

BEFORE THE COMMISSIONER
OF POLITICAL PRACTICES

Bonogofsky v. Kennedy No. COPP-2013-CFP-0015	Summary of Facts and Findings of Sufficient Evidence to Show a Violation of Montana's Campaign Practices Act
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Debra Bonogofsky of Billings was a candidate for the Montana House of Representatives, District 57, (HD 57) in the 2010 primary. On September 3, 2010 Bonogofsky filed a complaint with this Office. The complaint asserted specific campaign violations (failure to attribute and failure to report certain expenses) and it alleged illegal cooperation or coordination between the opposing campaign and several entities such that certain expenditures became coordinated contributions.

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 57).¹ These expenditure issues have

¹ The Montana Legislature has 100 house districts. House District 57, as created by the 2000 redistricting commission, held its first election in 2004. In 2004 a Republican, Penny Morgan, won election and was reelected in 2006 and 2008. Morgan received more than 60% of the vote in each election, marking HD 57 as a solid Republican district. (Data from Secretary of State's website). In the 2010 elections no Democratic candidate filed for election in HD 57, and Penny Morgan did not run for reelection.

confounded Montana political candidates and this Office for the past three election cycles.

The 2010 HD 57 primary election involved two candidates, Debra Bonogofsky and Dan Kennedy. Candidates Bonogofsky and Kennedy each reported raising slightly over \$8,500.² Each candidate reported raising funds primarily from contributions from individuals living in the Billings, Montana area. (Commissioner's records). Kennedy defeated Bonogofsky in the June 8, 2010 primary election by a vote of 1,467 to 1,218 and, with no Democrat having filed, became a representative to the Montana legislature from HD 57. (SOS website).

Candidate Bonogofsky's campaign focused on door to door contact with HD 57 voters. Candidate Bonogofsky reported campaign expenses showing costs for candidate brochures/door hangers, directed mailings to groups of absentee voters and a staggered-in-time district wide mailing. (Commissioner's records and Bonogofsky interview with Commissioner's investigator).

In contrast, Candidate Kennedy focused his campaign on advertising and direct mail. At a minimum, Candidate Kennedy's campaign engaged in 9 direct mail efforts, including a mailer and 8 letters on which his or his wife's signature was placed (*see* Decision, below). In addition, third party entities mailed at least 7 election pieces and placed radio ads in favor of Candidate Kennedy and/or against Candidate Bonogofsky.

² Candidate Bonogofsky's report shows \$9,800 in receipts however \$1,000 of this amount was a loan, later paid back by the campaign. This leaves \$8,800 net in funds raised by the campaign.

Candidate Bonogofsky reported campaign expenses consistent with election activity favorable to her candidacy. Candidate Kennedy did not. There was far more election activity favorable to Candidate Kennedy and/or against Candidate Bonogofsky occurring than was reported in Candidate Kennedy's campaign reports or by any third party. (see Decision, below). This unreported, undisclosed 2010 HD 57 election activity is the focus of this Decision.

II. ELECTION EXPENSES

This Decision identifies and discusses a number of 2010 HD 57 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.³ Further, the Commissioner reviewed records of Western Tradition Partnership (WTP), a non-profit corporation organized in the state of Colorado.⁴ WTP's records⁵, at one time in the possession of the Commissioner's office, are now in the possession of the

³ For an example of documents supplied by the public, please see detailed summary of election activity in the 2010 HD 61 election, attached as Exhibit 1 to this Decision. The documents necessary to make this summary were received and saved by members of the Esp extended family during the 2010 HD 61 election. John Esp was a candidate in the Republican primary in HD 61.

⁴ WTP was involved in 2008 and 2010 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. The Court is now considering awarding sanctions and fines against WTP.

⁵ 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.

Federal Bureau of Investigation (FBI) office in Missoula, Montana. These “WTP records” and the documents provided by citizens, allowed the Commissioner to identify otherwise undisclosed and unreported HD 57 2010 election expenses, as set out in this Decision.

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*).

The second type 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 accompanying companion decisions: *Bonogofsky v. Western Tradition Partnership*, COPP-2010-CFP-0007, *Bonogofsky v. National Gun Owners Alliance*, COPP-2010-CFP-0008, *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 those that will shortly follow. 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

⁶ The 2012 Montana Legislative session considered several bills that would have required reporting and 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.

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 of Contributions; and 3) Attribution.

IV. DISCUSSION AND FINDINGS

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

Finding of Fact No. 1: Ms. Bonogofsky was a 2010 Candidate for the Republican Party nomination to the Montana legislature from HD 57, Billings, Montana. Another candidate, Dan Kennedy, also sought the 2010 nomination by the Republican Party from House District 57 (Secretary of State (SOS) Website).

Finding of Fact No. 2: HD 57 was open in the 2010 primary election, with neither candidate being an incumbent.

Finding of Fact No 3: The primary vote in Montana took place on Tuesday, June 8, 2010. Mr. Kennedy won the Republican primary election in HD 57 by a vote of 1,467 to 1,218.

Mr. Kennedy and Ms. Bonogofsky, as candidates in the 2010 HD 57 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. Attribution and Reporting of Expenditure

Candidate Bonogofsky complained that Candidate Kennedy failed to report expenditures (as required by §13-37-225 MCA) and did not “attribute” expenditures (as required by §13-35-225(1) MCA). The Commissioner determines this complaint by an examination of Candidate Kennedy campaign expenses and communications.

Candidate Kennedy reported 18 primary election expenditures on campaign finance reports filed with the Commissioner’s office. These expenditures included 4 payments to Allegra Printing⁷ in Billings, 4 payments to Billings-area sign service businesses, and 2 payments to Direct Mail and Communications, Inc. (Direct Mail). Direct Mail was and is a Colorado for-profit corporation. It operated a print shop in Livingston, Montana.

⁷ The Commissioner’s investigator requested and received copies of these documents directly from Allegra.

In resolving this part of the Decision, the Commissioner reviewed: all Kennedy campaign documents printed by Allegra, photos of Candidate Kennedy campaign signs attached to the complaint in this matter, a document provided by Candidate Kennedy⁸, a letter to HD 57 voters from Denise Kennedy provided to the Commissioner by a member of the public, and a number of Candidate Kennedy campaign documents contained in the WTP records. Based on this review the Commissioner was able to directly examine 7 Allegra Candidate Kennedy documents, 2 photos of Kennedy campaign banners, and 7 Candidate Kennedy letters printed by Direct Mail. Under Montana law Candidate Kennedy was required to “attribute” or place the “name and the address of the candidate or the candidate’s campaign” on any such election communication, §13-35-225(1) MCA.

An attribution is an objective item. The required attribution is either printed or not printed on a campaign document. The Commissioner’s objective review of the above listed documents and photos determined that the required attribution was lacking on at least 13 election communications made by candidate Kennedy. These include: one Allegra printed fundraising letter, three Allegra printed stickers, two large campaign signs, and all seven candidate Kennedy letters printed by Direct Mail.

⁸ The document reviewed was a Direct Mail bill to Candidate Kennedy. Candidate Kennedy, through counsel, provided 7 pages of campaign documents, refusing further production. Direct Mail, through counsel, refused the Commissioner’s request for candidate Kennedy related documents, asserting that the Commissioner lacked authority to seek documents. Because sufficient documents or other evidence was gathered from the others sources the Commissioner issued this sufficiency decision. The challenges to investigation authority will be dealt with in another forum.

In addition, Candidate Bonogofsky alleged (and Candidate Kennedy admitted) that Candidate Kennedy did not report, as required by §13-37-225 MCA, the expense of tape measurers he affixed with campaign stickers and handed out to voters. (Commissioner's records).

Finding of Fact No. 4: Candidate Kennedy did not place the required attribution on thousands of campaign letters⁹ and other communications including signs and stickers.

Finding of Fact No. 5: Candidate Kennedy did not report campaign expenses, including the cost of tape measurers.¹⁰

Sufficiency Finding No. 1: There is sufficient evidence to justify a civil prosecution of Candidate Kennedy for failing to attribute, and/or report the expense of, those certain campaign communications described Findings of Fact 4 and 5.

B. Coordinated Expenses

Candidate Kennedy is also 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 Kennedy by a third party. 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

⁹ Direct Mail alone printed 7,000 candidate letters, none of which had a complete attribution.

¹⁰ Allegra records show that 3,000 campaign labels (none were attributed properly) were printed by Candidate Kennedy for use on tape measurers. The Commissioner reserves the right to add additional attribution and expenses based on new evidence discovered during any enforcement phase of this Matter.

