

BEFORE THE COMMISSIONER
OF POLITICAL PRACTICES OF THE STATE OF MONTANA

Bonogofsky v. Boniek No. COPP-2010-CFP-027	Summary of Facts and Findings of Sufficient Evidence to Show a Violation of Montana's Campaign Practices Act
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John Esp of Big Timber and Joel Boniek of Pray were candidates for the Montana House of Representatives, House District 61, (HD 61) in the 2010 Republican primary election. In December of 2012 Mr. Esp filed complaints with this Office against several parties involved in the 2010 HD 61 Republican primary election (*Esp. v. Direct Mail and WTP*, COPP-2012-CFP-048; *Esp v. Lair, Faw and Baird*, No. COPP-2012-CFP-049). On November 12, 2013, the Commissioner, with the permission of Mr. Esp, extended the earlier complaints to a separate complaint against Assembly Action Fund (*Esp v. Assembly Action Fund*, No. COPP-2010-CFP-025). Further, the Commissioner, with the permission of Debra Bonogofsky, extended an earlier Bonogofsky complaint to Candidate Joel Boniek (*Bonogofsky v. Boniek* COPP-2010-CFP-027). The extended complaint referenced and incorporated the issues identified in *Bonogofsky v. Kennedy*, COPP 2010-CFP-15.

I. INTRODUCTION

This Decision presents and decides several issues dealing with non-candidate expenditures in a Montana election, in this case a primary election in a single legislative district (HD 61).¹ These expenditure issues have confounded Montana political candidates and this Office for the past three election cycles.

The 2010 HD 61 primary election involved two candidates, John Esp and Joel Boniek. Candidate Esp defeated Candidate Boniek in the June 8, 2010 primary election by a vote of 1,512 to 1,347. There was no Democratic candidate filed for HD 61 so Candidate Esp went on to win the general election and became a representative to the 2010 Montana legislature from HD 61.² (SOS website).

Candidate Esp reported 2010 primary contributions of about \$8,000, (disclosing 62 individual and 7 PAC contributors) and primary election expenditures of the same amount. (Commissioner's records). Candidate Boniek reported 2010 primary contributions of \$7,000 (disclosing 64 individual and 2 PAC contributors) and primary election expenditures totaling \$6,500. (Commissioner's records).

Candidate Boniek was the incumbent in the HD 61 Republican primary, having been elected as HD 61 representative in 2008. Candidate Esp had

¹ The Montana Legislature has 100 house districts.

² House District 61, as created by the 2000 redistricting commission, is a solid Republican district. The electoral contest of note is the Republican primary.

served as a State Senator from SD 31, having been last elected in 2006. Candidate Esp's greatest expenses were for billboards, signs, travel and newspaper ads. Candidate Boniek, in contrast, reported the great majority (\$5,157.91) of his \$6,500 in 2010 primary election expenses as payments to Direct Mail and Communications, Inc. for "campaign mailings". (Commissioner's records).

Candidate Esp reported campaign expenses consistent with disclosed election activity favorable to his candidacy. Candidate Boniek did not. As set out in this Decision there was far more election activity (at least 23 direct mail pieces) favorable to Candidate Boniek and/or against Candidate Esp than reported in Candidate Boniek's campaign reports or by any third party (see Decision, below). This unreported, undisclosed 2010 HD 61 election activity is the focus of this Decision.

II. ELECTION EXPENSES

This Decision identifies and discusses a number of 2010 HD 61 election expenses that were not reported or disclosed by a candidate or third party. The Commissioner was able to identify election expenses, in part, based on documents supplied by members of the public, particularly an archive of documents supplied by the Esp family.³ Further, the Commissioner reviewed records of Western Tradition Partnership (WTP), a non-profit corporation organized in the state of Colorado. WTP's records, at one time in the

³ John Esp's family includes several people who live in HD61. The Esp family archive documents cited in this Decision were received and saved by members of the Esp extended family during the 2010 HD 61 election.

possession of the Commissioner's office, are now in the possession of the Federal Bureau of Investigation (FBI).⁴ These "WTP records" and the Esp Family archive documents, allowed the Commissioner to identify otherwise undisclosed and unreported HD 61 2010 election expenses, as set out in this Decision.⁵

The expenditure of money in an election creates a visible election activity. That election activity is elemental in nature in that it cannot be reduced, excused or made to disappear. An election activity, once identified, falls into one of three types of election expense.

The first type is that of a candidate election expense. A candidate election expense includes money spent in an election that is contributed to and expended by a candidate. Candidate election activity, of course, is subject to contribution limits and must be attributed, disclosed and reported by the candidate. A candidate election expense includes a third party election expense coordinated with a candidate, as a coordinated expense is deemed to be an in-kind contribution to a candidate. (*See below*).

⁴ There are 5 boxes of documents, formerly held by the Commissioner, now in the possession of the FBI, with federal possession of these documents taken through the power of a grand jury subpoena issued by a Federal Court. Two of these boxes of documents are the records and work product of the Commissioner's office that were deemed to be covered by the subpoena. The other three boxes consist of internal WTP documents showing WTP activity in elections held in Montana and Colorado. The WTP Records were delivered to the Commissioner by a third party who found them in a house in Colorado.

⁵ WTP was previously involved in 2008 candidate elections in Montana. Commissioner Unsworth determined that some WTP 2008 election activities violated Montana campaign practice law as unreported independent expenditures. *Graybill v. WTP*, COPP-2010-CFP-0016. WTP challenged that decision in a Montana District Court. *WTP et. al. v. COPP*, No. BDV-2010-1120, 1st Judicial District, Lewis and Clark County. WTP's challenge has been dismissed by the Court, which also awarded sanctions and fines against WTP.

The second type of election expense is that of a third party entity independent of a candidate, but focused on a candidate in the election. This election expense is called an “independent expenditure” and it too must be disclosed, reported, and attributed, albeit by the third party rather than the candidate. This expense, however, is not attributed as a contribution to a candidate and therefore it is not subject to contribution limits or to reporting by a candidate.

The third type of election expense is that made coincident to the election by a third party entity independent of a candidate, but with the use of the money focused on an issue and not on a candidate. This election expense is called “issue advocacy”. This issue advocacy expense is not considered to be a candidate expense and therefore is not subject to campaign practice requirements. Specifically, Montana law does not require that an issue advocacy expense be attributed, reported or disclosed.⁶

A limited discussion of the distinction between candidate, independent and issue advocacy election expenditures was made by the Commissioner in an earlier Decision. *MacLaren v. Montana Conservative Coalition*, COPP-2012-CFP-0027. The distinction between these election expenditures, with particular focus on an independent expenditure, is also discussed in: *Bonogofsky v. Western Tradition Partnership*, COPP-2010-CFP-0007, *Bonogofsky v. National Gun Owners Alliance*, COPP-2010-CFP-0008,

⁶ The 2012 Montana Legislative session considered several bills that would have required reporting and disclosure of any election expense, including issue advocacy, made within 60 days of the date of an election. None of these bills passed into law. A 2014 ballot initiative has been proposed to address this issue.

Bonogofsky v. Assembly Action Fund, COPP-2010-CFP-0009, and *Bonogofsky v. Montana Citizens for Right to Work*, COPP-2010-CFP-0010.

There is much of Montana's election and candidate culture at stake in the distinctions in expenditures made during the time of an election, as defined by the above listed Decisions and by following Decisions such as the one in this Matter. We are a nation of laws. Montanans have long expressed their majoritarian view for open and fair elections with maximum reporting and disclosure of money spent in elections. Candidates run with the expectation that they will not be bushwhacked by late, undisclosed and unreported expenditures. This Decision, and those that will follow, provide guidance to candidates and the public on coordination and the involvement of corporations in a candidate election.

III. SUBSTANTIVE ISSUES ADDRESSED

The substantive areas of campaign finance law addressed by this decision are: 1) Coordinated Expenditures; 2) Reporting and Disclosure; 3) Retention and Production of Campaign Accounts and Records; and 4) Attribution.

IV. DISCUSSION AND FINDINGS

The following are the foundational relevant facts for a Decision in this Matter: The 2010 HD 61 primary election involved two candidates, John Esp and Joel Boniek. Candidate Esp defeated Candidate Boniek in the June 8, 2010 primary election by a vote of 1,512 to 1,347. There was no Democratic

candidate filed for HD 61 so Candidate Esp went on to win the general election and became a representative to the 2010 Montana legislature from HD 61.

Finding of Fact No. 1: John Esp was a 2010 candidate for the Republican Party nomination to the Montana legislature from HD 61, Montana. Another candidate, Joel Boniek, also sought the 2010 nomination by the Republican Party from HD 61. (Secretary of State (SOS) Website).

Finding of Fact No. 2: Candidate Boniek was the incumbent legislator in HD 61, having been elected in 2008. (SOS Website).

Finding of Fact No 3: The primary vote in Montana took place on Tuesday, June 8, 2010. Candidate Esp won the Republican primary election in HD 61 by a vote of 1,512 to 1,347. (SOS Website).

Mr. Esp and Mr. Boniek, as candidates in the 2010 HD 61 Republican primary election, were required by law to disclose, report, and attribute all contributions to, and expenses by, their campaigns. The Commissioner notes that there are no offsetting constitutional speech issues to these campaign practice requirements. The holding of public office in Montana is a "public trust" (§ 2-2-103 MCA) and Montana's interest in preventing corruption of this public trust allows it to impose campaign practice requirements on a candidate for public office.

A. WTP Entities Involved in Candidate Boniek's Campaign

Candidate Boniek, as detailed in this Decision, received in-kind services from third party entities.⁷ Some of those third party entities are connected to WTP in such a way that they became agents of or the same as WTP.

