association of Gun Rights, Inc. v. Mangan, 933 F.3d 1102 (2019) (as to voter registration requirement for treasurers).

Despite strong and principled views to the contrary, the United States Supreme Court has squarely addressed issues pertaining to corporate and union rights relating to speech. These rights are constitutionally based in both the U.S. and Montana Constitutions. In short, with regard to the question of whether or not corporations and unions have First Amendment free speech rights, the U.S. Supreme Court has ruled, quite emphatically, that they do. Citizens United v. FEC, 558 U.S. 310 (2010).

This emphatic conclusion is important to government agencies because it establishes the legal standards for agency regulation. Put succinctly it dictates whether strict scrutiny is required or whether lesser a standard can apply, such as intermediate scrutiny. This dictates the burden of proof, the level of the government's interest (compelling, important, or rationally related). An additional question presented, especially in context of constitution speech restrictions, is whether the regulation is narrowly applied. Courts are deferential to the government agencies because the positions we espouse rely principally within the sphere of protecting the public interest. While deferential, there are limits, and this is especially true in the context of fundamental constitutional rights, like those contained in the First Amendment.

Not uncoincidentally, numerous COPP decisions over the course of COPP's 50-year history make reference to, and rely upon, federal case law and the FEC. In COPP Welch Advisory Opinions—COPP-2014-AO-004 and 009—the Commissioner notes that COPP interpretations are "guided by the approach taken by the Federal Election Commission (FEC)", and that "much of Montana's Title 13 statutory language….was borrowed from the comparable federal law." Welch AO 004, Feb. 2014, at 5 and AO 009, May 19, 2014, at 6. The Commissioner also specifically notes that, "Montana, however, can look to the federal interpretation as guidance". *Id.*

The foundation for case law associated with campaign finance regulation stems unquestionably within Buckley v. Valeo, 424 U.S. 1 (1975) as reaffirmed by Citizens United. If

the Citizens United Court did anything, it rebuilt and reclarified import aspects of Buckley. It firmly re-established First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978). Just as importantly the Citizens United Court overruled Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990), wherein the Austin Court based its holding on the notion of level playing fields and preventing corrosive and distorting effects of immense aggregations of wealth that are accumulated with the corporate form and have little or no public support for the political ideas of the corporation. Austin, 494 at 660. While Citizens United, itself, is under constant criticism, I cannot ignore that it is the predominant law of the land. The rules apply here.

The U.S. Supreme Court applied Citizens United in Montana when it reversed the Montana Supreme Court in American Tradition Partnership. The U.S. Supreme Court specifically addressed the question of "whether the holding of Citizens United applies to the Montana state law," and it concluded that, "[t]here can be no serious doubt that it does. *Id.* The Court held further that, "Montana's argument in support of the judgment below were either already rejected in Citizens United or fail to meaningfully distinguish that case. *Id.* Putting it succinctly, I am dutybound to adhere to fundamental and unequivocal U.S. Supreme Court decisions. To paraphrase Montana Supreme Court Justice Nelson, Montana is not entitled to a special "no peeing zone" in the First Amendment swimming pool. Western Tradition Partnership Inc. v. Bullock, 271 P.3d 1, ¶¶ 68 and 70. Likewise, in her dissent, Justice Baker urges a particular focus favoring robust disclosure as a correct path moving forward. *Id.* at ¶¶ 54 and 59.

The First Amendment provides that Congress shall make no law abridging the freedom of speech. U.S.C.A. Const. Amend. 1. This freedom includes the right of association, and it is applicable to the states through the Fourteenth Amendment. Buckley at 15 (citing Kusper v. Pontikes, 414 U.S. 51, at 56-57). The concept that the government may restrict the speech of some elements of society to enhance the relative voices of others is wholly foreign to the First Amendment. The purpose of the First Amendment protects the rights of citizens because it assures unfettered interchange of ideas to bring about change. New York Times Co. v. Sullivan, 376 U.S. 254 (1964), at 266, 269. In a free society ordained by our Constitution it is not the government, but the people individually as citizens and candidates and collectively as associations and political committees who must retain control over the quantity and range of debate on public issues in a political campaign. Buckley at 57.

Political speech does not lose First Amendment protections simply because its source is a corporation. Bellotti at 784. Corporations and other associations, like individuals, contribute to the discussion, debate, and dissemination of information and ideas that the First Amendment seeks to foster. *Id.* Consequently, the U.S. Supreme court categorially rejects the notion "that political speech of corporations and other associations should be treated differently under the First Amendment simply because such associations are not natural persons. Citizens United at 900, and American Tradition Partnership at 2491.

Buckley made the constitutionally based distinction between contributions and expenditures. In making the distinction the Buckley Court explicitly ruled that direct contributions were subject to government regulation due to a quid pro quo corruption factor, while expenditures were necessarily excluded because they suffered no such malignancy. Under Buckley the government and public interest regarding money spent (expenditures) was addressed by simple disclosure and disclaimer requirements. Without quid pro quo corruption as an impediment, under Buckley, the distinction would have been unnecessary. Bans on speech do not fare well in constitutional litigation where the government cannot show quid pro quo corruption.

Because this matter deals specifically with direct contributions to candidates, I must also address and adhere to FEC v. Beaumont, 539 U.S. 146. In Beaumont, North Carolina Right to Life, Inc., a 501(c)(4) nonprofit, and others challenged the constitutionality of the federal corporate contribution ban. The U.S. Supreme Court held that applying the direct contribution prohibition to nonprofit advocacy corporations is consistent with the First Amendment. Beaumont at pp. 152-163. Beaumont noted that Congressional deference existed with respect to corporate contribution bans and used intermediate scrutiny, rather than strict scrutiny, where direct corporate contributions are involved. Id at 157 and 161-162 (respectively). As a whole, the Beaumont Court was particularly focused on historic notions of corporate corruption and using nonprofits as conduits.