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. 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 7 Direct Mail Letters

Candidate Kennedy’s campaign finance reports show payment of \$3,057.50 to Direct Mail. Candidate Kennedy’s campaign reports disclosed the Direct Mail expenses as “advertising, fundraising, direct mail.” (Commissioner’s records). The Commissioner’s investigation in this Matter determined that Direct Mail produced 7 letters for candidate Kennedy (hereafter “7 Letters”).¹¹

The Commissioner’s review of WTP records further determined that the 7 Letters consisted of an introduction or “Intro letter” with survey, a “WIFE” letter,¹² four issue ID’d letters (gun, life, tax, spend/Right to Work) and a closing letter. (Direct mail bill, WTP records, Kennedy Folder, file cover).¹³ The Commissioner’s review of WTP records included examination of: a draft (and final copy) of each of these 7 Letters, drafts of comparable letters for other WTP

¹¹ Candidate Kennedy generally refused to produce campaign documents but did produce 7 documents, including a June 5, 2010 bill from Direct Mail. That bill, together with the WTP records, shows that Direct Mail produced 7 candidate letters. Neither Candidate Kennedy nor Direct Mail produced copies of the 7 letters. The Commissioner gained copies of the 7 Letters from other sources.

¹² The Commissioner’s review determined that WTP identified a letter from a candidate’s wife as a “WIFE” letter.

¹³ The WTP records included a separate folder labeled “Kennedy HD 57”. Copies of documents, such as drafts of the 7 Letters, were in the Kennedy folder.

endorsed 2010 Montana legislative candidates, candidate signature submissions (including candidate Kennedy's) for use on the letters, WTP plans for production and use of these letters in 2010 Montana legislative campaigns, Direct Mail's description of its printer/ mailing machines, and Direct Mail's method of stamping such letters.¹⁴

The 7 Letters are an election expense, reported at \$3,057.50 by Candidate Kennedy. This Decision determines whether or not the complete expense of the 7 Letters was reported and disclosed by Candidate Kennedy, including value of services. See 44.10.323 (2) ARM and above. Under COPP regulations, Candidate Kennedy was required to report as an in-kind contribution the "total value of the services" received as part of the preparation of these 7 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.¹⁵ In turn, all contributions must be reported and disclosed by the candidate (§13-37-225 MCA so that voters and the opposing

¹⁴ The Commissioner notes that the documents reviewed in this Matter are numerous. The documents attached as Exhibit 3 are illustrative of the documents examined and used by the Commissioner.

¹⁵ The Commissioner identified 16 documents constituting an election expense that were mailed to 2010 HD 57 voters. These documents either promoted Candidate Kennedy's campaign or attacked Candidate Bonogofsky's campaign. Those 16 documents consist of: 7 candidate letters printed by Direct Mail, 2 documents (1 letter, 1 flyer) printed by Allegra, 5 attack letters from third party entities, and 2 attack Slicks. The same pattern of large scale election use of documents was employed in a number of 2010 legislative campaigns. Attached as Exhibit 1 is a summary of the most complete 2010 election document record reviewed by the Commissioner, that being the documents attacking Candidate Esp or promoting Candidate Boniek in the 2010 HD 61 Republican primary race. This summary is useful to acquaint the reader with the pattern of election document use as well as the role played by WTP and its aligned groups.

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.”¹⁶

1. The WIFE LETTER

One of the 7 Letters was a letter signed by Denise Kennedy, Candidate Kennedy’s wife, and mailed to an identified group of HD 57 voters (“WIFE letter”). As part of the \$3,057.50 paid to Direct Mail, Candidate Kennedy is listed as paying 65 cents for each WIFE letter (including postage) for a cost of \$714.35, and an additional 5 cents each for 1110 photographs that accompanied the WIFE letter for a cost of \$55.50. (WTP records, Kennedy file cover, Direct Mail bill).

The Denise Kennedy WIFE letter is undated but was mailed the last week of May, 2010, likely May 23.¹⁷ The Denise Kennedy WIFE letter, accompanied by a family photograph, was handwritten and printed with blue ink on pink off size (10” by 8”) paper. The letter bears the purported signature of Denise Kennedy. There is no attribution on the WIFE letter even though the letter implores a vote for Dan Kennedy in the June 8, 2010 election.

¹⁶ 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.

¹⁷ On May 25, 2010 the Commissioner’s office received a copy of the Denise Kennedy WIFE letter, mailed to the Commissioner by a HD 57 voter.

The Commissioner did not receive the envelope in which the Denise Kennedy WIFE letter was mailed, but did receive an envelope for an identically formatted letter (blue ink, pink paper) that was signed by Marla Wagman in support of her husband, Pat Wagman (2010 Republican primary, SD 31) and placed in a pink envelope, hand addressed and mailed with a 44 cent stamp.¹⁸ The Commissioner determines that Denise Kennedy's letter was likewise hand addressed and mailed with a 44 cent stamp.

The Denise Kennedy WIFE letter is 5 pages in length (all handwritten) and discusses how Denise and Dan met, introduces their children, praises their marriage and extolls Dan Kennedy's virtues¹⁹. The Commissioner's examination further showed that WTP prepared a comparable WIFE letter for each candidate it supported in Montana's 2010 elections (WTP records).

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. 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 text and

¹⁸ The Wagman WIFE letter was received as part of the Esp family document archive. See Ex. 1. Wagman was also a candidate chosen for support by WTP. Marla Wagman's WIFE letter, unlike Denise Kennedy's, had a proper attribution.

¹⁹ The Commissioner's investigator determined, looking to mock-ups and notations on WIFE letter drafts, that there is common theme and carry-over phrases between WIFE letters. Further, the investigator observed that the wife's signature is generally added by the scribe, based on a sample signature from the wife. For example, 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. This is in contrast to the 2010 HD 61 primary election where the Susan Boniek WIFE letter mock-ups in the WTP records 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.

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 (See n. 18). The Commissioner viewed the mock-up in the WTP records showing that Denise's WIFE letter was so prepared. After mock-up, the Denise Kennedy WIFE letter was printed, inserted into a hand addressed pink envelope (along with a family photograph) and a 44cent stamp was used to mail the envelope.

The Commissioner takes administrative notice and determines that the 65 cents Candidate Kennedy paid for each such WIFE letter, at most, paid for the stamp, envelope, paper and ink. In making this determination the Commissioner incorporated information derived from Allegra invoice No. 80910. (Commissioner's records, See Ex. 3). 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.²⁰ This comes to a charge of 56 cents per mailer.

The Commissioner's recognizes that Allegra is an operating Montana business that offered services to the public 2010 at rates it designed to be competitive. Being competitive the 56 cents per mailer sets fair market value for a comparable service. Allegra charged 56 cents to print, fold and address a one page mailer. The Commissioner determines that the Direct Mail services provided to Candidate Kennedy 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

²⁰ Postage or "shipping" was separately charged by Allegra at \$470.16, or 24 cents per mailer. This is comparable to the 22 cents bulk rate paid by Direct Mail.

each of the 7 Letters were therefore greater than the Allegra services provided for the 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 7 Letters, at most, covers the envelope, paper, and ink costs of the 7 Letters.²¹ 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 Kennedy in connection with the Denise Kennedy WIFE letter (*See Daubert v MCC/Orvis*). The value of these services was not covered by any payment to Direct mail by Candidate Kennedy. The Commissioner determines Candidate Kennedy paid nothing to WTP for its services in writing, editing, layout and processing the Candidate Kennedy WIFE letter.

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

²¹ Montana law, at ARM 44.10.513(1)(b)(ii) requires that 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.

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 Kennedy.

Finding of Fact No. 6: The 65 cents Candidate Kennedy paid to Direct Mail per WIFE letter leaves 21 cents, after the 44 cent stamp cost is deducted. The 21 cents, at most, covered the cost of the paper, ink and envelope of each WIFE letter.

Finding of Fact No. 7: Candidate Kennedy received WIFE letter services in his 2010 HD 57 election, including preparation, design, layout, editing and handling of the WIFE letter.

Finding of Fact No. 8: Candidate Kennedy 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. 9: The WIFE letter services provided to Candidate Kennedy were provided by a corporation, whether through the WTP corporation or the Direct Mail corporation.

Finding of Fact No. 10: Candidate Kennedy knew of, consulted on and consented to the full range of WIFE letter services and therefore coordinated this activity with WTP and/or Direct Mail.

Sufficiency Finding No. 2: As shown by Findings of Fact 1 through 10, there is sufficient evidence to justify civil prosecution of Candidate Kennedy for accepting illegal corporate contributions to his 2010 HD 57 campaign in the form of coordinated in-kind expenses made by a corporation in connection with the WIFE letter.

Sufficiency Finding No. 3: As shown by Findings of Fact 1 through 10, there is sufficient evidence to justify civil prosecution of Candidate Kennedy for failing to disclose and report as in-kind contributions election related expenses associated with the WIFE letter.