⁷ The Decision in this Matter is the 5th Decision finding sufficient facts to show a violation of Montana's Campaign Practice Act by candidates for the 2010 legislature. The prior Decisions making this finding are: *Bonogofsky v. Kennedy*, COPP 2010-CFP-015; *Washburn v. Murray*, COPP 2010-CFP-019; *Ward v. Miller*, COPP 2010-CFP-021; and *Clark v. Bannan*, COPP 2010-CFP-023.

WTP's internal documents show that in early 2009 it began to seek funding, based on its claims of election success in 2008 Montana legislative campaigns, for election activities in 2010 Montana legislative races. (WTP "Confidential Overview", March 1, 2009).⁸ WTP identified the HD 61 Republican primary election, along with a number of other races, as targeted 2010 Montana legislative races. (WTP records).

WTP's Confidential Overview describes its planned use of documents in election activity forecast for a 2010 Montana legislative race, such as HD 61:

1. "Our ambitious Candidate survey program –the backbone of our election year lobbying program—was designed to mobilize the voters..."
2. "Surveys were first sent to candidates in the targeted primaries..."
3. The survey information was combined with other information to choose the pro-development candidate.
4. "In the final weeks of the election, letters and glossy postcards were sent to tens of thousands of likely voters and issue ID'd lists in our targeted races..."

A separate WTP document, the WTP 2010 Election year power point presentation,⁹ illustrates the tenor or some of these letters and postcards by showing 5 such WTP documents attacking candidates.

The campaign actions for which WTP claimed credit, including candidate letters, WIFE letters, issue ID'd letters, attack slicks, and surveys, were taken through several related entities and people, including Direct Mail and Communications, Inc., a Colorado for-profit corporation. In 2010 Direct Mail operated a print shop in Livingston, Montana under the direction of Allison

⁸ The WTP "Confidential Overview" was delivered to the Commissioner independent of the "WTP Records" as it was provided to the Commissioner by former WTP staffer Karolyn Loendorf.

⁹ Also produced to the Commissioner by Ms. Loendorf.

LeFer. The Commissioner determines that Direct Mail and Allison LeFer are agents of and part of WTP as to any Candidate Boniek election activity. There is a direct relationship between Direct Mail and WTP, making the two indistinguishable for the purposes of this Decision. Allison LeFer (aka Allison Andrews) was the President of Direct Mail in 2010.¹⁰ Allison LeFer was also directly involved in WTP, signing the majority of WTP's checks at the same time. Allison LeFer is married to Christian LeFer. (Commissioner's records).

Likewise, Christian LeFer is an agent of and the same as WTP as to any Candidate Boniek election activity. Christian LeFer is currently listed as one of 5 board members of American Tradition Institute, the 501(c)(3) adjunct to WTP. (Commissioner's records). A March 1, 2009 internal WTP memorandum laying out an agenda for the 2010 Montana legislative elections lists Christian LeFer as WTP's "Director of Strategic Programming." (Commissioner's records).

Karolyn Loendorf, a former WTP staffer, reported that it was Christian LeFer who hired her as a WTP staffer to work on 2010 legislative campaigns.

(Investigator Notes). Christian LeFer's name regularly appears in 2010 WTP election activity, including his April 2010 attempt to convince Candidate Esp to withdraw as a candidate in the 2010 HD 61 Republican primary election against WTP's chosen candidate, Candidate Boniek. (Commissioner's records).

Candidate Washburn (2010 HD 69) also reports that he received a phone call from Christian LeFer speaking on behalf of WTP after Candidate Washburn

¹⁰ Direct Mail and Communications, Inc. corporate documents list Allison Andrews as Director and President. Her address is listed as 1237 E. Amherst Circle, Aurora, CO.

criticized WTP at a political event. (Investigative conversation with Candidate Washburn).

Montana Citizens for Right to Work, a Montana not-for-profit corporation is also deemed to be the same as or an agent of WTP. The WTP records included a Montana Citizens for Right to Work letter promoting Candidate Boniek and attacking Candidate Esp. This letter is consistent with a national and statewide pattern of similar candidate related activity by Right to Work groups.¹¹ The Commissioner determines that Montana Citizens for Right to Work is an agent of and part of WTP as to any Candidate Boniek election activity.

The Commissioner's review of WTP files determined that Montana Citizens for Right to Work letters were handled in the same manner as WTP letters. The Montana Citizens for Right to Work letters were printed, handled, and mailed by Direct Mail with Allison LeFer receiving a copy of the letter, presumably to confirm that it had been mailed.¹² Both the WTP and Montana Citizens for Right to Work letters were placed in sleeves, files or held in envelopes in the same manner in the WTP records. Christian LeFer was a principal in the production of both the WTP and Montana Citizens for Right to Work letters, personally signing the last letter. The Commissioner determines that Montana Citizens for Right to Work letters were part of WTP's "backbone"

¹¹ Please see copy of November 21, 2013 letter from former NRTWC employee Dennis Fusaro attached to this Decision as Exhibit 1.

¹² The Commissioner viewed the return letters addressed to Allison LeFer in the WTP records. The WTP records included candidate issue letters that were stamped with the Banner Stamp and mailed to Allison LeFer at her Livingston, MT address.

of candidate survey attacks mounted in a “shock and awe electoral bombing campaign.” (Commissioner’s records).

Assembly Action Fund, Inc. is a Colorado not-for-profit corporation listed as the author of one of the Slicks attacking Candidate Esp. The Commissioner determines that Assembly Action Fund is also an agent of and the same as WTP as to any Candidate Boniek election activity. The Assembly Action Fund was, for all practical purposes, unorganized in regard to the 2010 elections. The Assembly Action Fund was incorporated as a non-profit corporation in Colorado on May 25, 2010, two weeks before the June 8, 2010 election. (Commissioner’s records).

The Assembly Action Fund’s presence in Montana is limited to use of its name on attack Slicks used in the 2010 legislative elections. The people who can be connected with the Assembly Action Fund have WTP connections. (Commissioner’s Records). Christian LeFer registered the Assembly Action Fund domain name. (Commissioner’s Records). Direct Mail operative, Jeremy Hofer, signed the purchase order for the radio ads against Candidate Bonogosky and signed the Assembly Action Fund check paying for ads. (WTP records).¹³

In the 2008 elections WTP created a front organization, the Coalition for Energy and the Environment, for use as the source of Slicks (*see Graybill v.*

¹³ Jeremy Hofer was listed in the 2010 Direct Mail corporate documents as a Director and Corporate Secretary. Hofer’s address was listed as 1237 East Amherst Circle, Aurora, CO, the same address used by Allison LeFer.

WTP, COPP-2010-CFP-0016).¹⁴ The Commissioner finds that the Assembly Action Fund is another such front organization created by WTP for use in the 2010 elections.

Bob Faw, Doug Lair, and Terry Baird are, for the purposes of a certain attack letter involved in this matter, determined by the Commissioner to be an agent of and the same as WTP as to any Candidate Boniek election activity. The attack letter, dated June 3, 2010, is signed by Bob Faw and Doug Lair with the partial payment attribution to Terry Baird. The related issues involving Faw, Lair, and Baird are discussed in a separate companion Decision, *Esp v. Lair*, COPP-2012-CFP-049. That companion Decision is incorporated by reference as though set out in full. It is particularly noted that Faw, Lair, and Baird each have ties to WTP.¹⁵ The letter is 6 pages in length written and printed in a style the Commissioner determines to be that of WTP. The Commissioner determines that while the attack letter was signed by Faw and Lair it was prepared by WTP, printed by Direct Mail and mailed by Direct Mail.

The Commissioner has, above, determined that Direct Mail, Christian LeFer, Allison LeFer, Assembly Action Fund, Montana Citizens for Right to Work, Bob Faw, Doug Lair, and Terry Baird are agents of and the same as WTP as to any Candidate Boniek 2010 election activity. There were, however,

¹⁴ WTP challenged the *Graybill* decision in district court. As part of that litigation a January 4, 2013 Order found that "WTP funded, controlled, and directed CEE during the 2008 election cycle in Montana," *WTP v. Murry*, No. BDV-2010-1120, 1st Judicial District, Lewis and Clark County.

¹⁵ Baird gave \$1,000 to WTP on May 13, 2010, just prior to the attack letter. Lair gave \$5,000 to WTP through a check dated April 19, 2010. Faw gave \$2,500 to WTP through a check dated September 22, 2010. (WTP records). Lair was and is a leader of WTP, now named American Tradition Partnership.

additional third party entities that made expenditures advancing Candidate Boniek's 2010 primary campaign or attacking Candidate Esp's campaign. Such remaining third party entities include the National Gun Owner's Alliance, National ProLife Alliance, the Sportsman's Rights PAC, the Montana Conservative Alliance, and the National Rifle Association. These entities are further discussed, this Decision.

B. Coordinated Expenses

The complaint against Candidate Boniek incorporated the coordination and corporate contribution issues discussed in the *Bonogofsky v. Kennedy* Decision. Candidate Boniek is responsible for a failure to properly disclose, report and/or attribute any in-kind (non-monetary) third party election contribution to his campaign, including those coordinated with Candidate Boniek by a third party (see principles and reasoning set out in *Bonogofsky v. Kennedy*). As defined by 44.10.323 (2) ARM an in-kind expenditure "...means the furnishing of services property or rights without charge or at a charge which is less than fair market value to a ...candidate..." Such in-kind services include the value of "staff time to draft the letter." (Commissioner Argenbright, *Daubert v. MCW/Orvis*, February 27, 1997 at p. 6).