In Montana, the analysis is made more complex by the wording of MCA § 13-35-227, which is rather unyielding absent an understanding of legal tenets, especially those espoused by the United States Supreme Court. In 2012, Montana voters adopted an initiative (I-166), which established a policy regarding corporate campaign speech. MCA 13-35-503. Even though it is codified, it is still a policy statement and as such it admittedly does not have the force of law. Adams v. Montanans for the 6 Mill, COPP 2018-CFP-003. The policy statement serves as a guideline to influence attitudes and behaviors of elected and appointed officials in Montana.

Adams at 9. The policy specifically charges officials to act, whenever possible, to prohibit corporations from making contributions or expenditures in connection with candidate or ballot issue campaigns. MCA § 13-35-503(1). The operable terminology here, even with respect to the guidance provided in the policy, is "whenever possible."

Clearly, while Citizens United remains the controlling law it is difficult if not possible for any government to adhere to such guidance, especially as it relates to independent expenditures. Much of the policy statement is chiefly based in Austin, which the Citizens United Court overruled. The policy directive is source based as to who is funding speech, which makes it unenforceable under Bellotti. As indicated above, Citizens United, Buckley, and Bellotti, predominantly control the regulation of campaign finance related laws and enforcement and they apply throughout the country. American Tradition Partnership, Inc. (reversing 271 P.3d 1). The policy remains in the Montana Code. Rickert v. McCulloch, CDV-2012-1003, WL 7203231 (St. Dist. Ct. 2013). Montana citizens should be aware, however, that even as a guiding principle, it is difficult if not impossible to follow its directives to act until the United States Supreme Court dramatically changes course, especially in light of the "whenever possible" language. MCA § 13-35-503(2).

Montana COPP decisions support this point. In Nelson, the Commissioner expressly determined "that this policy of disfavor of corporate election funding may be applied only when it can be reconciled with the dominate speech directives of Citizens United." Nelson was a ballot issue decision, but the same Commissioner, cited specifically to his decision in Landsgaard v. Peterson and Wilks, COPP 2014-CFP-008, wherein the Commissioner determined that contributions to political campaigns demonstrate involvement by citizens in the process of governance, thereby promoting civic involvement in governance. Political party organizations, and citizens involvement in them, is no less favored or disadvantaged than the rights recognized under Landsgaard.

Recognizing the necessity of enforcing regulations in the free speech arena, government agencies must remain vigilant with respect to strict scrutiny, especially where total bans on speech are concerned. Political speech is an essential mechanism of democracy, and it must prevail against laws that would suppress it by design or inadvertence. That is why laws burdening political speech requires the government to prove that restrictions "further a compelling interest and are narrowly tailored to achieve that interest (FEC v. Wisconsin Right to Life (WRTL), 551 U.S. 449 (2007), or,

where direct contributions are involved, satisfy something like intermediate scrutiny. Beaumont at 148.

Strict scrutiny requires the existence of a compelling government interest to encroach upon a fundament right. Fundamental rights are understood to be "fundamental" because the right's importance with respect to the overriding constitutional principle focused upon one's liberty, which, according to courts, should be beyond the reach of the general governing process. Buckley at 24-26. There is no basis for the proposition in a political speech context that government may impose restrictions on certain disfavored speakers. First National Bank of Boston. Bellotti, 435 U.S. 765, at 784-785.This is why the government interest must be "compelling" rather than simply important or legitimate with respect to expenditures. While imposing a legitimate interest, the government merely demonstrates that the law being imposed is rationally related to the interest. Where strict scrutiny is the test, however, the government must "narrowly tailor" the law, which means the law must be precisely written and applied to place as few restrictions as possible on fundamental liberties. Even when the scrutiny level is an intermediate one the government must show that the actions are rationally related.

Particularly because of the need to narrowly tailor law, or to make them rationally related, legislatures and agencies typically provide some leeway within their statutes or rules. For example, Montana allows otherwise banned corporations and unions to create separate segregated funds. The federal government does this too. The federal government also ignores corporate status in specific instances. See 11 CFR § 114.12.

Ignoring Corporate Status in Certain Specific Instances:

Under 11 CFR § 114.12(a), FEC regulations provide that an organization may incorporate and not be subject to the strict corporate ban if incorporating for liability purposes, and if the organization is already required to fully report its activity as a political committee. This is a practical exclusion designed to adhere to strict scrutiny concerns because it functions to narrowly tailor the law. In these situations, an organization is already required to report as a political committee. This includes disclosing all of its contributions and expenditures. As contained in the COPP Welch Advisory Opinion, (February 7, 2014), "[m]uch of Montana's Title 13 statutory language….was borrowed from the comparable federal law." Welch at 5. All of the organizations contributions and expenditures are reported to the agency as a matter of law and the organizations

is already compelled to adhere to all other legal requirements. These organizations will not have private persons with an interest in the organizations assets and the organization will not function as a for profit enterprise. To fulfill the definition of "political committee" as used in this context the entity will be under the control of a candidate or have a major purpose to nominate or elect candidates. Political committees are subject to recordkeeping and reporting requirements as well as contribution limits and other prohibitions. This is true in Montana. It certainly applies to party central committees, which is the crucial question presented in the complaint here.