The Commissioner recognizes that Candidate Kennedy “categorically denies” any coordination with WTP (see Kennedy answer to Bonogofsky complaint). That denial is not credible. The records listed above are sufficient

to show that Candidate Kennedy coordinated in the production of the WIFE letter and violated Montana law as set out in the sufficiency findings.

2. The Intro and Closing letters

Candidate Kennedy also engaged Direct Mail for an introduction (Intro) and a closing letter. (WTP records, Kennedy file cover²², Direct Mail bill). Direct Mail produced 2,616 Intro letters (50 cents each for \$1,308.00 cost) and 1,102 closing letters (45 cents each for \$495.90 cost) for Candidate Kennedy. Each Intro letter mailing included the outgoing envelope, the letter, a survey and return envelope the HD 57 voter could use to return the survey. (WTP records, Direct Mail bill).

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 Kennedy file contained mock-ups for the Kennedy Intro letter showing that the four page Intro letter was prepared by cutting and pasting information specific to Candidate Kennedy into pages 1 and 4 (pages 2 and 3 were unchanged) of a "master" letter used by WTP for multiple legislative candidates. A masthead for Candidate Kennedy was then pasted on the final text. (WTP records).

The Commissioner's review found that Candidate Kennedy 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 black

²² The WTP records include a separate manila folder or file containing documents specific to the Kennedy campaign.

ink on 8 ½ by 11 tan paper (Candidate Kennedy's signature was printed in blue ink), folded, inserted into an envelope along with survey and 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).

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 used by mailers of bulk quantities of items such as newsletters or notices.²³ 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 Kennedy 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 Kennedy paid for each for each such letter, at most, paid for the stamp, envelope, paper and ink. Candidate

²³ 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.

Kennedy paid nothing to WTP for its services in writing, editing, layout and processing the Intro or closing letters.

The Commissioner finds that Candidate Kennedy cooperated with, knew of and approved of the services involved in the Intro and closing letters. Candidate Kennedy signed the letters and 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 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 Kennedy.

Finding of Fact No. 11: Candidate Kennedy received Intro and closing letter services in his 2010 HD 57 election, including preparation, design, layout, editing and handling of the letters.

Finding of Fact No. 12: Candidate Kennedy 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. 13: The Intro and closing letter services provided to Candidate Kennedy were provided by a corporation, whether through the WTP corporation or the Direct Mail corporation.

Finding of Fact No. 14: Candidate Kennedy 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. 4: As shown by Findings of Fact 1 through 14, there is sufficient evidence to justify civil prosecution of Candidate Kennedy for accepting illegal corporate contributions to his 2010 HD 57 campaign in the form of coordinated in-kind expenses made by a corporation in connection with the Intro and closing letters.

Sufficiency Finding No. 5: As shown by Findings of Fact 1 through 14, there is sufficient evidence to justify civil prosecution of Candidate

Kennedy 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 Kennedy “categorically denies” any coordination with WTP (see Kennedy answer to Bonogofsky complaint). That denial is not credible. The records listed above are sufficient to show that Candidate Kennedy coordinated in the production of the Intro and closing letters and violated Montana law as set out in the sufficiency findings.

3. Issue ID letters

The Candidate Kennedy Intro, WIFE and closing letters discussed above, this Decision, did not go to all HD 57 Republican primary voters. Approximately 2,700 people voted in the 2010 HD 57 Republican primary and Candidate Kennedy received 1,467 of those votes. (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 25). Direct Mail described this mass mailing approach as a “shock and awe electoral bombing campaign” (see Exhibit 3).

The issue ID’d letters present the issue of just which voters were being “bombed” with the combined mailings from Candidate Kennedy and third parties. The Direct Mail bill to Candidate Kennedy states he was billed 45 cents each for 1,075 “issue” letters for a cost of \$483.75. The cover sheet to WTP’s Candidate Kennedy file also shows 1,075 issue letters but further defines “issue ID’d voters”, including 214 “gun” voters, 241 “life” voters, 219 “tax” voters, and 145 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 Kennedy, with an identified list of issue ID'd voters in their legislative district.²⁴ The Commissioner takes administrative notice that such any list of identified voters has value (*see Wittich v. Campbell*, November 17, 2009). This applies to each Kennedy 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 Kennedy.

A review of WTP records 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 Kennedy issue ID'd letters were two pages in length, printed on standard 8 1/2 by 11 inch paper stock with use of a scanned blue ink Candidate Kennedy signature. The Dan Kennedy masthead and the text of the letter were created by cutting and pasting "Dan Kennedy" 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.²⁵ As was the case with the Intro and closing letters the Candidate Kennedy issue ID'd letters were mailed using the bulk rate Patriotic Banner stamp. Specifically, four separate Candidate Kennedy issue ID'd letters were created (one for each group of ID'd voters) and mailed to each issue ID'd group of HD 57 voters. For example, the "gun" issue ID'd voters received a Candidate Kennedy letter stating his support of the 2nd amendment.

²⁴ Please see Exhibit 1 for a listing of the comparable approach in the 2010 HD 61 election.

²⁵ WTP used this issue ID's letter approach for multiple candidates in 2010 elections.

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

Finding of Fact No. 15: Candidate Kennedy received Issue ID'd letter services in his 2010 HD 57 election, including preparation, design, layout, editing and handling of the letters.

Finding of Fact No. 16: Candidate Kennedy did not pay for, disclose or report the expense of services involved preparation, design, layout editing, or handling of the Issue ID'd letters.

Finding of Fact No. 17: The Issue ID'd letter services provided to Candidate Kennedy were provided by a corporation, whether through the WTP corporation or the Direct Mail corporation.

Finding of Fact No. 18: Candidate Kennedy 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. 6: As shown by Findings of Fact 1 through 18, there is sufficient evidence to justify civil prosecution of Candidate Kennedy for accepting illegal corporate in-kind contributions to his 2010 HD 57 campaign in the form of coordinated in-kind expenses made by a corporation in connection with the Issue ID'd letters.

Sufficiency Finding No. 7: As shown by Findings of Fact 1 through 18, there is sufficient evidence to justify civil prosecution of Candidate Kennedy 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 Kennedy “categorically denies” any coordination with WTP (see Kennedy answer to Bonogofsky complaint). That denial is not credible. The records listed above are sufficient to show that Candidate Kennedy coordinated in the production of the Issue ID’d letters and violated Montana law as set out in the sufficiency findings.

ii. Third Party Letters and Slicks

The Commissioner determined, above, that Candidate Kennedy signed (thereby accepting content) and partially paid for the 7 Letters discussed above. By so acting Candidate Kennedy was directly involved with the 7 Letters 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 Kennedy’s campaign.²⁶

The Commissioner, by direct observation, has also identified an additional 7 documents that are election expenses in the 2010 HD 57 election in that the documents promoted the Candidacy of Candidate Kennedy and/or attacked Candidate Bonogofsky. These 7 documents included 5 survey related letters and 2 glossy attack flyers called “Slicks” by WTP.²⁷ There are no election expenses reported by any entity, including Candidate Kennedy, as to these 7 documents. The Commissioner must now determine who, if anyone, is responsible to report the value [i.e. “election expense”] of these documents.

²⁶ The Commissioner reserves his right to claim further fair market value deficiency as to the production costs Direct Mail charged Candidate Kennedy.

²⁷ These 7 documents are identified by direct observation. There may be more such documents that have not yet been identified.

The coordination determination as to these documents first requires that the Commissioner make determinations as to the relationship of third party entities involved with those documents. Those third party entities are WTP, Direct Mail, Assembly Action Fund, Montana Citizens for Right to Work, National Gun Owner's Association, Christian LeFer and Allison LeFer.

1. Third Party Entities

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, 2009.²⁸) WTP identified the HD 57 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 57:

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 chose 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..."

²⁸ 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.

A separate WTP document, the WTP 2010 Election year power point presentation²⁹, illustrates the tenor or some of these letters and postcards by showing 5 such WTP documents attacking candidates.

The Commissioner determines that Direct Mail and Allison LeFer are agents of and part of WTP as to any Candidate Kennedy election activity. Direct Mail's "shock and awe" electoral bombing capacity fit hand into glove with WTP's electoral action plan. 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 2010.³⁰ Allison 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 part of WTP as to any Candidate Kennedy 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 WTP records,

²⁹ Also produced to the Commissioner by Ms. Loendorf.

³⁰ Direct Mail and Communications, Inc. corporate documents list Allison Andrews a director and as President. Her address is listed as 1237 E. Amherst Circle, Aurora, CO.

including his April 2010 attempt to convince John Esp to withdraw as a candidate in the 2010 HD 61 Republican primary election against WTP's chosen candidate, Joel Boniek (*see Ex. 1*).