COPP regulations define a coordinated expenditure as "an expenditure made in cooperation with, consultation with, at the request or suggestion of, or the prior consent of a candidate..." 44.10.323(4) ARM. Commissioner Vaughey found such coordination based on a showing of "...prior knowledge, consent and encouragement ..." of the third party expense by the candidate. *Little v.*

Progressive Missoula, July 22, 2004; see also *Friede v. Rice/Hill County Republican Central Committee*, May 2002. (Commissioner Vaughey). A more detailed discussion of the legal elements of coordination, including a review of past coordination decisions by Commissioners, accompanies this Decision as Exhibit 2.

i. The 8 Direct Mail Letters Plus 1 Flyer

Candidate Boniek's campaign finance reports show payment of \$5,157.91 to Direct Mail. Candidate Boniek did not produce a copy of Direct Mail's invoice to his campaign. Candidate Boniek's campaign finance report discloses payment for cost of the "campaign mailings."¹⁶ Candidate Boniek did not produce copies of any of the mailings.

The Commissioner was able to directly review 7 of the 8 letters and the flyer attributed to/signed by Candidate Boniek or his wife. The letters and flyer were delivered to the Commissioner as part of the Esp family archive or were viewed as part of the WTP records. Based on this direct review the Commissioner determined that the 8 Letters consisted of an introduction or "Intro letters" with survey, a "WIFE" letter,¹⁷ four issue ID'd letters (gun, life, tax, spend/Right to Work) and a closing letter. The flyer was a 5 ½" by 8 ½" glossy flyer mailed with a Banner stamp to HD 61 voters.

¹⁶ Candidate Boniek's campaign finance reports indicated payment for 7 campaign mailings. The Commissioner's review determined that 9 mailings were involved, including 8 letters and 1 flyer.

¹⁷ The Commissioner's review determined that WTP identified a letter from a candidate's wife as a "WIFE" letter.

Candidate Boniek's WTP file folder lacked a ledger sheet listing the number and cost of the letters prepared and mailed by Direct Mail. Candidate Boniek's campaign report, however, disclosed \$5,157.91 in payments to Direct Mail. The payment amount allows the Commissioner to determine the number of Candidate Boniek letters by looking to the WTP ledger sheets of other 2010 candidates.

The Commissioner's review of WTP ledgers on candidates for whom Decisions have been made shows: Candidate Murray charged \$1,821.50 for 3,669 candidate letters; Candidate Miller charged for \$2,281.65 for 4,345 candidate letters; Candidate Kennedy charged \$2,346.65 for 4592 candidate letters; Candidate Bannan charged \$2,462 for 4904 candidate letters. (Commissioner's records). A review of WTP ledgers for candidates for whom Decisions have not been made shows \$4,654.20 charged to Candidate Pat Wagman (SD 31, 2010) for 9,235 candidate letters. Based on this review the Commissioner determines that the \$5,157.91 Candidate Boniek was charged covered at least 10,000 candidate letters plus one flyer.

The cost of the 10,000 candidate letters is an election expense, with partial payment of \$5,157.91 reported by Candidate Boniek. This Decision determines whether or not the complete expense of the Letters was reported and disclosed by Candidate Boniek, including value of services. See 44.10.323 (2) ARM and above. Under COPP regulations, Candidate Boniek was required to report as an in-kind contribution the "total value of the services" received as

part of the preparation of these Letters (44.10.513 ARM), including the value of “staff time to draft the letter.” See *Daubert v. MCW/Orvis, supra*.

This requirement of disclosure of “total value” makes sense as Montana law dictates that “anything of value” (§13-1-101(7)(a) MCA) provided to a candidate is a contribution.¹⁸ In turn, all contributions must be reported and disclosed by the candidate (§13-37-225 MCA) so that voters and the opposing candidate know who is supporting a particular candidate for public office. If WTP or another entity was providing in-kind services in connection with any one of the letters and those services can be identified, then the value of those services must be reported. *Daubert v. MCC/Orvis, supra*. Valuation of any such identified services for reporting purposes is defined by 44.10.533 ARM as “fair market value.”¹⁹

1. The WIFE LETTER

One of the 8 candidate Letters was a letter signed by Susan Boniek, Candidate Boniek’s wife, and mailed to an identified group of HD 61 voters (“WIFE letter”). WTP/ Direct Mail uniformly charged each candidate 65 cents for each of the WIFE letters. (Commissioner’s records.) Using Candidate Wagman’s ledger, the Commissioner determines that Candidate Boniek was charged for at least 1,800 such letters.

¹⁸ The Commissioner identified 24 documents constituting an election expense that were mailed to 2010 HD 61 voters. These documents either promoted Candidate Boniek’s campaign or attacked Candidate Esp’s campaign. Those 24 documents consist of: 8 candidate letters and 1 candidate flyer printed by WTP/Direct Mail; 6 attack Slicks; 1 attack postcard and, 8 attack letters by third party groups. The same pattern of large scale election use of documents was employed in a number of 2010 legislative campaigns.

¹⁹ The Commissioner has retained an expert to set the fair market value, should it be necessary to do so in any enforcement action of this Matter.

The Esp archive included a copy of the Susan Boniek WIFE letter for the 2010 HD 61 primary election. The Susan Boniek WIFE letter was printed with black ink on pink off-size (5 ½" by 8") paper. The Commissioner takes administrative notice based on review of a number of comparable WIFE letters that the WIFE letters were generally placed in a pink envelope, hand addressed, and mailed with a 44 cent stamp.²⁰

The Commissioner review determines that the Susan Boniek WIFE letter discussed how Susan and Joel met, praised their marriage, and extolled Joel Boniek's virtues.²¹ The Commissioner's review determined that WTP interviewed each wife (using a survey form) to gain the information to draft the content of a WIFE letter.²² The draft was written and edited by WTP into the final WIFE letter text. A scribe was then engaged to carefully write out the final handwritten text²³ and that text was cut, pasted, and mocked up to fit the size of letter paper used for the candidate. A wife signature was added to each WIFE letter. After mock-up, the Susan Boniek WIFE letter was printed,

²⁰ For example, the pink, stamped envelope for the Marla Wagman WIFE letter was retained as part of the Esp family document archive. Wagman was also a candidate chosen for support by WTP.

²¹ This approach is consistent with that of WIFE letters used in other 2010 legislative campaigns. (WTP records).

²² The Commissioner's Investigator determined, looking to mock-ups and notations on WIFE letter drafts, that there is a common theme and carry-over phrases between WIFE letters. The Investigator observed that the wife's signature is generally added by the scribe, based on a sample signature from the wife. In particular, the Investigator determined that the 2008 Susan Boniek HD 61 WIFE letters (primary and general elections) signatures appear to have been made by the scribe

²³ The WTP Records for the 2010 HD 61 primary election contain the Susan Boniek WIFE letter mock-ups. The mock-ups show there was direction "to PDF to CL (Christian LeFer) rewrite 1st page not even/neat as other pages," indicating WTP had difficulty getting the scribe to prepare the letter as directed. The WTP records show that the 2010 HD 61 Susan Boniek WIFE letter was eventually computer generated with a scripted font. Susan Boniek then likely signed the computer generated 2010 WIFE letter and added a post-script in her own handwriting.

inserted into a hand addressed pink envelope and a 44 cent stamp was used to mail the envelope. The Commissioner determines that the 65 cents Candidate Boniek paid for each such WIFE letter, at most, paid for the stamp, envelope, paper and ink.

In making the above determination the Commissioner takes administrative notice that minimum cost of printing and handling a mailer is 56 cents, exclusive of postage. The Commissioner takes administrative notice of the information in the Allegra invoice No. 80910. (*See Bonogofsky v. Kennedy*). Allegra's invoice, dated May 4, 2010, showed a charge to Candidate Kennedy of \$1,103.72 to print, fold, and inkjet address 1,959 mailers. This comes to a charge of 56 cents per mailer, exclusive of postage.²⁴

The Commissioner's administrative notice as to 56 cents being a minimum printing cost for a mailer recognizes that Allegra is an operating Montana business that offered services to the public in 2010 at rates it designed to be competitive. Being competitive, the 56 cents of cost per mailer and 43 cents per Slick sets fair market value for a comparable service.²⁵

In total, Allegra charged 56 cents to print, fold, and address a one page mailer. The Commissioner determines that the Direct Mail services provided to

²⁴ Postage or "shipping" was separately charged by Allegra at \$470.16, or 24 cents per mailer. This is comparable to the 22 cents bulk stamp rate paid by Direct Mail.

²⁵ The Commissioner further takes administrative notice that minimum printing costs of 43 cents per item is the minimum fair market value for a flyer or Slick used in a 2010 HD election, exclusive of postage. Candidate Dooling's campaign (HD 84, 2010) engaged in a mailing consisted of a flyer or Slick supporting his candidacy. Allegra charged 43 cents per Slick it printed and addressed for Candidate Dooling. Mailing costs were separately billed (*see Ward v. Miller*, Commissioner's records).

Candidate Boniek in the production of the WIFE letter involved printing, folding, and inserting multiple pages into an envelope as well as sealing and addressing the envelope. The Direct Mail services provided for each of the 8 Letters were therefore greater than the Allegra services provided for the less complicated mailer.

The Commissioner, based on the above analysis and common sense, determines that Direct Mail's after postage charge of 21 cents (WIFE letter) to 23 cents for the remaining 7 Letters does not cover the envelope, paper, and ink costs of the 7 Letters.²⁶ The Commissioner also determines, based on the above information, that there were writing, editing, layout, and production services of substantial value provided by WTP to Candidate Boniek in connection with the Susan Boniek WIFE letter (*see Daubert v MCC/Orvis*). The value of these services was not covered by any payment to Direct Mail by Candidate Boniek. The Commissioner determines Candidate Boniek paid nothing to WTP for its services in writing, editing, layout and processing the Candidate Boniek WIFE letter.