Federal Law as Applicable Authority and Guidance:

There are numerous instances throughout the COPP's existence where Commissioners acknowledge and rely upon federal law and regulations in reaching decisions. As recognized in the Welch advisory and numerous other COPP determinations, Montana law was modeled after federal law. This was done for obvious reasons. Chiefly among those reasons is our required adherence to U.S. Supreme Court decisions regarding the First and Fourteenth Amendment. Commissioners adhere to or reference federal law in other decisions. In October of 2002, the Commissioner determined that political committee that formed as a corporate entity violated MCA § 13-35-227. There the entity noted in its articles listed its purpose to support or oppose candidates, engage in property ownership for commercial purposes, and engage in "any business whatsoever." Close v. People for Responsible Government and Gallatin Valley Licensed Beverage Association (PRG I), October, 2002. The corporation also issued 50,000 shares of stock, though these had no associated par value. PRG then began an expenditure campaign, but it also made one direct contribution. This contribution was ultimately returned.

In PRG 1, since it was still good law, the commissioner substantially relied on Austin, which established a new type of corruption based on "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 at 659-660. The Commissioner notes and follows the holding in Buckley v. Valeo, 424 U.S. 1, with respect to express advocacy and cites to numerous other U.S. Supreme Court holdings to support her decision. This included Massachusetts Citizens for Life, 479 U.S. 238 (1986), and FEC v. Furgatch, 807 F. 2d 857 at 864 (9th Cir. 1987). The Commissioner also referenced to Federal Election Commission rules adopted in 1995. The point here being is that the Commissioner cited

to and relied on federal case law and federal agency regulation to make her interpretations as to how Montana law should be applied.

The same Commissioner took the exact same general approach in Close v. People for Responsible Government (PRG II) decided in December of 2005. In PRG II, the Commissioner noted the approach to certain distinctions made in federal case law, which prompted her to conclude that, in light of these federal holdings, it was likely that a court would determine that the State of Montana may not enforce the provisions of MCA § 13-35-227 in a manner proposed by the complainant. She did so even after acknowledging the wording of the Montana statute and the presumption of constitutionality. See also Metzmaker v. Citizens for an Informed Public (Whitefish), February 2003 COPP Decision). In a 2010 decision,

In Graybill v. WTP, the Commissioner decided substantial evidence to reach his conclusion that WTP violated Montana law, and to do that he used Buckley, McConnell v. FEC, 540 U.S. 93 (2003), Massachusetts Citizens for Life, 479 U.S. 238, Citizens United, Furgatch, and Wisconsin Right to Life.

In Pennington v. Bullock, COPP 2013-CFP-012, the Commissioner found insufficient evidence of a violation and concluded that the many allegations of the complainant could have insidious and far-reaching effects. Pennington involved coordination, third party group cooperation, and common vendors. The decision specifically cites to federal rule with respect to the coordination issue at hand. Pennington FN 4 at 6. In Pennington, the Commissioner uses the FEC rule to establish an "actual evidence approach" and the fact that the FEC found that there needs to be more than common vendors, related individuals, and shared contacts, to support a legal conclusion with respect to coordination.

In Miller v. Van Dyk, COPP 2014-CFP-002, the Commissioner takes the same approach with respect to coordination and substantially relies upon the federal rule. Van Dyk at 11. The Commissioner notes that "[c]oordination decisions by Montana Commissioners show a similar approach to that of the federal decisions. *Id.* at 11. He goes on to cite many of those COPP decisions including Citizens for Common Sense Government (December 31, 1997), Close v. PRG, Keane v. Montanans for a True Democrat (2008), Little v. Progressive Missoula (2004), Madin v. Burnett, Ponte v. Buttrey, and Fletcher v. Montanans for Veracity, Diversity and Work, COPP 2014-CFP-028.

Finally, COPP decisions in Ward v. Miller, COPP-2010-CFP-021, and all of the Bonogofsky decisions are replete with substantial reliance on federal case law and FEC rules.

Clearly, whether commissioners agreed with these findings or not, they continuously and consistently sought to apply them through federal interpretation.

Associational Interest of Political Party Organizations/Committees

A specific determination regarding political party associational rights is also required, especially given their role and function. As decided in Sanders County Republican Central Committee, "if Montana chooses to tap the energy and legitimize power of the democratic process, it must accord the participants in that process the First Amendment rights that attach to their roles. Sanders County Republican Central Committee v. Bullock, 698 F.3d 741 at 747. The Republican and Democratic parties are party organizations because they were represented on Montana's official ballot in the two most recent general elections. MCA § 13-1-101(34). The other regularly qualified and currently recognized political party committee organization is the Libertarian Party. All other political party committee organizations would need to qualify by petition. MCA § 13-10, parts 5 and 6. Under Montana law, central committees are actually created specifically within the Montana Code. Title 13, Chapter 38. The creation of central committees occurs simultaneously with the existence or creation of the state party. This provides central committees with an additional special status with respect to how the law should be applied.

Political parties are specifically recognized and play an essential role in Montana's election process. MCA Title 13, chapter 38. Political committees, including political party committees and organizations must meet the stringent requirements imposed under MCA § 13-37-229 with respect to reporting their contributions and expenditures. In essence this includes a detailed record and accounting of all their activity. These full disclosure requirements are similar to those required under the federal law. Political party committees are similar to candidate campaigns because all of their income is recorded and disclosed. As the commissioner points out in Welch (COPP-2014-AO-009, at 5) ballot committees share these same full reporting attributes and requirements. This is in contrast to other political committees that are not required to disclose members or contributors, unless the contributor makes an earmarked contribution. Incidental political committees disclose under MCA § 13-37-232 and do not meet these exacting and more stringent requirements. Every dollar that a political party committee receives is accounted for as a

contribution. Every dollar that goes out is reported as an expenditure, and the political party committee maintains and reports a balance that reflects all of this activity. For profit corporations and certain nonprofit corporations cannot, or electively do not, fulfill the same stringent requirements.