The Commissioner determines that Montana Citizens for Right to Work is an agent of and part of WTP as to any Candidate Kennedy 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.³¹ 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" of candidate survey attacks mounted in a "shock and awe electoral bombing campaign."

The Commissioner determines that Assembly Action Fund is an agent of and part of WTP as to any Candidate Kennedy 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).

³¹ The Commissioner viewed the return letters addressed to Allison LeFer in the WTP 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 Bonogofsky and signed the Assembly Action Fund check paying for ads (Bonogofsky Complaint Document).³² The Commissioner's Investigator was unable to locate any people who would admit to connections with the Assembly Action Fund.

In addition to the WTP/Direct Mail connection through LeFer and Hofer, the WTP records include invoice No. 473 showing the cost of 13 Slicks used in ten 2010 Montana legislative races (*see* Ex. 3). 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. The Commissioner determines that Assembly Action Fund Slicks were printed and mailed by Direct Mail.

Invoice No. 473 shows 3,300 Slicks were printed and mailed attacking Candidate Bonogofsky on "Abortion" and "Main Street"³³. Additional Slicks attacked candidates: Dooling, HD 84; Moran, SD 35; Welch, HD 3; Esp, HD 61;

³² 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.

³³ Bonogofsky had two runs of Slicks: 2,000 "HD 57 Bonogofsky Main Street Slick" and 1,300 "HD 57 Bonogofsky Abortion Slick". The cost per unit, including the 22 cent stamp, is 43 cents making the total invoice amount \$1,419 for the Bonogofsky Slicks.

Washburn, HD 69; Barnhardt, HD 4; Gilman, HD 71; Flynn, HD 68; and, Arthun, SD 31.

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. WTP*, COPP-2010-CFP-0016).³⁴ The Commissioner finds that the Assembly Action Fund is another such artifice created by WTP for use in the 2010 elections.

2. Attack Letters and Slicks

The Commissioner has determined, above, that Direct Mail, Christian LeFer, Allison LeFer, Montana Citizens for Right to Work and Assembly Action Fund are agents of and part of WTP as to any Candidate Kennedy election activity. The Commissioner's review has identified (discussed below) 7 attack letters or Slicks were sent out by WTP or its agents in regard to the Kennedy campaign.

The Commissioner now turns to an examination of nature of the election expense associated with these 7 attack letters of Slicks. None of the expense of these documents were reported or disclosed by any entity, including Candidate Kennedy (Commissioner's records). If there was coordination as to these documents Candidate Kennedy failed his duty to attribute, disclose and report the election expense of the survey documents and Slicks. Next, if the documents are not coordinated but are an "independent expenditure" in the

³⁴ 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.

2010 HD 57 election then the third party entity responsible for the document would fail its duty to attribute, report and disclose the fair market value of the costs and services involved in the production of the 7 attack letters of Slicks. The only way that there is no reporting or disclosure is if the 7 attack letters of Slicks are "issue advocacy" rather than a coordinated or independent expenditure.

a. The WTP letter

Candidate Bonogofsky provided a copy of 4 page letter dated "Monday morning" and authored by WTP and sent to 2010 HD 57 voters. The letter was accompanied by a two page summary of HD 57 candidate survey results focused on property rights and taxes.

By direct observation the Commissioner determines that the WTP letter was double side printed on standard 8 1/2 by 11 inch yellow paper under the WTP masthead. The letter used an undated "Monday Morning" letter³⁵ approach and it was signed by Daniel Fuchs, WTP Director of Governmental Affairs. The tax and property rights approach taken in the survey and WTP letter resulted in the listing of Candidate Debra Bonogofsky's name 13 times, always negatively, in relation to the 2010 HD 57 primary vote while always listing Candidate Dan Kennedy's name positively.³⁶ The WTP letter was mailed using the bulk rate Patriotic Banner bulk rate stamp. The WTP letter is a

³⁵ WTP regularly used "Monday Morning" or other such salutations in lieu of a date in the documents it wrote in the 2010 elections. For example, Candidate Kennedy's Intro letter to HD 57 voters (a copy was attached to Bonogofsky's complaint), also written by WTP, used "Monday morning" in lieu of a date.

³⁶ The WTP Bonogofsky attack letter is, with adjustments, comparable to the attack letters WTP routinely sent in other 2010 elections.

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 57. Further, the substance of the WTP letter is consistent with the substance of the companion issue ID'd letters mailed by Candidate Kennedy. Still further, the "Monday morning" letter in the 2010 HD 57 race was one of many comparable letters that WTP sent out in 2010 legislative races.

The Commissioner determines that the WTP attack letters exist, have value and are an election expense made by WTP in the 2010 HD 57 legislative race. As an election expense, Candidate Kennedy will be deemed to accept the WTP letter 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 57 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.

In addition to imputed knowledge, the Commissioner finds that Candidate Kennedy'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 Kennedy expected and knew his issue ID'd letters would be followed by third party attack letters or Slicks to the same group of voters. In *Little v. Progressive Missoula*, Commissioner Vaughey found that candidate Handler coordinated with another entity, a PAC called Progressive Missoula (PM), that spent money campaigning against Handler's opponent. 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 Kennedy meets this standard as to the WTP attack letter and the WTP attack letter is deemed a coordinated contribution to Candidate Kennedy.

b. The Montana Citizens for Right to Work Letter

Bonogofsky further provided copies of an 8 ½ by 11 inch survey-based three page letter issued under the name of Montana Citizens for Right to Work. The letter was signed by Christian LeFer, as Executive Director. The letter

attacked Candidate Bonogofsky and promoted Candidate Kennedy in the same manner described above in regard to the WTP letter.

The Montana Citizens for Right to Work letter was dated June 1, 2010 and by its own language the survey based attack letter was the second such letter sent out by Montana Citizens for Right to Work to 2010 HD 57 Republican primary election voters. 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. While the Commissioner did not observe the Candidate Kennedy postage, the postage stamp used by Montana Citizens for Right to Work in comparable mailings in other 2010 candidate races is a non-profit bulk rate stamp.³⁷ Under the same reasoning set out above in regard to the WTP letter the Commissioner determines that Candidate Kennedy coordinated as to the Montana Citizens for Right to Work letters.³⁸

c. The National Gun Owner's Alliance letter.

Bonogofsky further provided copies of an 8 ½ by 14 inch survey-based letter signed by the National Gun Owner's Alliance. This letter attacked Candidate Bonogofsky and promoted Candidate Kennedy in a manner similar to that described above in regard to WTP. This letter was dated June 1, 2010

³⁷ 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.

³⁸ 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 Kennedy.

and by its own language was the second such letter sent out by the National Gun Owner's Alliance to HD 57 Republican primary election voters.

The National Gun Owner's Alliance letter is worded, and its use is timed in the 2010 HD 57 election, so as to be an election expense comparable to that of the WTP letter. There is a difference though. WTP is directly connected to Candidate Kennedy through writing, editing, handling and signature of letters. There are mock-ups, sample signatures, and numerous other indices in the WTP files showing the connection. The same is not true for the National Gun Owner's Alliance. Unlike other communications, the National Gun Owner's Alliance letter was mailed from Virginia, using a regular stamp rather than through Direct Mail making use of the Patriotic Banner bulk rate stamp. The Commissioner, despite an examination of the complete WTP records, found no document linking WTP or Candidate Kennedy to the National Gun Owner's Alliance.

The National Gun Owner's Alliance is a non-profit corporation based in the state of Virginia (Commissioner's records). It is intuitive that a Virginia based non-profit would have to be in contact with someone in Montana to send a properly timed and appropriately written letter in an obscure Montana primary election. However, that association, without an accompanying link such as exists for the WTP letter, is not enough to find coordination. Past Commissioners have refused to find coordination even though there was extensive crossover in personnel and activity. *See Harmon and Sweet v. Citizens for Common Sense Government, et. al.*, 12-31-1997 (Argenbright); *Close*

v. People for Responsive Government, 12-15-05 (Higgins); and *Keanne v. Montanans for a True Democrat*, 04-02-08 (Unsworth).

This does not mean that the National Gun Owner's Alliance election expenditure is free of reporting and disclosure. A separate independent expenditure analysis is made in the companion Decision *Bonogofsky v. National Gun Owners Alliance*, COPP-2010-CFP-0008.

d. Assembly Action Fund Slicks

Candidate Bongofsky asserted the expense of certain attack flyers or Slicks printed under the name of Assembly Action Fund were election expenses because the flyers attacked her candidacy while promoting the candidacy of Candidate Kennedy. Bonogofsky asserted that these election expenses became contributions, by coordination, to Candidate Kennedy.