The Commissioner further determines that Candidate Boniek cooperated with, knew of, and approved of the WTP services involved in the Susan Boniek WIFE letter. Candidate Boniek was directly involved through his wife in the WIFE letter production. The content was approved by signature and Candidate

²⁶ Montana law, at ARM 44.10.513(1)(b)(ii) requires that WTP/Direct Mail report as an in-kind contribution "...the difference between the fair market value at the time of the contribution and the amount charged the contribute...". Candidates routinely engage businesses, such as Allegra, to provide goods or services for the candidate's campaign. There is no contribution involved so long as the candidate pays fair market value for the goods or services. If fair market value is not charged then the difference becomes an in-kind contribution to the candidate.

Boniek partially paid for the letter. The Commissioner determines that candidate coordination lies under 44.10.323(4) ARM and *Little v. Progressive Missoula, supra*. These unpaid, unreported, and undisclosed services provided by WTP in regard to the WIFE letter met the definition of coordination and should have, but were not, reported as an in-kind contribution/expense to and by Candidate Boniek.

Finding of Fact No. 4: The 65 cents Candidate Boniek paid to Direct Mail per WIFE letter leaves 21 cents, after the 44 cent stamp cost is deducted. The 21 cents does not cover the cost of the paper, ink, and envelope of each WIFE letter.

Finding of Fact No. 5: Candidate Boniek received WIFE letter services in his 2010 HD 61 election, including preparation, design, layout, editing, and handling of the WIFE letter.

Finding of Fact No. 6: Candidate Boniek did not pay for, disclose, or report the expense of services involved preparation, design, layout editing, or handling of the WIFE letter.

Finding of Fact No. 7: The WIFE letter services provided to Candidate Boniek were provided by a corporation, whether through the WTP corporation or the Direct Mail corporation.

Finding of Fact No. 8: Candidate Boniek knew of, consulted on, and/or consented to the full range of WIFE letter services and therefore coordinated this activity with WTP and/or Direct Mail.

Sufficiency Finding No. 1: As shown by Findings of Fact 1 through 8, there is sufficient evidence to justify civil prosecution of Candidate Boniek for accepting illegal corporate contributions to his 2010 HD 61 campaign in the form of coordinated in-kind expenses made by a corporation in connection with the WIFE letter.

Sufficiency Finding No. 2: As shown by Findings of Fact 1 through 8, there is sufficient evidence to justify civil prosecution of Candidate Boniek for failing to disclose and report as in-kind contributions election related expenses associated with the WIFE letter.

The Commissioner recognizes that Candidate Boniek's does not admit any coordination with WTP. That response is not credible. The records listed above are sufficient to show that Candidate Boniek coordinated in the production of the WIFE letter and violated Montana law as set out in the sufficiency findings. While *Citizens United* allows a corporation to make independent expenditures in candidate elections, it did not strike the prohibition on corporate contributions to candidates. Campaign contribution by a corporation and/or acceptance of a corporate contribution by a Montana candidate, whether in cash or in-kind services, is illegal in any amount. See §13-35-227(2) MCA.

2. The 2 Intro and Closing letters

Candidate Boniek also engaged Direct Mail for two introduction (Intro) letters and a closing letter. (Boniek campaign reports, WTP records, Esp Archive). The Commissioner determines, based on the candidate Wagman ledger and the amount paid by Boniek, that Direct Mail produced over 2,000 Intro letters (at 50 cents each) and over 2,000 closing letters (45 cents each) for Candidate Boniek. Each Intro letter mailing included the outgoing envelope, the letter, a survey, and return envelope the HD 61 voter could use to return the survey. (WTP records).

The Commissioner determined the services provided by WTP through an examination of WTP Intro and closing letter records comparable to that set out above in regard to the WIFE letter. In particular, the Commissioner found that the WTP used a standard practice of cutting and pasting information specific to

a candidate, including Candidate Boniek, into pages of a “master” letter used by WTP for multiple legislative candidates. A masthead for Candidate Boniek was then pasted on the final text. (WTP records).

The Commissioner’s review found that Candidate Boniek gave multiple samples of his signature to WTP. One of those signatures was selected by WTP and scanned into a printer menu. The Intro letter was then printed in ink on 8 ½” by 11” paper (Candidate Boniek’s chosen signature was scan printed on the letter), folded, and inserted into an envelope along with survey and return envelope and then mailed, engaging Direct Mail’s rapid fire printing capacity. The Commissioner found a Direct Mail flyer in the WTP records wherein Direct Mail described itself as a “grassroots direct mail fortress” whose equipment included “computer controlled automated insertion technology” capable of printing, inserting, and sealing letters at rate of over 1,000 per hour. (WTP records). The closing letter was prepared using a similar approach. (WTP records).²⁷

The Direct Mail flyer also described its equipment as including a rapid fire “stamp affixer” machine. (WTP records). The Commissioner’s review of WTP records determined that, except for special letters like the WIFE letter, 2010 Montana legislative election documents were mailed by Direct Mail under a presort standard rate stamp called the Patriotic Banner stamp which can be

²⁷ Candidate Boniek had minimal involvement in the production of his campaign letters. Candidate Boniek responded in an investigative interview by saying he could not produce documents because “if I (Boniek) ever wrote a campaign letter, I don’t remember doing so.”

used by mailers of bulk quantities of items such as newsletters or notices.²⁸ The postage charge was 22 cents per document mailed when this stamp is used. (WTP records, Investigator's Notes).

The Commissioner determined that the Candidate Boniek Intro and closing letters were mailed using the Patriotic Banner stamp. The Commissioner, under the reasoning set out in regard to the WIFE letter, determines that the 50 or 45 cents Candidate Boniek paid for each for each such letter did not cover even the cost of the stamp, envelope, paper, and ink. Further, the Commissioner determined that Candidate Boniek paid nothing to WTP for its services in writing, editing, layout, and processing the Intro or closing letters.

The Commissioner finds that Candidate Boniek cooperated with, knew of, and approved of the services involved in the Intro and closing letters. Candidate Boniek signed the letters and partially paid for the letters. The Commissioner determines that candidate coordination lies under 44.10.323(4) ARM and *Little v. Progressive Missoula, supra*. These services provided by WTP in regard to the Intro and closing letters met the definition of coordination and should have, but were not, reported as an in-kind contribution/expense to and by Candidate Boniek.

Finding of Fact No. 9: Candidate Boniek received Intro and closing letter services in his 2010 HD 61 election, including preparation, design, layout, editing, and handling of the letters.

²⁸ WTP records and the Esp records show a systemic use by WTP and/or Direct Mail of the Patriotic Banner bulk rate stamp on documents that WTP/Direct Mail prepared, printed, and mailed for candidates.

Finding of Fact No. 10: Candidate Boniek did not pay for, disclose, or report the expense of services involved preparation, design, layout, editing, or handling of the Intro and closing letters.

Finding of Fact No. 11: The Intro and closing letter services provided to Candidate Boniek were provided by a corporation, whether through the WTP corporation or the Direct Mail corporation.

Finding of Fact No. 12: Candidate Boniek knew of, consulted on and consented to the full range of Intro and closing letter services and therefore coordinated this activity with WTP and/or Direct Mail.

Sufficiency Finding No. 3: As shown by Findings of Fact 1 through 12, there is sufficient evidence to justify civil prosecution of Candidate Boniek for accepting illegal corporate contributions to his 2010 HD 61 campaign in the form of coordinated in-kind expenses made by a corporation in connection with the Intro and closing letters.

Sufficiency Finding No. 4: As shown by Findings of Fact 1 through 12, there is sufficient evidence to justify civil prosecution of Candidate Boniek for failing to disclose and report as in-kind contributions election related expenses associated with the Intro and closing letters.

The Commissioner recognizes that Candidate Boniek does not admit any coordination with WTP. That response is not credible. The records listed above are sufficient to show that Candidate Boniek coordinated in the production of the Intro and closing letters and violated Montana law as set out in the sufficiency findings. While *Citizens United* allows a corporation to make independent expenditures in candidate elections, it did not strike the prohibition on corporate contributions to candidates. Campaign contribution by a corporation and/or acceptance of a corporate contribution by a Montana candidate, whether in cash or in-kind services, is illegal in any amount. See §13-35-227(2) MCA.

3. Issue ID'd letters

The Candidate Boniek Intro, WIFE, and closing letters discussed above, this Decision, did not go to all HD 61 primary voters. The SOS website reports that 2,859 people voted in the 2010 HD 61 Republican primary (see Finding of Fact 3). WTP planned a mass mailing of "letters and glossy postcards to ...tens of thousands of likely voters and issue ID'd lists" (see this Decision, page 7) in selected legislative districts, including HD 61. Direct Mail described this mass mailing approach, including the issue ID'd letters, as a "shock and awe electoral bombing campaign." (Commissioner's records).

The issue ID'd letters present the issue of just which voters were being "bombed" with the combined mailings from Candidate Boniek and third parties. The Commissioner determines from Candidate Wagman's ledger and the Boniek campaign finance reports that Direct Mail sent over 2,000 issue ID'd letters under candidate Boniek's name. The issue ID'd letters were charged to Candidate Boniek at 45 cents each. The cover sheets to WTP's candidate files divided "issue ID'd voters" into four groups, those being: "gun" voters, "life" voters, "tax" voters, and "tax/right to work" voters.