In the Keenan advisory opinion, (COPP-2015-AO-008), the commissioner addressed a memorandum of understanding between the Montana Democratic Party and Governor Steve Bullock's re-election campaign involving in-kind personal service expenditures. The commissioner specifically notes the MOU identifies the associational interest of the Party, which were to "persuade Montana voters to support Democratic candidates", that the MOU embraces the full reporting disclosure requirements, and that the amounts were reasonable. Keenan at 2. Because the paid personal services were in context of an associational interest and the expenditures were "reasonable" the commissioner determined, as he did in Welch (COPP-2014-AO-009 with reference to 44.11.401 ARM) that contribution limits did not apply since coordination did not matter so long as the expenditure is full reported and disclosed. In FN 5, also on at 2, the commissioner describes "reasonable" as it relates to the associational interest. The word reasonable was used because it is consistent with a political party's application of resources in an amount of paid staff that reflect the associational interest of Montanans organized in a political party. This was contrasted with large staff allocation of a political party that might be considered unreasonable as it could reflect large amounts of money funneled through a political party by a third party to circumvent contribution limits or prohibitions, rather than the party's allocation of its own resources consistent with this history of this use set out in the discussion in COPP-2014-AO-009 (i.e. Welch).

The Keenan advisory recognized the need to balance the associational interests with the interests Montanans have in full reporting and disclosure. The Commissioner notes that 44.11.401 achieves this objective. Keenan at 3. The same associational intertest logic can and should be applied to political party organizations and their committees with respect to direct contributions, even in those instances where a central committee incorporates for liability and organizational purposes but continues to fully report and disclose. For the legal reasons provided herein in, I disagree with the notion that "a political party committee has no special status as a Montana political committee under Montana law". They most assuredly do. While their reporting and disclosure requirements may be the same, the Montana Code Annotated creates them as a unique

entity. Title 13, chapter 38, and the Montana Code further and specifically provides that they are a "type" of political committee, which makes them distinct from other types.

What is most consequential in Welch, is the Commissioner determined that, "there is a basis, rooted in Montana tradition, as translated into constitutionally protected association rights, to provide deference to political party in-kind contributions made in the form of paid personal services", which was the issue being addressed. Welch at 7-8.

As further noted in Welch, commissioners do not decide issues of constitutionality, but we are required to construe statutes and regulations in a manner that recognizes constitutional issues and interpret law in a manner that will render its use constitutional. Welch at 8. While they are independent political committees (Kuhl v. Flathead County Republican Central Committee, COPP February 26, 2009) it does not mean political party committees lose other special or unique characteristics excluding them from deference.

What is clear from the COPP decisions and opinions reviewed is that political party committees have been afforded deference based on their associational interests and their status within the Montana Code. As determined in Adams v. Montana Democratic Party, COPP-2015-CFP-006, a review of the political party disclosure reports demonstrated registration and reporting that was consistent with the assertions of the MDP. There was no justifiable reason in law for separate political committee registration, which was sought by the complainant, because a political committee is allowed to function consistent with its purpose so long as it fully reports and discloses. There is no incentives and there is no practical reason to require a separate political committee registration when the functional purpose is the same. Again, the Commissioner notes that the different analysis is required to accommodate the unrestricted associational rights of a political party to advance the party's interests, while still requiring full reporting and disclosure of value of that activity. Adams v. MDP at 3.

O'Hara v. Madison Couty Republican Central Committee, COPP-2016-CFP-011 addressed controlling legal principles and established restrictions relating to central committee activity. In doing so the Commissioner was adhering to the tenets of law in existence at the time, which now includes Buckley, Bellotti, and Citizens United, but not Austin.

The Commissioner specifically addressed the role and function of a political party committee in O'Hara v. Cascade County Republican Central Committee, COPP-2016-CFP-004 and 013. The Commissioner recognized the manner in which political party committees are created

(MCA § 13-38-101) and that political party committees, including county central committees, have the power to make their own rules (MCA § 13-38-203). Central committees make their own rules so long as those rules are not inconsistent with provisions of the state election laws or rules of the state political party. MCA § 13-38-203(1)a). In O'Hara v. Cascade County RCC, the Commissioner provides the respondent political party a great deal of latitude with respect to what this means. In fact, when addressing whether the central committee was properly functioning as a political party, and even though its purpose, as contained in the Statement of Organization (C-2) provided it supported "[a]ll Republican Candidates for Office in Cascade County", the Commissioner allowed the CCRCC to selectively support, and even oppose, Cascade County Republican candidates based on whether the CCRCC leadership considered the candidates to be "true Republicans." The Commissioner, again, used the "nuances of political party association rights" involved in restricting political party association actions. O'Hara v. CCRCC at 4 and 6.

The complaint in Cascade County RCC was asking that "the Commissioner reclassify the Central Committee as an independent committee, thereby taking away any benefit the Central Committee receives as a political party committee", even in context of providing direct and in-kind contributions to its own Republican candidates. O'Hara v. CCRC at 4. The Commissioner declined to do so in regard to a political party committee, even though he acknowledged having some basis of authority (ARM 44.11.204). *Id.* Further, the Commissioner determined that, "the selection of some Republican Party primary election candidates over other competing Republican candidates falls under the association interest of a political party." O'Hara v. CCRCC at 5. The complainant's remedies lie within the political party committee structure, not the COPP. *Id.* and See also, Buck and Kantorowicz v. Hagan, COPP-2019-CFP-001.