The Assembly Action Fund is deemed to be an agent of WTP for the reasons set out above. Based on the same reasoning set out in regard to the WTP letter, the Commissioner finds that the costs of the Bonogofsky Slicks were coordinated with Candidate Kennedy.

Finding of Fact No. 19: The WTP letter, Montana Citizens for Right to Work letters, and the Assembly Action Fund Slick were election expenses in the 2010 HD 57 election

Finding of Fact No. 20: The in-kind election expenses in FOF No. 19 were not disclosed or reported as election expenses by any entity, including Candidate Kennedy.

Finding of Fact No. 21: The election expenses in FOF No. 19 were coordinated with Candidate Kennedy and became in-kind contributions to candidate Kennedy's campaign.

Finding of Fact No. 22: The election expenses of FOF No. 19 were made by a corporation.

Sufficiency Finding No. 8: As shown by Findings of Fact 1 through 22, there is sufficient evidence to justify civil prosecution of Candidate Kennedy for accepting illegal in-kind corporate contributions to his 2010 HD 57 campaign in the form of in-kind coordinated expenses made by a corporation in connection with the documents discussed in FOF No. 19.

Sufficiency Finding No. 9: As shown by Findings of Fact 1 through 22, there is sufficient evidence to justify civil prosecution of Candidate Kennedy for failing to disclose and report as in-kind contributions election related expenses in connection with the documents discussed in FOF No. 19.

Sufficiency Finding No. 10: The issue of whether or not the National Gun Owners Alliance letter is or is not an independent expenditure is dealt with by a separate Decision, *Bonogofsky v. National Gun Owner's Alliance* COPP-2010-CFP-0008.

The Commissioner recognizes that Candidate Kennedy “categorically denies” any coordination with WTP (*see* Kennedy answer to Bonogofsky complaint). That denial is not credible. The records listed above are sufficient to show that Candidate Kennedy coordinated in the production of the WTP and Montana Citizens for Right to Work letters, as well as the Assembly Action Fund Slicks, and violated Montana law as set out in the sufficiency findings.

V. SUMMARY OF CAMPAIGN PRACTICE VIOLATIONS

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

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 findings are a flashing red light to 2014 candidates and their treasurers.

There has been one prior coordination finding by a Montana Commissioner of Political Practices, that being in *Little v. Progressive Missoula* by Commissioner Vaughney. The *Progressive Missoula* matter, however, involved far less services than are involved in this matter and the coordinating third party was a political committee, not a corporation. A political committee can contribute, subject to limits, to a candidate.

This Decision 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 Kennedy and/or his Treasurer Corey Stapleton, face 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 Kennedy 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 Kennedy and/or Treasurer Stapleton have, 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 Kennedy and/or Treasurer Stapleton 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-007 and 011. 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 identify 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-007 and 011. 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”)³⁹ 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 (§13-37-124(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.⁴⁰ 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 rulings.

³⁹ Notification is to “...the county attorney in which the alleged violation occurred...” §13-37-124(1) MCA. The failure to attribute occurred in Yellowstone County and the failure to report occurred in Lewis and Clark County. This Commissioner chooses to Notice this matter to the county attorney in Lewis and Clark County.

⁴⁰ This type of systemic violations in Montana’s past gave rise to many of Montana’s current campaign practice laws.

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 Kennedy also demonstrates an equally self-determined view of appropriate election activity. Treasurer Stapleton must, to a degree, accept the consequences of any failures in the Kennedy campaign election activity. Stapleton is required by law to "keep detailed accounts of all contributions received and expenditures made..." (§13-37-208 MCA) but he was unable to produce or assist in producing such accounts. Further, it appears that he allowed his name to be used for campaign purposes without actually attempting to fulfill his statutory duties.

Commissioners have rarely found it necessary to seek the full legal redress allowed by Montana law against a candidate or treasurer.⁴¹ Full legal redress is imposed by a district court judge and comes only after a full due-process district court hearing whereat the candidate may provide evidence and confront witnesses, including the Commissioner. The Commissioner notes that if adjudication proves necessary in this Matter appropriate full legal redress includes ineligibility of adjudicated offender to be a candidate for, or to hold, public office (*see* §13-35-106(3)MCA). In addition the offender can be assessed a fine of up to three times the amount of the unlawful contribution or expenditure (*see* §13-37-128 MCA).

⁴¹ Commissioners have filed district court enforcement actions in several Matters. After filing these Matters settled without active district court enforcement litigation.

A 2014 candidate for election in Montana should carefully consider the substantial nature of redress for violations of Montana Campaign Practices Act. The full range of redress has been applied once, before the Commissioner's office was established and before the current codification of Montana law. In *Kommers v. Palagi*, 111 Mont. 293, 108 P2d 208 (1940) the Montana Supreme Court upheld the removal of Sheriff Palagi from office of the elected sheriff of Cascade County under Montana's Corrupt Practices Act (the predecessor law to Title 13, MCA). Palagi was determined to have submitted false campaign account records and to have used a "slush" fund, consisting of excess mileage and board reimbursement for prisoners, as a secret campaign fund from which he purchased pencils, beer and sewing kits to give to potential voters. The court specifically found that the pencils and "handy menders" were articles of value distributed by the candidate and his deputy sheriffs as his political agents with the intent to influence votes contrary to the provisions of law. *Id.*, 111 Mont. at 308, 108 P2d at 215.

The politics of 1940 must have been corrosive to lead to a *Palogi* application of full redress of law by a court of law. The politics of 2013 may be corrosive enough to lead to a similar application full redress today. Under Montana law the Commissioner can and will pursue a full redress result if that is what is required to arrest the type of election expense activity addressed in this Decision. The Commissioner cautions 2014 candidates to take heed of this Decision and to avoid such election activity in 2014 campaigns. Such avoidance can only be good for all Montanans as it leads to better and fairer

elections which, in turn, leads to better acceptance of election results and better governance for us all.

VII. CONCLUSION

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

Dated this 16th day of October, 2013.



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Exhibit 1
Bonogofsky v. Kennedy COPP-2010-CFP-0015

The *Bonogofsky v. Kennedy* Decision summarizes election actions orchestrated by Western Tradition Partnership (WTP) through 16 direct mail pieces in support of Candidate Kennedy and/or in opposition to Candidate Bonogofsky in the Montana 2010 HD 57 Republican primary election. This document is a summary of comparable direct mail election actions orchestrated by WTP in support of Candidate Joel Boniek and/or in opposition to Candidate John Esp in the 2010 HD 61 Republican primary race. This summary provides a further example of the election related surveys, letters and attack pieces used by WTP to enhance the election of its chosen candidate in 2010 legislative elections.¹ The primary election was set for June 8, 2010. In the two months leading to the following WTP related election actions took place in the HD 61 race:

1. Direct contact with Esp by WTP: On April 4, 2010 WTP, through Christian LeFer, called Candidate Esp. LeFer tried to talk Esp out of running, calling Boniek a beacon of hope to so many. LeFer also accused Esp of spreading rumors about Boniek and threatened to run

¹ John Esp has a number of family members living in HD 61. Mr. Esp has provided the Commissioner with the Esp family archive of WTP orchestrated actions related to the 2010 Republican primary. The ESP family archive, added to information in the WTP files, created a comprehensive record of WTP activity in the 2010 HD 61 Republican primary election.

a “dirty campaign” against Esp in retaliation (Esp notes, Esp Campaign records).

2. Six Surveys: During May 3 through May 10, 2010 Candidate Esp received 6 candidate surveys -- those being from the National Gun Owners Alliance, Montana Citizens for Right to Work, WTP, the National League of Taxpayers, the National Pro-Life Alliance, and the Montana Tea Party Coalition. *Id.*
3. Boniek letter and Survey: In this same early May 2010 period Boniek sent an undated “Monday morning letter” announcing he was running for the HD 61 nomination, asking for money and enclosing a voter survey. *Id.*
4. 5 to 10 Attack Letters Based on Survey Results: During May 24 through June 1 the National Gun Owner’s Alliance, National ProLife Alliance, Montana Citizens for Right to Work and WTP sent two letters each to HD 61 voters, each letter promoting Candidate Boniek and/or attacking Candidate Esp centered on the June 8 primary election in HD 61. *Id.*
5. 4 Boniek issue letters: Also during May 24 through June 1 Candidate Boniek sent four more letters on issues (abortion, taxes, spending and guns) to groups of HD 61 voters who were ID’d as favorable to his position on these issues. *Id.*

6. 3 final Boniek letters: On June 3, 2010 two people with WTP connections (Lair and Faw) sent a letter attacking Esp. Susan Boniek sent a letter [WIFE letter] imploring a vote in favor of her husband and Candidate Boniek sent a final 6 page candidate letter seeking votes.