The Commissioner, by review of WTP records, has determined that WTP provided each candidate it chose to support, including Candidate Boniek, with an identified list of issue ID'd voters in their legislative district. The Commissioner takes administrative notice that any such list of identified voters has value (see *Wittich v. Campbell*, November 17, 2009). This applies to each Candidate Boniek mailing, but particularly in this issue ID'd mailing. The

Commissioner finds that provision of likely voter lists, in particular issue ID'd lists, is an additional service value provided by WTP to Candidate Boniek.

A review of WTP records and the Esp family archive relating to issue ID'd letters was conducted by the Commissioner comparable to that set out in regard to the WIFE letter. Based on that review the Commissioner determined that the Candidate Boniek issue ID'd letters were not the normal letters, those being two pages in length, printed on standard 8 1/2 by 11 inch paper stock with use of a scanned blue ink Candidate signature. Instead the Boniek issue ID'd letters were off-size (7 1/4" by 10 1/2") with a blue "Joel Boniek" masthead and blue "Joel Boniek" signature over a "Honorable Joel Boniek" printed acknowledgement.²⁹ The Joel Boniek masthead and the text of the letter were created by cutting and pasting "Joel Boniek" onto the master letter used as a template for all such issue ID'd letters prepared by WTP for the 2010 Montana legislative candidates it supported.³⁰ As was the case with the Intro and closing letters the Candidate Boniek issue ID'd letters were mailed using the bulk rate Patriotic Banner stamp. Specifically, four separate Candidate Boniek issue ID'd letters were created (one for each group of ID'd voters) and mailed to each issue ID'd group of HD 61 voters. For example, the "life" issue ID'd voters received a Candidate Boniek letter stating his opposition to abortion.

²⁹ Candidate boniek had run in 2008 with assistance from WTP. WTP was also involved in a 2010 senate campaign spanning HD 61, using the same direct mail techniques in the senate campaign. The change in page size and style for Candidate Boniek may have been designed to disguise the similar origin of other comparable letters received by HD 61 voters.

³⁰ WTP used this issue ID's letter approach for multiple candidates in the 2010 elections.

The Commissioner adopts and applies the reasoning set out in the WIFE and Intro letter determinations (*see above*) and determines that writing, editing, layout, and production services of substantial value were provided by WTP to Candidate Boniek in connection with the four issue ID'd letters. The Commissioner further determines that Candidate Boniek paid nothing to WTP/Direct Mail for the services in writing, editing, layout, and processing the Candidate Boniek issue ID'd letters.

Finding of Fact No. 13: Candidate Boniek received issue ID'd letter services in his 2010 HD 61 election, including preparation, design, layout, editing, and handling of the letters.

Finding of Fact No. 14: Candidate Boniek did not pay for, disclose or report the expense of services involved with Voter ID work or with preparation, design, layout editing, or handling of the issue ID'd letters.

Finding of Fact No. 15: The issue ID'd letter services provided to Candidate Boniek were provided by a corporation, whether through the WTP corporation or the Direct Mail corporation.

Finding of Fact No. 16: Candidate Boniek knew of, consulted on, and consented to the full range of issue ID'd services and therefore coordinated this activity with WTP and/or Direct Mail.

Sufficiency Finding No. 5: As shown by Findings of Fact 1 through 16, there is sufficient evidence to justify civil prosecution of Candidate Boniek for accepting illegal corporate in-kind contributions to his 2010 HD 61 campaign in the form of coordinated in-kind expenses made by a corporation in connection with the issue ID'd letters.

Sufficiency Finding No. 6: As shown by Findings of Fact 1 through 16, there is sufficient evidence to justify civil prosecution of Candidate Boniek for failing to disclose and report as in-kind contributions election related expenses associated with the issue ID'd letters.

The Commissioner recognizes that Candidate Boniek does not admit any coordination with WTP. That response is not credible. The records listed above are sufficient to show that Candidate Boniek coordinated in the production of the issue ID'd letter and violated Montana law as set out in the sufficiency findings. While *Citizens United* allows a corporation to make independent expenditures in candidate elections, it did not strike the prohibition on corporate contributions to candidates. Campaign contribution by a corporation and/or acceptance of a corporate contribution by a Montana candidate, whether in cash or in-kind services, is illegal in any amount. See §13-35-227(2) MCA.

ii. Third Party Slicks and Letters

The Commissioner determined, above, that Candidate Boniek signed or attributed (thereby accepting content) and partially paid for the 8 Letters and 1 flyer discussed above. By so acting Candidate Boniek was directly involved with the 9 documents such that he directly showed coordination with WTP (see 44.10.323(4) ARM and *Little v. Progressive Missoula*) such that the fair market value of the accompanying letter services became an in-kind contribution to Candidate Boniek's campaign.³¹

The Commissioner, by direct observation from the Esp family archive or WTP records, identified an additional 15 documents that are election expenses in the 2010 HD 84 election in that the documents attacked Candidate Esp by name during the last 10 days of the primary election. These documents

³¹ The Commissioner reserves his right to claim further fair market value deficiency as to the production costs Direct Mail charged Candidate Boniek.

consist of 6 attack slicks, 8 group attack letters and 1 attack letter from individuals. The Commissioner must now determine who, if anyone, is responsible to attribute, report, and disclose the value (i.e. "election expense") of these documents.

1. The Attack Slicks

WTP mailed at least two attack Slicks (tax/spend and inheritance taxes) attacking Candidate Esp. (WTP Records, Esp family archive). A third attack Slick was mailed under the name of Assembly Action Fund and attacked Candidate Esp for supporting Planned Parenthood. *Id.* All three attack Slicks were mailed under the WTP trademark Patriotic Banner stamp. *Id.* The Commissioner has, above, determined that the Assembly Action Fund is an agent of or the same as WTP. The Commissioner further determines that Assembly Action Fund Slicks were printed and mailed by Direct Mail.

The WTP records include Invoice No. 473.³² That invoice showed that 1,500 copies of the Assembly Action Fund Slick were printed and mailed attacking Candidate Esp on "abortion."³³ The Commissioner determines that WTP prepared and mailed a comparable number (or 1,500) of each of its two Slicks. The expense of the 1,500 Assembly Action Fund and 3,000 WTP Slicks

³² Invoice No. 473 showed the number and cost of 13 Slicks used in ten 2010 Montana legislative races. The Commissioner found copies of each of the 13 Slicks in the WTP records and each of the Slicks was mailed under the Patriotic Banner bulk rate stamp. Additional Slicks listed on the invoice attacked candidates: Washburn, HD 69; Bonogofsky, HD 57; Dooling, HD 84; Moran, SD 35; Welch, HD 3; Barnhardt, HD 4; Gilman, HD 71; Flynn, HD 68; and, Arthun, SD 31.

³³ The Candidate Esp "abortion Slicks" were charged at 43 cent cost per unit, including the 22 cent stamp, making the total invoice amount \$645 for the Esp Slicks.

attacking Candidate Esp was not reported or disclosed by any entity, including Candidate Boniek. (Commissioner's records).

Additional slicks attacking candidate Esp were attributed to: Sportsman Rights PAC (guns); the Montana Conservative Alliance (unions), and Taxpayers for Liberty (taxes).³⁴ The Commissioner has considered the activities on these entities in the companion Decision *Esp v. WTP/Direct Mail*, COPP-CFP-2012-048.

2. The Attack Letters

During May 24 through June 1, 2010, WTP and Montana Citizens for Right to Work mailed two letters each attacking Candidate Esp and promoting Candidate Boniek. In addition, three individuals (Messrs. Lair, Faw, and Baird) signed or partially attributed an attack letter dated June 3, 2010. These letters are analyzed below.

During that same time period additional attack letters were mailed by the National Gun Owner's Alliance and National Pro-life Alliance. The Commissioner has considered the activities on these entities in the companion Decision *Esp v. WTP/Direct Mail*, COPP-CFP-2012-048.

a. The WTP letter

The WTP records included copies of a 4 page letter dated May 28 and June 1, 2010 authored by WTP and sent to 2010 HD 61 voters. The letters were accompanied by a two page summary of HD 61 candidate survey results focused on property rights and environmental issues.

³⁴ The Commissioner found Candidate Miller (HD 84, 2010) was billed and paid \$444.69 for 1,034 Taxpayers for Liberty "slicks." (Commissioner's records).

By direct observation the Commissioner determines that the WTP letter was double-sided and printed on standard 8 1/2 by 11 inch yellow paper under the WTP masthead. The letter was signed by Daniel Fuchs, WTP Director of Governmental Affairs. The approach taken in the survey and WTP letter resulted in the listing of Candidate Esp's name 11 times, always negatively, in relation to the "June 8" 2010 HD 61 primary vote while always listing Candidate Boniek's name positively.³⁵ The WTP letter was mailed using the bulk rate Patriotic Banner bulk rate stamp. The WTP letter is a follow up to survey and therefore is consistent with WTP's overall plan (see above) to use surveys, survey based attack letters and Slicks in 2010 Montana legislative race, such as HD 61. Further, the topics addressed in the WTP letter are consistent with the topics of the companion issue ID'd letters mailed by Candidate Boniek. Still further, the WTP attack letter in the 2010 HD 61 race was one of many comparable letters that WTP sent out in 2010 legislative races.

b. The Montana Citizens for Right to Work Letter

The WTP records and the Esp archive included copies of a May 24 and May 28, 2010 survey-based three page letters issued under the name of Montana Citizens for Right to Work. The letters were signed by Christian LeFer, as Executive Director. The letters attacked Candidate Esp and promoted Candidate Boniek in the same manner described above in regard to the WTP letter.