Just three weeks later the commissioner decided O'Hara v. Madison County Republican Central Committee, COPP-2016-CFP-011. In Madison County RCC the Commissioner also addressed the role and function of county central committees. The commissioner applied many of the same legal principles discussed in Cascade County RCC, including statutory creation, associational interest, deference, control, and reporting responsibilities. In Madison County RCC, the commissioner expands the Cascade County RCC discussion to include the manner in which affiliated entities are formed or created. As noted, a political party committee does not fall under the $250 threshold expenditure amount with respect to its formation, so it reports from the first dollar of its expenditures. O'Hara v. Madison County RCC at 3-4.

Even though these COPP decisions deal with deference to political parties in the context of coordination and whether campaign contribution limits apply, it is important to point out that the Buckley Court groups together disclosure, reporting, and contribution limits as permissible methods with which to deal in the campaign finance arena, especially where quid pro quo corruption is a basis to permit government regulation. If this deferential treatment is agreeable as a means of protecting political party association rights relating to contribution limits, it is just as agreeable in context of the other areas mentioned where quid pro quo corruption is not a factor and where all of the activity is otherwise fully reported. While contribution limits and a political party's associational interests are accommodated in rule (44.11.225(3) ARM) in these instances, the fact that no commensurate rule with respect to these other matters, which can also be established in an associational interest, does not preclude an interpretation by me.

Central Committees are automatically created by law when the state political party is legally established. MCA § 13-1-101(33) and MCA § 13-10-601 and 13-38-101 et seq. It is therefore reasonable to conclude that central committees, automatically created by law, are correctly characterized as political party organizations. Consequently, central committees also create, or form, affiliated political party organizations within their particular area so long as they maintain control over the affiliated entity created and the main business and function of the affiliated entity created is the election of candidates running under the party label. Control is a necessary and logical element because it ensures that the associational interested is confined to political party committees actually formed by political party organizations, who have these rights. Madison County RCC at 4-5. This is in contrast to individuals who create entities on their own under the political party label, but not with the actual consent of the political party organization.

There are other provisions of law that make political party organizations unique. Political parties have the power to make their own rules (adopt bylaws), select its officers, call conventions, and adopt platforms. MCA § 13-38-101(1) through (4). In addition, a political party may "perform all other functions inherent in a political party organization. MCA § 13-38-101(9). A further example of the special status of political party committees is contained in MCA § 13-37-229(4)(a), which provides that candidates are not required to report contributions received from political party committees for compensation of the personal services of another person that are rendered to a candidate if the political party committee reports the amount of contributions made to the candidate in the form of personal services. Keenan, COPP-2015-AO-008. Political party committees are

allowed to file copies of a single comprehensive report when they support or oppose more than one candidate. MCA § 13-37-227. MCA 13-37-216(2) provides special status to political party committees with respect to candidate contribution limits. Likewise, political party organizations are exempt from aggregate limits placed on candidates under MCA § 13-37-218, while other political committees are not.

The law requires their membership to be duly elected or properly appointed from precincts established by the government. The organization must provide the list of its membership to the government. Only those individuals adopt and adhere to the organization's rules or bylaws, and only those individuals select their leadership and representatives in other matters. Due to their role and importance within the election process some courts treat political party organizations as agents of the state. In consequence, some of their associational rights are more easily infringed upon, but this does not give the government consequence to deny them their fundamental rights to free speech and association. California Democratic Party v. Jones, 530 U.S. 567 (2000); Randall v. Sorrell, 548 U.S. 230 (2006); Eu v. San Fransisco Democratic Central Committee, 489 U.S. 217 (1989); and Tashjan v. Republican Party of Connecticut, 479 U.S. 208 (1986). In any event, political party organizations have the responsibility to report all of their contributions and all of their expenditures. Their reports must be timely and accurate.

In the present matter, the complainant Ms. Van Fossen appears to urge an interpretation that the individual leadership, or elected Treasurer, cannot act independently of the whole central committee by motion or resolution, but this I decline to do. Relying on the matters discussed and analyzed herein this is a matter better addressed by the political party committee itself, not COPP. Ms. Van Fossen is free to make a motion to dissolve the affiliated entity created by the elected MCRCC leadership and she can request a resolution adopting changes to the organizational bylaws that can specifically require full central committee approval. As commissioner I cannot and will not do this as I lack authority in that regard. This is especially true since I have already determined that MCRCC and MCR, Inc. are, in fact, and in function, legally the same entity. Further, I cannot interfere in the manner suggested since MCR, Inc. is legally operating as the central committee in Missoula County.

Conclusion Regarding Corporate Speech By the MCRCC

Complaints that urge interpretation of law that are without credible support in policy or law should be dismissed for the aforementioned reasons once the Commissioner has weighed all of the

pertinent factors. Doing so now, compels me to determine based on fact and applicable law, that MCRCC was permitted to organize and operate as a corporation and that MCRCC has a unique status in law as it relates to Montana election system. In performance of their function whether referring to itself as MCRCC or MCR, Inc. the organization operated in conformance with these laws. They maintained an approved set of bylaws that were publicly filed and opened to review. MCRCC operates not as a for-profit enterprise but rather it relies on the gratuity of individuals and other entities who also identify themselves and support the MCRCC mission. Whether as the MCRCC or MCR, Inc. the entity fulfilled its responsibilities and this mission. Under MCA § 13-37-201, with limited reference to the central committee's bylaws, I can ascertain that the central committee treasurer is permitted to perform various duties. By law, their unique presence in Montana statutes, election of its members, increased contribution limits and exemption from aggregate limits, and even their in-kind contributions are allowed unique status in law, which recognizes their important function in the election system. It is not a conduit, nor would the applicable law allow it to be one. Consequently, there is not compelling interest because there is no quid pro quo corruption. All MCRCC activity is disclosed and ascertainable. The fundamental public purposes are met.