Id.

7. 6 attack Esp pieces: During the final weeks of the campaign 6 glossy fliers (Slicks) attacking Candidate Esp were mailed or handed to HD 61 voters by four groups: WTP attacked Esp twice on tax/spend and inheritance taxes; Assembly Action Fund attacked Esp on supporting Planned Parenthood; the Sportsman's Rights PAC attacked Esp as opposing "pro-gun hero Joel Boniek", the Montana Conservative Alliance attacked Esp as being supported by unions; and an anonymous "fact check" piece attacked Esp for failing to return surveys. *Id.*

8. The NRA sent postcards to its membership supporting Boniek. *Id.*

The *Bonogofsky v. Kennedy* decision determined that WTP (partly through its agent, a for-profit corporation called Direct Mail and Communications) wrote, edited, printed, stamped and mailed all letters sent by Candidate Kennedy. Excluding the surveys (which only went to the candidate) Candidate Boniek was promoted or Candidate Esp attacked by 24 direct mail pieces, as set out above.

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

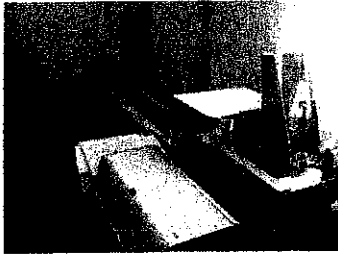
crossover contributions/activity by people involved in both the candidate campaign and the political committee but found no coordination because “...there is no evidence that MTDC’s expenditures for newspaper and radio ads, billboards, and campaign flyers opposing candidate Keane and supporting candidate 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.

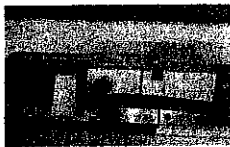
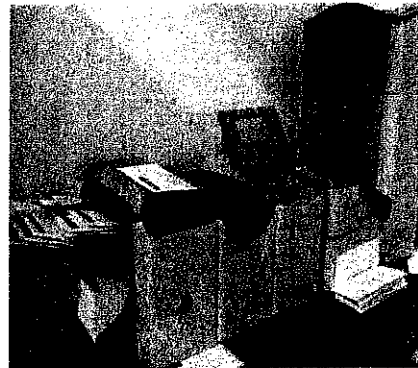
E+3

Direct Mail & Communications, Inc. YOUR One-Stop, Turnkey Grassroots Direct Mail Fortress! Just the highlights . . .



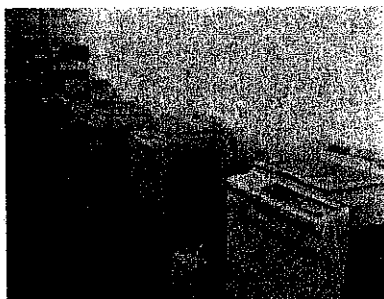
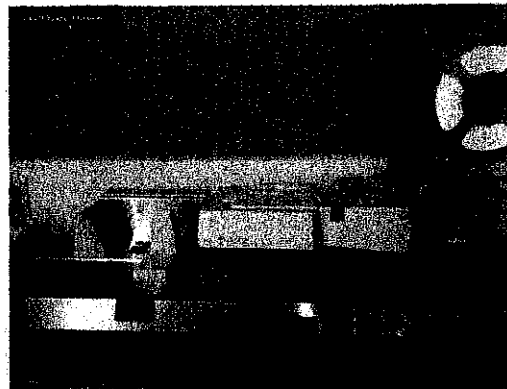
37,000 address-per-hour Rena Imager 2.5 (new in late 2008). State of the art envelope/postcard/reply addresser delivers a combination of high speed and high quality. Keep hands, feet, and Afghan dogs far from this machine if you know what's good for you.

Formax 6402 Folder-Inserter is the state of the art in computer-controlled automated insertion technology. Currently set up as a 4-station unit, the 6402 can turn flat stacks of two-page letter, reply (even legal), and BRM into a sealed package at nearly 1,500 per hour. Max speed is 3,000 envelopes per hour, depending on number and configuration of inserts.



What can we say? This old Hasler 200 may not meet today's "Red-Meter" postal specs, but perfectly sealing envelopes with it sure beats licking thousands of envelopes at a time.

Here, we invite you to burn with envy over our stamp-affixer, and added to our lineup in mid- October 2008. Many a volunteer has been spared an early bout of arthritis by utilizing this handy machine, which sits atop the venerable but otherwise-outdated Hasler 350 red-meter/sealer. Come visit our shop, and perhaps we'll let you look at it!



Finally, last but not least, the infamous "wall of Riso's" – reminiscent of the Iraqi "Highway of death" – and equally as destructive to those who would stray into the path of one of Direct Mail's "shock-and-awe" electoral bombing campaigns. These Riso 3750's are capable of producing 28,000 prints per hour in 7

available colors. **DM&C: CONTENT, DESIGN, PRODUCTION, & POSTAL SERVICES.**



Invoice No.

473

INVOICE**Customer**

Name Assembly Action Fund
 Address PO Box 3662
 City Lewistown State MT ZIP 59457
 Phone _____

Date 6/10/2010
 Order No. _____
 Rep _____

Qty	Description	Unit Price	TOTAL
1500	HD 3 Welch Main Street Slick	\$0.43	\$645.00
1000	HD 4 Barnhart Main Street Slick	\$0.43	\$430.00
2000	HD 57 Bonogofsky Main Street Slick	\$0.43	\$860.00
1,500	HD 71 Gilman Main Street Slick	\$0.43	\$645.00
2,000	HD 69 Wasburn Main Street Slick	\$0.23	\$460.00
1,503	HD 84 Dooling Main Street Slick	\$0.43	\$646.29
2,143	SD 31 Arthun Main Street Slick	\$0.43	\$921.49
1,000	SD 35 Moran Main Street Slick	\$0.43	\$430.00
1300	HD 57 Bonogofsky Abortion Slick	\$0.43	\$559.00
1,500	HD 61 Esp Abortion Slick	\$0.43	\$645.00
1,129	HD 68 Washburn Abortion Slick	\$0.43	\$485.47
1499	HD 68 Flynn Main Street Slick	\$0.43	\$644.57
1,282	HD 84 Barnhart Slick- first class postage & two colors	\$0.54	\$692.28

Payment Details

- _____
 Check

Name _____

Check #: _____

SubTotal	\$8,064.10
Discount/Contribution	_____
Taxes State	_____
TOTAL	\$8,064.10

Office Use Only

also purchased \$ 3,524 in Radio

Thank you for your business!

Direct Mail & Communications
P.O. Box 11695
Bozeman MT 59718
United States

Client Billing

Invoice #:	Kennedy
Date:	June 5, 2010
Amount Due USD:	\$557.50

Item	Description	Unit Cost (\$)	Quantity	Price (\$)
Print	Intro Letters to Abs mailed 5/10	0.50	2019	1,009.50
Print	Intro Letter to PPV	0.50	597	298.50
Print	additional 3X4 photos	0.05	1110	55.50
Print	Issue Letter	0.45	1075	483.75
Print	Wife Letter	0.65	1099	714.35
Print	Final Letter	0.45	1102	495.90
Subtotal:				3,057.50
Total:				3,057.50
Amount Paid:				-2,500.00
Balance Due USD:				\$557.50



ALLEGRA PRINT & IMAGING
 2620 Overland Ave.
 Billings, MT 59102
 406-248-6811 • Fax 406-248-6135

INVOICE

No. **80910**

Date 5/14/10

Customer P.O. No.

Dan Kennedy

QUANTITY	DESCRIPTION	AMOUNT
1,959	Mailer, 11 x 12 White 80# Vector Text Gloss, folded to 11 x 6, printed 4 colors front in Process ink, 4 colors back in Process ink	1,103.72
	Cutting	
1,959	Half fold	
	List Processing/NCOA/Dedupe	
1,959	Inkjet Addressing	
Sales Rep: Al Taken by: al Account Type: COD Allegra is your source for promotional products. Search the world's largest database of promotional items at www.allegranetwork.com/billings by clicking on the "Promote Your Brand" link.		SUB 1,103.72 TAX 0.00 SHIPPING 470.16 TOTAL 1,573.88

Western Tradition Partnership

Confidential Overview

FOR REVIEW

Prepared for XXXXXXXXXXXX
MONTH 1, 2009

Grassroots Membership Development Proposal

Western Tradition Partnership is a 501(c)(4) grassroots lobbying organization dedicated to fighting environmental extremism and promoting responsible development and management of natural resources in the Rocky Mountain West and across the United States.