³⁵ The WTP Esp attack letter is, with individualized adjustments, comparable to the attack letters WTP routinely sent in other 2010 elections.

The Commissioner's review of WTP records determined that two Montana Citizens for Right to Work attack letters were routinely sent in 2010 Montana legislative races, most four days apart under the dates of May 24 and May 28, 2010. The Commissioner observed that the postage stamp used by Montana Citizens for Right to Work in the Boniek and comparable mailings in other 2010 candidate races is a non-profit bulk rate stamp.³⁶

c. The Lair, Faw, and Baird Attack Letter

Messrs. Bob Faw, Doug Lair, and Terry Baird are Montana residents living in or near HD 61. This Decision has determined that, for the purposes of a certain attack letter in this matter, Messrs. Faw, Lair, and Baird are be agents of and the same as WTP as to any Candidate Boniek election activity.

The attack letter is dated June 3, 2010. The attack letter is not anonymous as it is signed by Bob Faw and Doug Lair. A partial payment attribution is made to Terry Baird, thereby involving Baird. The letter is 6 pages in length. The letter attacks Candidate Esp and urges a vote for Candidate Boniek in the June 8 HD 61 primary election. The attack letter is written and printed in a style the Commissioner determines to be that of WTP.

3. The Attack Letters and Slicks are Coordinated

The Commissioner determines that the WTP, MCRTW and Lair/Faw/Baird attack letters exist, have value, and are an election expense

³⁶ The non-profit stamp is prepaid (at 5 cents a stamp), but additional charges are added depending on the weight and size of the mailing. The total charge will likely be less than the 22 cent Patriotic Banner bulk rate charge. There was a Right to Work political committee registered with the COPP for the 2010 elections. That political committee reported no in-kind or other contributions to Candidate Boniek.

made by WTP and/or MCRTW in the 2010 HD 61 legislative race. As an election expense, Candidate Boniek will be deemed to accept the letters as a coordinated in-kind contribution if it is “an expenditure made in cooperation with, consultation with, at the request or suggestion of, or the prior consent of a candidate...” 44.10.323(4) ARM. Commissioner Vaughey found such coordination based on a showing of “...prior knowledge, consent and encouragement ...” of the third party expense by the candidate, *Little v. Progressive Missoula, supra*.

The 2010 elections, including the HD 61 elections, were the second election cycle for WTP involvement in Montana’s legislative races. By far the most visible and controversial part of WTP’s 2008 election activity had been its use of attack letters and slicks in 2008 legislative elections (*see Graybill v. WTP, 2010-COPP-CFP-0016*). The Commissioner takes administrative notice that a candidate endorsed by WTP in the 2010 elections would have to know of and consented to the use of attack letters and Slicks, as such use was WTP’s signature electioneering brand. Further, the Commissioner interviewed two Republican primary candidates, John Ward (2008, HD 84) and John Esp (2010, HD 61). Both Ward and Esp told the Commissioner that any 2010 legislative candidate accepting WTP’s endorsement had to know of or give consent to WTP’s use of attack letters and Slicks.³⁷

³⁷ Candidate Boniek was unusually close to WTP and its activities. Candidate Boniek had been supported by WTP in his 2008 election and worked on a gun rights project with Christian LeFer, WTP’s leader, after the 2009 session of the Montana legislature. (Commissioner’s records).

In addition to imputed knowledge, the Commissioner finds that Candidate Boniek's specific and companion use of issue ID'd letters keyed to the attack letter topics and the timing of those letters showed that Candidate Boniek expected and knew his issue ID'd letters would be followed and bolstered by third party attack letters or Slicks to the same group of voters. In *Little v. Progressive Missoula*, Commissioner Vaughey found that a particular candidate for public office coordinated with a PAC called Progressive Missoula, that spent money campaigning against the opposing candidate. Commissioner Vaughey found such coordination between a candidate and political committee based on a showing of "...prior knowledge, consent and encouragement ..." of the third party expense by the candidate, *supra*. The Commissioner finds that Candidate Boniek meets this standard as to the attack letters are deemed a coordinated contribution to Candidate Boniek.

Likewise, the Commissioner determines that the AAF and WTP attack Slicks exist, have value, and are an election expense made by AAF/WTP in the 2010 HD 61 legislative race. As an election expense, Candidate Boniek will be deemed to accept the cost of the AAF/WTP Slicks as a coordinated in-kind contribution if it is "an expenditure made in cooperation with, consultation with, at the request or suggestion of, or the prior consent of, a candidate..." 44.10.323(4) ARM. Commissioner Vaughey found such coordination based on a showing of "...prior knowledge, consent and encouragement ..." of the third party expense by the candidate, *Little v. Progressive Missoula, supra*.

Further, the Commissioner determines that the Lair/Faw/Baird attack letters exist, have value and are an election expense made by AAF/WTP in the 2010 HD 61 legislative race. As an election expense, Candidate Boniek will be deemed to accept the cost of the AAF/WTP Slicks as a coordinated in-kind contribution if it is “an expenditure made in cooperation with, consultation with, at the request or suggestion of, or the prior consent of a candidate...” 44.10.323(4) ARM. Commissioner Vaughey found such coordination based on a showing of “...prior knowledge, consent and encouragement ...” of the third party expense by the candidate, *Little v. Progressive Missoula, supra*.

The Commissioner, in particular determines that Candidate Boniek consented to the actions WTP and its agents or alter egos. Candidate Boniek literally turned his campaign over to WTP/Direct Mail with his expense reports showing limited campaign activity other than the activity carried out by WTP through Direct Mail.³⁸ The Commissioner further determines that Candidate Boniek improperly benefited from accepting the fruits of an undisclosed, shadow campaign that produced 24 campaign documents, including 8 letters and 1 flyer that Candidate Boniek signed or attributed. Candidate Boniek won a 2008 election in which he did not report or disclose the major expenses of his campaign. He nearly won the follow-up 2010 election where the same tactics were used on an even greater scale. Given the coordination and complexity that he consented to or was part of, the Commissioner determines that the

³⁸ Ms. Loendorf reported that Christian LeFer bragged that Candidate Boniek was absent out-of-state for much of the campaign, leaving WTP in complete charge. (Commissioner's investigative records.)

letters and Slicks were an integral part of Candidate Boniek's campaign for which he must take responsibility.

The amount billed to Assembly Action Fund was 43 cents per Slick for each of 1,500 Slicks attacking Candidate Esp. The Commissioner determines that a Banner Stamp was used to mail the Slick at a cost of 22 cents per stamp, leaving 21 cents to cover the cost of the paper and ink used in the Slick.³⁹ This leaves nothing to cover the cost of writing, designing, and layout of the Slick.

Finding of Fact No. 17: The WTP and Assembly Action Fund Slicks as well as the WTP, MCRTW and Lair/Faw/Baird attack letters were election expenses in the 2010 HD 61 election.

Finding of Fact No. 18: The in-kind election expenses involved in the Slicks and letters identified in FOF No. 17 were not disclosed or reported as election expenses by any entity, including Candidate Boniek.

Finding of Fact No. 19: The election expenses identified in FOF No. 18 were coordinated with Candidate Boniek and became in-kind contributions to Candidate Boniek's campaign.

Finding of Fact No. 20: The election expenses of FOF No. 18 were made by a corporation.

Sufficiency Finding No. 7: As shown by Findings of Fact 1 through 20, there is sufficient evidence to justify civil prosecution of Candidate Boniek for accepting illegal in-kind corporate contributions to his 2010 HD 61 campaign in the form of in-kind coordinated expenses made by a corporation in connection with the documents discussed in FOF No. 18.

Sufficiency Finding No. 8: As shown by Findings of Fact 1 through 20, there is sufficient evidence to justify civil prosecution of Candidate Boniek for failing to disclose and report as in-kind contributions election

³⁹ The Commissioner has taken administrative notice, this Decision page 16, that 43 cents is the minimum fair market value cost of printing and handling a Slick, exclusive of postage.

related expenses in connection with the documents discussed in FOF No. 18.

The Commissioner recognizes that Candidate Boniek does not admit any coordination with WTP or involvement with the attack Slicks or letters. That response is not credible. The records listed above are sufficient to show that Candidate Boniek coordinated in the production of the Slicks/letters and violated Montana law as set out in the sufficiency findings. While *Citizens United* allows a corporation to make independent expenditures in candidate elections, it did not strike the prohibition on corporate contributions to candidates. Campaign contribution by a corporation and/or acceptance of a corporate contribution by a Montana candidate, whether in cash or in-kind services, is illegal in any amount. See §13-35-227(2) MCA.

D. Campaign Attribution, Reporting, and Documents

There are further issues involved with the attribution, reporting, and document retention by Candidate Boniek's campaign.

1. Attribution of Expenditures

Candidate Boniek is required to "attribute" expenditures by §13-35-225(1) MCA. By direct observation Candidate Boniek did not attribute a "Monday Morning" Intro letter. The Commissioner reserves his right to add additional attribution claims.

Sufficiency Finding No. 9: The Commissioner determines that there is sufficient evidence to justify civil prosecution of Candidate Boniek for failing to attribute election related expenses.

2. Reporting of Expenditures

Candidate Boniek is required to report expenditures by §13-37-225 MCA. Candidate Boniek received undisclosed and unreported in-kind expenditures as set out in findings of fact and sufficiency findings, above.