Further, I cannot craft a solution that is narrowly tailored or rational under the circumstances presented. The advisory policy of MCA § 13-35-503 cannot be applied for the reasons provided above. The policy cannot be applied because is cannot be reconciled with the dominate speech directives of Citizens United or other law. The Republican central committee in Missoula County, in whatever form, is clearly engaged in speech related activity, or performing a recognized and permissible inherent legal function as an associational right. All of its activities are reported. There is no quid pro quo corruption or conduit issue. Thus, after weighing all relevant factors the inherent activity, even under Beaumont, is allowed. It is inconceivable to me that the legislature ever meant to place political party committees with the cruel dilemma the complainant seems to insist upon here. The dilemma is they either withdraw from making contributions to their own candidates (and therefore cease to be effective as a political party), or alternatively, expose their (mostly) volunteer officers to unlimited personal liability. Both can have insidious and far-reaching effects. The reasonable solution to this cruel dilemma rests in simply following the federal approach.

Consequently, the FEC rule (11 CFR § 114.12(a)) serves an appropriate guide, and I can ignore the corporate status of MCR, Inc. By weighing the evidence, and applying the law, I can determine that Ms. Minjares and Ms. Siloti did not act intentionally or negligently with respect to MCA § 13-35-227. Montana intentionally chose to tap the energy and legitimize the power of the democratic process through political party organizations, and it must accord the participants in that process the First Amendment rights attached to their roles. Sanders at 747.

Special Notice to MCRCC and Other Similarly Situated Political Party Committees:

In closing and dismissing this portion of the complaint, and the MCR, Inc. entirely, I do make special note that a cursory review of available public record filing maintained by the Montana Secretary of State shows that at seven (7) party central committees are or have been incorporated in Montana. This includes four (4) Democratic central committees and three (3) Republican central committees. Including the Missoula County Republican Central Committee brings the number to eight (8). Each of those filed as domestic nonprofit corporations to establish accounts, gain liability protection, and perform their inherent and statutorily permitted functions. Seven (7) of these political party central committees filed 2023 annual reports with the Montana Secretary of State and are listed as "active" domestic nonprofit corporations. Each political party central committee filed the C-2 Statement of Organization with COPP, and each central committee neglected to list either their affiliation with the created entity or indicate the status of their incorporation, however.

COPP will contact each of these county central committees. I will provide a copy of this decision and notify the entities that they are not in compliance with Montana law. They will have ten days from the date of the notice to amend their reports. The notice date for the Missoula County Republican Central Committee is the date of this decision. While each central committee is able to maintain their created entity, a properly amended C-2 is required.

Deference Does Not Extend to Political Party Reporting and Disclosure Responsibilities

This does not end the matter, however with respect to MCRCC/MCR, Inc., however. The legal sensibilities of Montana's laws and affected citizens were aggrieved by the too many late filings of their committee disclosure reports and required updating of their Statement of Organization (C-2). The MCRCC may have been permitted to establish an affiliated entity to essentially function as a central committee with liability protection, but this is permissible because

they accurately and timely disclose all of their activity to the regulatory agency—COPP. This is what makes their entity unique. Here, there were significant failures, and the public was deprived of vital information.

In O'Hara v. CCRCC, the Commissioner states that "a political party committee is afforded deference when its associational interests are involved", but the "deference does not extend to the requirements for reporting and disclosure. O'Hara v. CCRCC at 8-9, See also, Barrett v. Missoula County Republican Central Committee, COPP-2016-CFP-046. This position with respect to the law is correctly determined, and it is consistent with Buckley, Sorrell, and Citizens United.

In O'Hara v CCRCC, 2016-CFP-004/013, the Commissioner acknowledged political party associational rights even where it was determined that the central committee engaged in selective actions by supporting some Cascade County Republican candidates while even opposing others, and even though the organizational statement on file—the C-2—listed "[a]ll Republican Candidates for Office in Cascade County. Recognizing such associational rights and avoiding placing unnecessary impediments on those rights is the correct course of action. The O'Hara Cascade County decision makes clear that the deference applies in the context of campaign speech and includes entities that Montana political committees create. O'Hara v. CCRCC at 8. It does not extend deference with respect to reporting and disclosure. O'Hara v. CCRCC at 9.

Whether acting as an unincorporated association or an incorporated one, political committees have reporting requirements. Citizens United clearly validated, rather than infringed upon, strong disclosure and disclaimer laws. Disclosure and disclaimer requirements remain as viable purposes under the law. Agencies can, and should, robustly enforcement disclosure and disclaimer laws. This is especially true in Montana where our laws and regulations have been held as being simple and reasonable—that is there is a legitimate and compelling government interest, that Montana, through COPP, narrowly tailors to the objectives of the legally established interest. National Ass'n for Gun Rights, Inc. v. Mangan 933 F3d 1109 (9th Cir. 2019) (regarding Montana disclosure laws).