WTP is the only single-purpose organization of its kind. Founded by committed activists, we have the kind of credibility on these issues that only an independent grassroots group can earn. In addition, the Partnership also works alongside our sister 501(c)(3) Western Tradition Institute, as well as an energy-oriented 527, and will form state-level PACs and SDCs as needed.

Our goals are achieved through hard-hitting issue advocacy including legislative lobbying, electioneering, grassroots mobilization and public education campaigns.

Western Tradition Partnership is committed to advancing a voluntary, free-market approach to partnering with the business community to promote beneficial environmental stewardship. This is the only *economically* sustainable way to protect and preserve our environment. We put the lie to the fallacy that free people will choose to poison their own water, air, and land.

WTP's message is simple as it is effective: Politicians who pursue a radical environmental agenda without regard for the rights and needs of their constituents must either change their minds, or voters will opt for candidates who more closely match their values. Once elected, officeholders who credit their success up to hard-core "green" activist groups are unlikely prospects for even the most effective and well-funded Capitol lobbyists.

Our effectiveness hinges on the fact that the majority of Americans agree with our objectives, and will influence policy and policymakers out of self interest on economic and environmental issues; e.g., lobbying or voting against those who would increase their electric bill.

In fact, polls consistently show that the majority of Americans believe that their fellow citizens and businesspeople can be responsible stewards of the earth *without* excessive, costly, and often environment-damaging government intervention. Though they may agree with the intent, they realize they cannot afford the measures proposed by environmental extremists.

To the contrary, Americans overwhelmingly support responsible energy exploration and development, proper forest management (e.g., harvesting the pine bark beetle kill), wisely extracting other precious resources, and protecting private property and water rights.

That's why it should be no surprise that balanced, free-market solutions continue to gather support from the grassroots – because they will help, not hurt, families, jobs and the American economy – and they must be advanced in the face of anti-business, environmentalist hysteria.

Lower energy prices, jobs, and school and infrastructure funding are presented by WTP primarily as simple kitchen table issues; WTP has shown that citizens can be mobilized to action by tying responsible development to positive personal and economic outcomes.

Environmental issues like the so-called Global Warming crisis are clearly seen by the Left as the ultimate Trojan Horse opportunity for full-scale socialization of our free-market system -- including the destruction of property rights, an inefficient command economy, and the subjugation of individual rights to the collective.

The fight must be taken to their doorstep now, before devastating, game-changing public policy can be implemented to tilt the playing field against free-market interests for the long-term.

State-level issues including natural resource development and oil & gas rule changes have proven WTP's approach resonates with the grassroots, but the present threat of federal Cap and Trade legislation is exactly the type of fight this organization was built for.

The high stakes for business, consumers and even the poor make Cap and Trade a perfect storm that WTP can ride to national prominence and electoral potency while the issue of massive "wilderness" designation, usurpation of water rights, etc. can help mobilize the grassroots.

A massive grassroots lobbying and membership campaign in 2009, followed by an issue-based election year campaign targeting on these issues in 2010 will establish WTP as the foremost single-issue organization when it comes to effectively opposing radical environmentalism.

Radical environmentalists have worked to establish their false premises in the national consciousness, with a significant degree of success. Moreover, today, it's "hip to be green."

However, public relations success is quite different from policy and electoral success as we have seen numerous times. Nearly all the mainstream media outlets are liberal, but that doesn't always translate into political success for liberal politicians.

The problem on the pro-business side -- especially when it comes to so-called "green" issues -- is we've never taken the radical environmentalists head-on.

That's why WTP is determined to retake the offensive on environmental issues, and create a large enough opening for political leaders to oppose schemes like Global Warming and Cap & Trade, or at least allow more timid politicians who lean toward rational, pro-business policy on these issues to be less inclined to kowtow to the radical "green" agenda.

In its first 24 months, this organization has made significant progress, including:

- Recognized exempt by IRS under section 501(c)4 [and the Institute as 501(c)3]
- Raised significant funds for issue lobbying, plus compensating Major Purpose funding
- Developed a coherent agenda and message, delivered via a cross-media approach
- Conducted a successful Candidate Survey program with electoral success in two states
- Built relationships with a stable of state-level elected officials willing to help
- Limited but significant success in grassroots legislative lobbying
- Initiated and won a Federal free speech Lawsuit when our lobbying rights were curtailed

Moving forward with our 2010 candidate survey program, WTP is prime for funding.

For decades, Montana has been a beachhead in enemy territory for radical environmentalists and has been slowly losing responsible development advocates in the legislature for the past few electoral cycles. This past year Western Tradition Partnership fought back, targeting legislative and key County races in two states -- with great success -- in a year where anti-development Democrats swept into office nationwide.

Our ambitious Candidate survey program -- the backbone of our election-year lobbying program -- was designed to mobilize the voters on candidates' positions on natural resource policy.

Surveys were first sent to candidates in targeted primaries, then in the General Election to introduce our agenda and find out which candidates sided with us on our responsible development agenda.

This information was combined with what is known internally as our "Watermelon Index", which examines voting patterns to identify who is "green on the outside and red in the inside".

In the final weeks of the election, letters and glossy postcards were sent to tens of thousands of likely voters and issue-ID lists in our targeted races where there was a clear difference on our issues. In total, we implemented our full survey program in the general election, and mobilized voters in 19 carefully selected legislative districts with information about how their candidates responded. A "No Global Warming Penalty" pledge was part of this effort.

The pro-development candidate prevailed in 14 of those 19 districts and arrested Governor Brian Schweitzer's plans to take total control of the 2009 Legislative resource agenda. With WTP's support on these issues, the pro-development GOP took the Senate majority by four seats, also taking one critical County Commissioner race where our aligned candidate prevailed.

Overall, a total of 28 Montana Senators- and Representatives-to-be rode to office in 100% support of WTP's responsible development agenda. That translated into 80% of our survey agenda solutions being drafted into proposed legislation in the 2009 session.

Following the election, Montana's former Speaker of the House and current Republican leader Scott Sales (R-Gallatin) said,

"...without [Western Tradition Partnership's] uncompromising issue-advocacy and hard-hitting tactics, the political environment in Montana would likely not be as favorable as it is now."

In Colorado, our main focus was in targeted County Commissioner races across the resource-rich Western Slope. This included hotly contested Garfield County, which as the epicenter of the 21 trillion cubic foot natural gas discovery, accounts for 40% of the drilling permits in the state. Garfield saw a horde of radical environmentalist third-party organizations align against the Republican incumbent and challenger for the two seats at play.

With absentee voting approaching nearly half of all ballots cast over recent cycles, WTP opted for a late-stage strategy, spending nearly \$70,000 primarily on targeted direct mail and phones -- with the bulk of spending on Garfield.

Both pro-development candidates in Garfield lost the absentee vote but overcame the deficit with polling place voters, vindicating WTP's intense poll-voter strategy. On Election Day, WTP-

aligned candidates prevailed in 7 of 9 targeted Colorado races. State legislative and Congressional candidates will follow.

Finally for Colorado, WTP engaged at the U.S Senate level, lobbying Mark Udall over his opposition to U.S. domestic energy production, an unpopular position according to all available polling. While that issue did not win the day, it generated a number of postcards and constituent contacts which validated the organization's assessment and framing of the issue, and paved the way for similar efforts in the future at the highest levels of Federal office.

As we look ahead, it is critical we concentrate on advancing pro-resource development legislation, defeat attempts to socialize or control private and so-called public property (as with usurpation of development rights, or federalizing of water through H.R. 2421), and to kill Cap & Trade in whatever form it takes.

In 2010, WTP also intends to sponsor or co-sponsor a Ballot Initiative.

Western Tradition Partnership is set up to defend against the inevitable – and unpopular – natural resource power grabs by the Federal Government while broadening the scope of our program, all of which requires additional funding resources.

Our 2009 Grassroots growth program primarily consists of a three-prong approach:

1) Direct marketing

- a. Direct Mail – WTP has utilized direct mail to raise money, grow its list of identified supporters, and build the organization's reach – all while raising the profile of our issues among the grassroots. We have moved from issues in play during the state legislative season in MT and CO (which adjourn in April and May, respectively) to a national program primarily based upon opposition to Cap & Trade, but also regionally battling the several massive "wilderness" bills in Congress.
- b. Email and Web Marketing – WTP has developed a cutting-edge email and "Web 2.0" marketing program designed to drive prospects to signing up for our email lists via a single-issue purpose-built landing page with an E-Petition. Our conversion rates on state issues have been strong; the Cap and Trade E-Petition program has likewise been a success. Go to www.noca.org or www.hydroisrenewable.com for an earlier example.
- c. Employee Grassroots Membership and "Paycheck Stuffer" Program – Please see memo enclosed herein. This program is modeled after systems developed by credit unions to engage and sign up employees in their own self-interest; WTP will engage with industries threatened by environmental policy (e.g., transportation, mining, oil & gas, etc.) as well as employees of other types of business whose management are willing to arrange for WTP to use employee meetings and/or "paycheck stuffers" to recruit grassroots membership.