3. Campaign Document Retention and Production

By law Candidate Boniek's campaign is required to preserve "detailed accounts" of all expenses made for a period of 4 years. §13-37-208 MCA. The detail in the accounts must be sufficient to determine the "purpose of each expenditure" §13-37-230(1)(a) MCA. The detail is that required to prepare "...directly from the accounting records, the reports required by Title 13" ARM 44.10.501. Commissioner Vaughney applied that standard to require that invoices must "...describe the work performed..." so that a value can be set for in-kind services. *Motl v. Citizens for More Responsive Govt.*, Decided April 20, 2004, p. 15.

In turn, under Montana law the Commissioner has a right to "inspect any records, accounts or books that must be kept" (§13-37-111(2)(b) MCA). In this Matter the Commissioner requested such an inspection. Candidate Boniek's 2010 primary election campaign engaged in a number of expenses. Candidate Boniek was asked to provide copies of the documents concerning those expenses. Candidate Boniek did not produce copies of his campaign bank records, Direct Mail invoices, or the 8 letters or the other documents comprising each expense.

Sufficiency Finding No. 10: The Commissioner determines that there is sufficient evidence to justify civil prosecution of Candidate Boniek for failing to maintain campaign records for the four year period of time set out in Title 13 of the Montana Code.

V. SUMMARY OF CAMPAIGN PRACTICE VIOLATIONS

The Commissioner issued 10 sufficiency findings in this Matter. These included: failure to attribute (Sufficiency Finding No. 9); failure to report or disclose (Sufficiency Findings Nos. 2, 4, 6, 8); acceptance of illegal corporate contributions through coordination (Sufficiency Findings Nos. 1, 3, 5, 7); and failure to maintain campaign finance records for the required time period. (Sufficiency Finding No. 10).

The sufficiency findings of failures to attribute, report, and disclose as well as the finding of acceptance, through coordination, of illegal corporate contributions are substantial and significant. While each of these findings raise caution flags, the coordination and failure to maintain records findings are a flashing red light to 2014 candidates and their treasurers.

There have been 6 prior coordination findings by a Montana Commissioner of Political Practices: *Little v. Progressive Missoula* (Commissioner Vaughey); *Friede v. Rice/Hill County Republican Central Committee*, May 2002 (Commissioner Vaughey); *Bonogofsky v. Kennedy*, COPP 2010-CFP-015 (Commissioner Motl); *Washburn v. Murray*, COPP 2010-CFP-019 (Commissioner Motl); *Ward v. Miller*, COPP 2010-CFP-021 (Commissioner Motl); and *Clark v. Bannan*, COPP 2010-CFP-023 (Commissioner Motl).

This Decision, as did *Bonogofsky v. Kennedy*, finds coordination by a corporation. While *Citizens United* allows a corporation to make independent expenditures in candidate elections, it did not strike the prohibition on corporate contributions to candidates. Acceptance of a corporate contribution by a Montana candidate, whether in cash or in-kind services, is illegal in any amount. See §13-35-227(2) MCA.

There is lag time in social adjustment when major changes occur in permissible activity, such as the changes made by the *Citizens United* decision. During that lag time opportunistic people and groups may emerge and promote activity such as corporate involvement in candidate campaigns that is risky or down right illegal. This Decision cautions candidates and treasurers that their agreement to partake in such behavior may leave them to pay the societal debt based on determination of error in behavior. In particular, the sufficiency findings in this matter mean that Candidate Boniek faces potentially significant enforcement consequences. There may be similar enforcement consequences in any determination of a similarly postured candidate in other 2010 and 2012 elections.

The Commissioner hereby cautions 2014 candidates in Montana elections to avoid the sort of election entanglement or involvement with a non-profit or for-profit corporation that Candidate Boniek had with WTP and/or Direct Mail. While a corporation may independently make election expenditures (as independent expenditures or issue advocacy), the best protection a candidate has from consequences like those of this Decision is to

avoid election contact, interaction or interplay with a corporation unless that contact is fully paid for. That is what the law requires and it is what fair play with an opponent should dictate.

VI. ENFORCEMENT OF SUFFICIENCY FINDINGS

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must make, a decision 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 prosecution.

Second, having been charged to make a decision, the Commissioner must follow substantive law applicable to a particular campaign practice decision. This Commissioner, having been charged to investigate and decide, hereby determines that there is sufficient evidence, as set out in this Decision, to show that Candidate Boniek has, as a matter of law, violated Montana’s campaign practice laws, including but not limited to §13-35-225, §13-35-227, §13-37-225, §13-37-226, §13-37-229, §13-37-230, MCA and all associated ARMs. Having determined that sufficient evidence of a campaign practice violation exists, the next step is to determine whether there are circumstances or explanations that may affect prosecution of the violation and/or the amount of the fine.

The many decisions to act or to not act made by Candidate Boniek in this matter were choices. Excusable neglect cannot be applied to such choices. See discussion of excusable neglect principles in *Matters of Vincent*, Nos. CPP-2013-CFP-006 and 009. Montana has determined that political discourse is more fairly advanced when election funding is kept fair and, through disclosure, the public is informed as to the identity of those who seek to influence elections. There can be no excuse for instances of failing to attribute, report and disclose, or for acceptance of corporate in-kind contributions, such as are involved in this matter.

Likewise, the amounts of money are too significant to be excused as *de minimis*. See discussion of *de minimis* principles in *Matters of Vincent*, Nos. CPP-2013-CFP-006 and 0009. With the above analysis in mind, this Matter is also not appropriate for application of the *de minimis* theory.

Because there is a finding of sufficient showing 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 “sufficient evidence” Finding and Decision justifying civil prosecution under §13-37-124 MCA. This matter will now be submitted to (or “noticed to”)⁴⁰ the Lewis and Clark County attorney for his review for appropriate civil action (see §13-37-124(1) MCA). Should the County Attorney waive the right to adjudicate (§13-

⁴⁰ Notification is to “...the county attorney in which the alleged violation occurred...” §13-37-124(1) MCA. The failures to attribute and report occurred in Lewis and Clark County. This Commissioner chooses to Notice this matter to the county attorney in Lewis and Clark County.

37-124(2) MCA) or fail to initiate civil action within 30 days (§13-37-124(1) MCA) this Matter returns to this Commissioner for possible adjudication.

Campaign practice violations, of the nature and scope encountered in this Matter, are new to the modern era Montana politics.⁴¹ Montana's second Commissioner, Peg Krivec, served her entire 6 year term (1981-1986) without issuing a Decision. Subsequent Commissioners Colberg, Vaughey, and Argenbright issued decisions that generally provided a platform for earnest political participants to pay a fine for the mistake and adjust future election activity to conform with the rulings.

In contrast, the parties in this Matter have, to date, been unwilling to accept or adjust to Montana's expectations of appropriate election behavior. WTP has, to date, aggressively pursued a self-determined approach to involvement in Montana elections. Candidate Boniek also demonstrates an equally self-determined view of appropriate election activity. Commissioners have rarely found it necessary to seek the full legal redress allowed by Montana law against a candidate or treasurer.⁴² Full legal redress is imposed by a district court judge and comes only after a full due-process district court hearing where the candidate may provide evidence and confront witnesses, including the Commissioner.

⁴¹ This type of systemic violations in Montana's past gave rise to many of Montana's current campaign practice laws.

⁴² Commissioners have filed district court enforcement actions in several Matters. After filing these Matters settled without active district court enforcement litigation.

VII. CONCLUSION

Based on the preceding discussion, as Commissioner, I find and decide that there is sufficient evidence to show that Candidate Boniek violated Montana's campaign practices laws as set out above and that civil adjudication of the violation is warranted.

Dated this 22nd day of January, 2014.

A handwritten signature in black ink, appearing to read 'Jonathan R. Motl', is written over a horizontal line.

Jonathan R. Motl
Commissioner of Political Practices
Of the State of Montana
P.O. Box 202401
1205 8th Avenue
Helena, MT 59620
Phone: (406) 444-4622

November 21, 2013

NRTWC BOD Members
8001 Braddock Road, 5th Floor
Springfield, VA 22160
VIA Email

Dear NRTWC Board Members and Officer:

Events in Montana involving the shenanigans of Christian Lefar and former NRTWC Director of Government Affairs Dimitri Kesari have led me to communicate to you. The irresponsible actions of President Mark Mix and his unwillingness to take responsibility for his actions have put me in a difficult position. When I got into politics and public policy in the late 1980s, I did not agree to join some sort of white-collar Cosa Nostra, nor will I accept some sort of claim that I am bound by a NRTWC Omerta.

The ends do not justify the means. And Jesus Christ is the standard, not the whims and arbitrary ethics of someone like Huck Walther and his protégé Mike Rothfeld. Politics is not simply the adjudication of power. It is about serving our Lord Jesus Christ. I know I have failed in this. It is time you recognized that your management leadership has done so, too.

We are supposed to be the good guys and gals. We are not supposed to adopt the methods of the Union Bosses.

I urge you to clean up your own house before the bad guys do it for you.

- 1) In late 2009 Iowa Rep. Kent Sorenson received the gift from a registered lobbyist, Alina Severs (now Alina Waggoner) of an airline ticket to fly to a seminar in Corpus Christi, Texas. I was told the value was roughly \$1000. The authorities could verify this by reviewing the passenger lists in late 2009 and determining who paid for the ticket. This ticket was provided by the lobbyist at the instruction of Dimitri Kesari, the lobbyist's employer and at the same time an employee of the National Right to Work Committee. Alina was employed by Mid-America Right to Work Committee, but Dimitri Kesari, an employee of the National Right to Work Committee, had hire and fire authority over her. I brought this to the attention of Mark Mix and Doug Stafford, Dimitri's employers and supervisors at the Committee. I believed at the time, and still do, that this is a violation of the Iowa Ethics Law. Mr. Mix refused to deal with it and told me not to tell him about these sorts of things.
- 2) In the 2008 and 2010 election cycles several current and past candidates or legislators received contributions to their campaigns that were unreported either completely or in part. These contributions consisted of material goods and labor services. These things of value given to candidates to advance his or her campaign were either not reported, or they were subsidized so that part of the value given can only be understood as an in-kind contribution. These



contributions were made from a non-profit corporate source in apparent violation of Iowa campaign and election law.