Pursuant to Montana law, the first order of business for any political committee, including MCRCC and all other party central committees is to file a certification with COPP. MCA 13-37-201, which that each political committee shall appoint one campaign treasurer by providing the full name and complete address of the treasurer. A campaign treasurer may appoint deputy treasurers, but not more than one in each county. MCA § 13-37-202. For central committees this

means they must have one treasure and may have one deputy treasurer, but only one deputy treasurer. Each deputy treasurer must also provide the full name and address of a deputy treasurer with COPP. MCA § 13-37-202(1). Deputy treasurers exercise any of the powers and duties of the treasurer so long as the authorization is in writing, signed by the treasurer, and the written authorization is maintained in the political committee's official records as specified under MCA § 13-37-208.

As specifically provided in MCA § 13-37-203, an individual may not serve as a treasurer or deputy treasurer for a political committee until the written authorization (designation) is made and the individual's name is certified to COPP. MCA § 13-37-203(2). A political committee may remove a treasurer or deputy treasurer, and the removal must be immediately reported to COPP. MCA § 13-37-204. In the case of death, resignation, or removal of a treasurer or deputy treasurer the political committee must appoint a successor incompliance with MCA 13-37-201, before the individual can perform any obligations under Title 13, chapter 37. This would include making deposits, writing checks, and filing reports.

A treasurer or properly authorized deputy treasurer of a political committee is given broad authority to establish an account at a financial institution authorized to transact business in Montana for the purpose of depositing all contributions received and disbursing all expenditures made by the political committee. MCA § 13-37-205(1) and (3). Contributions received by treasurers or deputy treasurers must be deposited within five days of receipt. MCA § 13-37-207. At statement showing the amount received from each person must be prepared by the treasurer at the time the deposit is made, and the statement along with receipts must be kept as part of the treasurer's records. MCA § 13-37-207(2). The treasurer has additional record keeping obligations including, keeping current and detailed accounts of all contributions received and expenditures made by or on behalf of the political committee. MCA § 13-37-208(1) and (2). Contributions have limits and treasurers are obligated to determine that political committees operate within these limits. MCA § 13-37-216. A person (aka political committee) may not accept contributions from undisclosed principals. MCA § 13-37-217. These contributions may not be entered into political committee accounts, and only a treasurer makes such entries, so the treasurer also has this obligation.

It is well established in Montana that political committees must file reports of contributions and expenditures. MCA § 13-37-225. The time for filing these reports is also unambiguously and

firmly established. MCA § 13-37-226. The COPP posts calendars and regularly reminds all political committees and candidates regarding due dates of reports. Political party committees are specifically listed among the other types of committees as committees that must disclose information required in MCA § 13-37-229(1) and (2). Finally, pursuant to MCA § 13-37-231, reports filed by political committees must be verified as true, complete, and correct by oath or affirmation of the individual filing the report, and only an officer of a political committee on file with COPP may file a report. In nearly all instances involving reports by political committees the officer filing the report is the treasurer or a deputy treasurer.

MCRCC and MCR, Inc. did fail to adequately maintain and report their affiliation. They failed to timely update their Statement of Organization in a manner that reflects changes they clearly made. This is true with respect to their treasurers, which is especially concerning, and their officers. They also failed to disclose that an incorporation occurred, even though this is a clear requirement on the C-2 form itself. While MCRCC and the affiliated organization the central committee created—MCR, Inc.—is permitted to support an entire ticket of Republican candidates by reference rather than listing of each candidate on the C-2, when they committee supports nonpartisan candidates, those candidates should be listed separately, and the C-2 should be updated accordingly. Some nonpartisan candidates maybe Republican or they may closely align with MCRCC platforms or ideas, but they are technically and by legal definition not Republican candidates running on the Republican ticket. For these reasons MCRCC and MCR, Inc. violated MCA § 13-37-201.

As determined by the record, MCRCC/MCR, Inc. reports are not accurate. In many instances they are also untimely. While COPP strives to assist candidates and political committees with all aspects of compliance, the obligation to accurately and timely report is entirely the responsibility of the candidate or political committee. Numerous court holdings establish that Montana's system of reporting and disclosure is clear, simple, unambiguous, compelling and enforceable as a matter of law. Montana's laws have also been determined to be narrowly tailored to achieve the purpose of the established law. Citizens United is foundational because it firmly established that disclosure and reporting laws, while burdensome, serve an important government function. The minimal burden placed on candidates and political committees is not outweighed by the vital interest served, which is to provide information to citizens regarding who it attempting to influence the results of their elections.

Here, the record sufficiently establishes and supports a determination that the Missoula County Republican Central Committee (aka Missoula County Republicans, Inc.):

Did not timely report the resignation of Treasurer Minjares and the subsequent appointment of Treasurer Siloti. This change occurred in December of 2021, but the required Statement of Organization (C-2) was not submitted until February 10, 2022. The C-2 did not list all of the political committee's officers. MCA § 13-37-201(2)(b). Treasurer Siloti and others performed functions of the office while not allowed to do so under the law. This is a violation of MCA § 13-37-203 and 204. Other individuals acted in the capacity of what would ordinarily be considered a deputy treasurer without being properly appointed and certified. This violates MCA § 13-37-202. MCRCC and MCR, Inc. should have reported their affiliation to one another, which is a requirement on the C-2 form. MCRCC/MCR Inc. should also indicate, on the C-2 that, due to their affiliations and creation of a corporate entity, they are, in fact "incorporated", which is a requirement when filing the C-2. This is the true place where contributions are deposited and the source from which funds are expended.

There is a long pattern of late reporting, which violates MCA § 13-37-226 and frustrates the fundamental purpose of Montana disclosure laws. The July 5, 2021, C-6 report was not submitted to COPP until July 28, 2021. In 2022, the April, May, and June reports were not filed until July 6, 2022, and the August and September reports were not filed until October 27, 2022. The post-election C-6 due on November 30, 2022, was not submitted until December 22, 2022. The pattern continued into 2023, as the April 5, 2023, report was not submitted until May 6, 2023. Accurate and timely reporting is required to meet the full disclosure provisions of Montana law.