2) Earned media and PR

- a. WTP plans to use an Earned Media strategy to help drive its message to the general public via radio and television talk show interviews, and public speaking/forum events. WTP's Jacob Leis recently made a national appearance on talk radio promoting our Cap & Trade opposition campaign and in driving traffic to our Cap & Trade website via dozens of radio affiliates. The organization also plans to grow its relationships with radio talk show hosts and other assets in the media, to publish op-eds, and to develop other earned media.
- 3) Building relationships with business and donor base
- a. Tour program – WTP has tested a Major Donor Acquisition Program: One-on-one meetings with high-propensity donors using a PowerPoint presentation. This program has proven successful on a limited basis (as far as dollars raised per meeting and conversion rate); provided we have the funding to continue to invest in this program, we expect a massive increase in new high dollar donors from our battle against Cap and Trade.
 - b. Public Relations program – WTP is scheduling presentations before groups of business executives, public policy organizations, and other influencers.

WTP is building regional and national membership through its broader direct mail and online fundraising programs. However, our efforts will be focused upon building membership in those specific states where we have identified and targeted politicians whose positions on Federal land grabs, Cap and Trade, and other relevant legislation, make them vulnerable to public pressure.

We estimate that a goal of building membership and issue-ID lists amounting to approximately 10% of likely voters in a given state or district is ideal for influencing candidates' positions and the greater electorate on these issues.

Western Tradition Partnership was built for such a time as this, and we have shown our ability to conceive, and execute a mission that is critical to building and/or regaining a conservative pro-business policy agenda. We occupy a unique position, being one of the only true conservative grassroots organizations niched entirely in the emerging environmental and natural resource issue mix.

We have tested and proven our Direct Mail and online membership, electoral lobbying, and legislative lobbying capabilities, on the state level. WTP is now a broad, self-sustaining organization with a growing grassroots base. We are building relationships by delivering valuable information and member benefits, while pursuing large-donor funding to grow through tackling broader major issues (e.g., Cap & Trade) on a regional and national scale.

The organization is therefore prime for funding at all levels, and we look forward to meeting with decision makers who are interested in advancing balanced policy solutions and making political progress at the state and federal level.

To Condit

Memorandum

To: WTP Staff

From: Christian Lefer, Director of Strategic Programming

Date: March 1, 2009, Most Recent Revision: April 5, 2009

Regarding: Meeting Scheduling Overview

Senator Brophy,

I appreciate your openness to look at this. This is a winning idea that needs the initial support of a handful of people who realize the opportunity presented to us. Western Tradition Partnership (WTP) needs to achieve a critical mass and break out of the typical cycle of inefficiency of early programs in order to be effective in 2010.

Please see our proposal below. This memo is intended for:

- a) those who already comprehend the basic elements and importance of targeted grassroots mobilization and effective media advocacy by groups like WTP – especially in battling radical environmentalists; and
- b) those who recognize the effectiveness of WTP's targeted strategy and ability to implement effective, results-oriented action.

As you can see in this memo, if we can meet with enough people and explain WTP's program to them, we will be able to raise the funding necessary to raise the immediate funds required to get our spokesmen on the road with new donor data, and WTP will be able to fund our proven programs long-term to combat and win the battles being waged by the radical environmentalists against job creation and business development across the West.

To enter the 2010 election season aggressively, we must raise \$260,000 by the end of the year.

If you would be willing to recommend us to a small group of people, this would go a very long way in making sure we achieve critical mass to grow at a rate to position WTP to make a major difference in 2010.

Should you have questions or want to discuss this proposal, please give me a call anytime.

Jacob Leis

Director of Communications
Western Tradition Partnership

Survey - Colored paper

HD57 Dan Kennedy

MASTER CANDIDATE FOLDER:

- Signature
- Letterhead
- Corner card (#10)
- #9

PRINTED:

BM Letterhead Blue # 4000

BM Letterhead Red # 1200

M Corner card (#10) Blue 4000

BM Corner card (#10) Red 1200 window

BM #9 # 2000

Primary Mail Budget	Tier 1 Voters				
	House Ct.	PerPiece	House \$	COPY TO CAND	COPY APPROVED
Intro Letter with Survey	597 1209	0.5	\$604.50		
Wife Letter	1099	0.65	\$714.35		
Issue-ID'd voters (R,T,L,G)	1075	0.45	\$483.75		
GUN	214				
LIFE	2011				
TAX	217				
TAX/RTW	145				
Final	1209	0.45	\$544.05		
Totals	4592		\$2,346.65		

Absentee Chase	T1 Abs vtrs=		T2 Abs. Vot=		
	doing?	to whom?	House Ct.	PerPiece	
Intro				0.5	\$-
Wife				0.65	\$-
Postcard				0.38	\$-
Total Abs:					\$-

864

TOTAL	\$2,346.65	Deposit:	\$1,173.33
--------------	------------	----------	------------

BMX 1900 Intro Letter - Done

MG 1900 Survey Done

Wife letter 1+3 only (150-160) (1090) P.5

Dan

(406) 259-5900 wk

628-1360 hm

~~406~~

cell

~~608~~ 839-7117

4/27 LUM 4 sent e-mail

~~0000~~ 9/10 THAT2 ABS

5/25 PPV ready to stamp 584 pcs ✓ Sdlb

0/2 Issue letters 219 ✓ Sdlb

Denise Kennedy

Dear Friend-

My name is Denise Kennedy, and my husband Dan is running for the State Legislature in the June 8 Republican Primary.

As a busy mom, I know how difficult it is sometimes to feel like you have a good grasp on what your candidates running for office are about.

I also know how easy it is to feel sometimes like your voice and your vote don't matter.

But the good news is some people still get into politics for the right reasons -- not to "play" the games in Helena -- but to actually represent our values as Montanans.

And I know if elected, one of the good guys in Helena that we could always count on, would be my husband Dan.

Rather than just repeat some of the slick campaign talking points so popular nowadays among some politicians, I'd like to introduce you to the Daniel Kennedy I've been in love with for more than 20 years.

Our story began, believe it or not, at Dan's first business, a used furniture shop called D+D Used Furniture.

A girlfriend and I had been out looking for some things for the apartment we'd just moved into. By chance we walked into Dan's store.

As it turned out, Dan and my roommate had gone to the same High School and knew each other well.

From that first meeting on, the butterflies have never ceased.

Dan found out from my friend where I worked and paid me a visit there later that evening.

After that night, I knew we would end up together.

We've now been married 20 years, and Dan has moved onto bigger and better things in his career.

In fact, he's opened and grown five local companies since that time, and owns Ashley Furniture HomeStore in Billings, a branch of the largest privately held furniture company in the world.

Today, we're blessed with two beautiful children - our 15 year old daughter, Bailey and our son Logan, who is 9.

As you know, life is never exactly a fairytale. Even the best relationships take work and faith.

But, that's exactly what Dan has been these last 20 years -- an incredibly hard worker, able provider, steadfast partner and man of faith.

As dedicated as he is to family, Dan's efforts have always extended beyond our household.

Like many good men in our state, my husband cares for his family and his community.

At our church, Dan volunteers with the upward Basketball program and helps with various children's ministries.

In our 4-H club, Dan teaches archery while I help out with the Horse project.

Ever since I've known Dan, I can say he's always been concerned about future generations.

I'm sure that's one reason why Dan is strongly Pro-Life.

Also, as a business owner, Dan understands the pain high taxes and burdensome regulations can cause for families.

In fact, it bothers him that so many caring fathers and husbands are forced to spend more and more time away from their families -- just to keep up with the ever growing tax burden.

In deciding to run for the State Legislature, Dan understood the changes it would mean in our family.

But, like all decisions that affect our family, he came to me to talk about it.

Together, we decided -- especially because this election is so pivotal for our state & country -- running for state Representative was something he should go through with.

I know that with the support of our neighbors, Dan will be the guy that can change things for the better in Helena.

His values and convictions as a father, husband and Montanan make me sure of it.

Thanks for your time & God Bless.

Sincerely,
Debbie Kennedy

P.S. My husband, Dan Kennedy, is running for the Montana State House District 57.

As his loving wife of 26 years, I can tell you he's just the type of common sense, hard working, fiscally conservative leader we need -- more desperately than ever in Helena.

Join our family in supporting Dan's efforts to change things for the better in Helena.

Please vote for Dan in the June 8 Republican Primary.