- 3) I have reason to believe this activity continued in the 2012 election cycle in Iowa. The program is very regular. I believe the officers almost to a man (or woman) have been involved to some extent.
- 4) The contributions discussed above consisted of the following elements:
 - A. "Field staff" paid out of monies belonging to one or more non-profit corporate entities working in election districts on the orders and at the direction of their employers and supervisors to assist with the election of multiple candidates in Iowa, and other states. This is an apparent violation of Iowa (and possibly other states) campaign and election law both as to the source of the money and the fact that the contributions went unreported.
 - B. Copy writing services paid out of monies belonging to one or more non-profit corporate entities working on the orders and at the direction of their employers and supervisors to assist with the election of multiple candidates in Iowa, and other states. This is an apparent violation of Iowa (and possibly other states) campaign and election law both as to the source of the money and the fact that the contributions went unreported.
 - C. Computer equipment belonging to by one or more non-profit corporate entities used by employees of one or more non-profit corporate entities on the orders and at the direction of the officers and executive staff of these entities to write letter copy to advance the election of multiple state candidates in Iowa, and other states. This is an apparent violation of Iowa (and possibly other states) campaign and election law both as to the source of the money and the fact that the contributions went unreported.
 - D. Printing labor services provided and paid out of monies belonging to one or more non-profit corporate entities working on the orders and at the direction of the officers and supervisors to assist with the election of multiple candidates in Iowa, and other states. This is an apparent violation of Iowa (and possibly other states) campaign and election law both as to the source of the money and the fact that the contributions went unreported.
 - E. Printing and mail preparation equipment owned, or the use of such equipment subsidized, by one or more non-profit corporate entities and used by employees of one or more non-profit corporate entities on the orders and at the direction of the officers and executive staff of these entities to produce mailings and other election communications to advance the election of multiple state candidates in Iowa, and other states. In some cases campaign volunteers used this corporate equipment to prepare and produce such mailings for the candidates and their campaigns. This is an apparent violation of Iowa (and possibly other states) campaign and election law both as to the source of the money and the fact that the contributions went unreported.

- F. Use of office space leased by one or more non-profit corporate entities and used by employees of one or more non-profit corporate entities on the orders and at the direction of the officers and executive staff of these entities to produce mailings and other election communications to advance the election of multiple state candidates in Iowa, and other states. In some cases campaign volunteers used this corporately leased office space to prepare and produce such mailings for the candidates and their campaigns. This is an apparent violation of Iowa (and possibly other states) campaign and election law both as to the source of the money and the fact that the contributions went unreported.

The main printing facility was relocated to Indiana in late September 2010 on the orders of Mark Mix, President, and Doug Stafford, Vice President, at the National Right to Work Committee. These two men supervised and employed Dimitri Kesari in his capacity as Director of Government Affairs.

These actions also appear to be violations of Federal Law (the Internal Revenue Code) in that the expenditures were not reported on IRS Form 990 (2010), Part IV (Checklist of Required Schedules), line 3 which asks, "Did the organization engage in any direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? If 'Yes' complete Schedule C, Part I." I believe this may have occurred over many election cycles in multiple states at the direction of and with the involvement of Dimitri Kesari, Doug Stafford, Mark Mix and many other of the executive staff and employees of the National Right to Work Committee. The NRTWC IRS Form 990 for 2010 was checked with an "X" under the No column. This is the year for which I have direct knowledge and other evidence that such activities did take place.

I believe this same issue is a problem for the Mid-America Right to Work Committee whose Chairman, Cornell Gethmann, resides in Iowa. He is also a board member of the National Right to Work Committee

Sincerely,

Dennis Fusaro
P.O. Box 1829
Front Royal, VA 22630
540-622-7676

Exhibit 2
Bonogofsky v. Kennedy, COPP-2010-CFP-0015

This Exhibit supplements the legal discussion of coordination, as introduced in the above Decision. This discussion is incorporated by reference into the Decision as though set out in full therein.

An expenditure that is deemed to be "coordinated" between a candidate and another entity or person is treated as though it is a contribution to and/or expense by the candidate's own committee. Contributions to a candidate are limited in amount from any source and prohibited completely from a corporate source. (See §§13-35-227, 13-37-216, MCA). Because a coordinated third party election expense is deemed to be a contribution it becomes subject to the limits and prohibition of these laws.

A third party, including a corporation, can participate in an election through an independent expenditure. An independent election expenditure is subject only to reporting and attribution and is not subject to contribution limits or bans. The Courts, in upholding coordination findings, have recognized that there is a temptation to go past an independent expenditure and coordinate:

Independent expenditures "are poor sources of leverage for a spender because they might be duplicative or counterproductive from a candidate's point of view" (citing to *FEC v. Colo. Republican*, 533 US 431 at 446 (2001)). By contrast, expenditures made after a 'wink or nod' often will be "as useful



to the candidate as cash." (*Id.* at 442, 446). For this reason, Congress has always treated expenditures made "at the request of suggestion of" a candidate as coordinated.

McConnell v. FEC, 540 U.S. 93, 224 (2003).

This circumvention of limits, through coordination, is not allowed:

"Moreover, recent cases have recognized that certain restrictions on corporate electoral involvement permissibly hedge against 'circumvention of [valid] contribution limits.'" 540 U.S., at 205, 124 S. Ct. 619, 157 L. Ed. 2d 491 (quoting *Beaumont*, 539 U.S., at 155, 123 S. Ct. 2200, 156 L. Ed. 2d 179, in turn quoting *FEC v. Colorado Republican Federal Campaign Comm.*, 533 U.S. 431, 456 and n. 18, 121 S. Ct. 2351, 150 L. Ed. 2d 461 (2001) (*Colorado II*), (alteration in original).

Montana's definition of coordination is similar to that of federal law. Section 44.10.323(4) ARM defines coordination as "an expenditure made in cooperation with, consultation with, at the request or suggestion of, or the prior consent of a candidate..."

Commissions and Commissioners have found coordination only in particular circumstances. The FEC, while advancing a new coordination regulation in 2012 (11 C.F.R. §109.21(d)(4)), operates under a 6 member commission structure and that commission has deadlocked on basic enforcement decisions. Richard Briffault, *Coordination Reconsidered*, Colum. L. Rev., (May 2013). In regard to coordination, the FEC has found that there needs to be more than common vendors, interrelated individuals (as in a

former employee of the candidate) and shared contacts. Thus, the FEC has not found coordination unless there is actual evidence showing the coordination between the expenditure and the candidate. *Id.*

Past coordination decisions by Montana Commissioners show similar approach to that of the federal decisions. Commissioner Argenbright considered a complaint that a political committee, Citizens for Common Sense Government (CCSG), and six candidates for the Missoula City council were coordinated or linked such that CCSG was a candidate committee subject to contribution limits. *Harmon and Sweet v. Citizens for Common Sense Government, et. al.*, December 31, 1997. Despite extensive crossover in involvement (participation in parade using same mode of transportation) and people, the Commissioner found no coordination because there were "no notes, memoranda, records of telephone conversations, correspondence or other documents" supporting "coordination, cooperation or consultation". *Id.* p. 19. Further, there was "little, if any, similarity" in campaign literature. *Id.* p. 23.

Likewise, Commissioner Higgins rejected coordination between a candidate and a political committee that engaged in attack activity against the opposing candidate. *Close v. People for Responsive Government*, December 15, 2005. The Commissioner found crossover contributors between the political committee and the candidate but found no evidence of communication or activity showing coordination between the candidate and committee.

Likewise Commissioner Unsworth rejected coordination in *Keanne v. Montanans for a True Democrat*, April 2, 2008. The Commissioner noted

crossover contributions/activity by people involved in both the candidate campaign and the political committee but found no coordination because "...there is no evidence that MTDC's expenditures for newspaper and radio ads, billboards, and campaign flyers opposing candidate Keane and supporting candidate McAdam were made with the prior knowledge, consent and encouragement of McAdam or his campaign." *Id.* p.9. In addition the Commissioner found that the crossover communication was "limited" and that it was personal and not on behalf of the political committee. *Id.*

In contrast to the above three decisions, Commissioner Vaughey found coordination in *Little v. Progressive Missoula*, July 22, 2004. The Commissioner, identified crossover activity, finding that members of the Progressive Missoula steering committee were directly involved in the candidate's campaign (Allison Handler). Further, the Commissioner found specific evidence showing that Handler and the individual committee members knew of the negative attack role that Progressive Missoula would play in support of the candidate's campaign. The Commissioner found that certain barriers between the Handler campaign and Progressive Missoula, including a letter of reproach from Progressive Missoula to Handler, were artifices designed to disguise the real cooperation. The Commissioner found that the PM's expenditures for flyers opposing candidate K. were made with "...prior knowledge, consent and encouragement of Handler...". Thus they were coordinated expenditures.

The predecessor decision to this Matter (*Graybill v. Western Tradition Partnership*, COPP-2010-CFP-0016 (Commissioner Unsworth)) focused on WTP's activities in 2008 elections in Montana and, while noting shared staffing, did not find coordination, *id* p. 28. Graybill noted "concern and healthy skepticism" as to coordination but spent little time on coordination and instead focused on and found express advocacy.