In addition, the late filed July 6, 2022, C-6 report from MCRCC disclosed an expenditure of $793.70, which occurred on May 25, 2022. This should have been disclosed on a C-7E report no later than May 27, 2022. The primary election occurred on June 7, 2022, which makes this failure to disclose a significant violation of Montana law. MCA § 13-37-226(2)(d).

ENFORCEMENT

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must act on a complaint as the law mandates that the Commissioner ("shall investigate," *see*, §13-37-111(2)(a) MCA) investigate any alleged violation of campaign practices law. The mandate to investigate is

followed by a mandate to take action as the law requires that if there is "sufficient evidence" of a violation the Commissioner must ("shall notify", *see* §13-37-124 MCA) initiate consideration for adjudication. Here, as established in consultation with the COPP investigator and compliance specialist a determination of sufficient evidence was reached, and the matter is ready for decision and referral, at least regarding the reporting and disclosure allegations. There is no sufficiency determination with respect to other aspects lodged by the complaint, including complaint number two, which is entirely based upon the corporate status of MCR, Inc. Those aspects of the lodged complaint are dismissed.

This Commissioner, having been charged to investigate and decide, hereby determines that sufficient evidence exists to show that the MRCCC/MRC Inc., violated Montana's campaign practice laws, including but not limited to MCA §§ 13-37-201, 225, 226 and 231. This frustrates the purpose of MCA § 13-37-229 (detailed disclosure) because the information is not publicly available. Montana citizens have a fundamental right to this information while election issues are being debated, and before they cast their votes—not after. These rights will be vigorously protected. Accurate and timely reporting is central to what remains as enforceable campaign finance law following Citizens United, and COPP will do everything allowed by law to see that those objects are achieved.

Having determined that there is sufficient evidence to show a campaign practice violation has occurred, the next step is to determine whether there are circumstances or explanations that may affect adjudication of the violation and/or the amount of the fine.

Montana's campaign finance disclosure laws are straightforward and easy to follow, especially as compared to federal requirements and other states. Under MCA§ 13-37-128, a person who intentionally or negligently violates any of the reporting provisions is liable in a civil action brought by the commissioner or a county attorney. Due to the clarity of the law, and other factors, I cannot escape the conclusion that MCRCC/MCR, Inc., was at least negligent with respect to their required disclosure. These violations are not excusable nor are they de minimis.

Because there is a sufficiency finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable, civil adjudication and/or a civil fine is justified (*see* §13-37-124 MCA). This Commissioner hereby, through this decision, issues a sufficiency decision justifying civil adjudication under §13-37-124 MCA. This matter will now be submitted to (or "noticed to") the Missoula Clark County attorney for her review for appropriate civil action.

See §13-37-124(1) MCA.[1] Should the County Attorney waive the right to adjudicate (§13-37-124(2) MCA) or fail to prosecute within 30 days (§13-37-124(1) MCA) the matter returns to the commissioner for possible adjudication. *Id.*

Most of the matters decided by a commissioner and referred to the County Attorney are waived back to the commissioner for his further consideration. Assuming that this matter is waived back, the Finding and Decision in this Matter does not necessarily lead to civil adjudication as the commissioner has discretion ("may then initiate" *see* §13-37-124(1) MCA) in regard to a legal action. Instead, most of the matters decided by a commissioner are resolved by payment of a negotiated fine. In the event that a fine is not negotiated, and the matter resolved, the Commissioner retains statutory authority to bring a complaint in district court against any person who intentionally or negligently violates any requirement of Chapter 37, including those of §13-37-226. (*See* §13-37-128 MCA). Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

CONCLUSION

Based on the preceding Discussion as Commissioner I find and decide that the complaint allegations relating to violations associated with MCA § 13-35-227 (MCR, Inc.'s corporate status) are dismissed. Allegations that the reports are false are not supported. The reports were incomplete and late but nothing false or nefarious occurred with respect to law. I do, however, determine that there is sufficient evidence to show that MCRCC/MCR, Inc. (as the Missoula Republican Central Committee) violated Montana's campaign practices laws, especially with respect to timing. This impacted reporting under MCA §13-37-201(primarily) as well as MCA §§ 13-37-225, 226, 229, and 230 MCA, and that a civil penalty action under § 13-37-128, MCA is warranted.

This matter is now referred to the Missoula County Attorney in accordance with the provisions of MCA § 13-37-124. The County Attorney is free to conduct her own investigation under MCA 13-37-125 or request material from COPP, which we will provide. The County Attorney has 30 days to decide to prosecute or return the matter to COPP for prosecution or negotiated settlement. Most matters are returned to COPP by county attorneys and must matters

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[1] Notification is to "...the county attorney in which the alleged violation occurred..." §13-37-124(1) MCA. This Commissioner will no longer follow the notion that all "failure to report" violations occur in Lewis and Clark County. This is a significant change from what has occurred during the last 10 years. The people most interested in, and affected by, violations are present in the county where a committee or candidate resides and committed the violation. Fundamental fairness dictates that I send such matters there. As this is under my discretion, I will.

concluded with a negotiated settlement where mitigating factors are considered, and a civil penalty (fine) is set pursuant to MCA § 13-37-128. If a negotiated settlement is unsuccessful the Commissioner pursues the matter in state district court, which will also be filed in the Judicial District Court of Missoula County, Montana.

DATED this 19th day of October, 2023.

Chris J. Gallus

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