

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Deschamps v. Montana League of Rural Voters  No. COPP 2015-CFP-004	Dismissal of Complaint
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On April 30, 2015 Will Deschamps (on behalf of the Montana Republican Party) filed a complaint against the Montana League of Rural Voters (MLRV), a Montana Political Action Committee, alleging campaign practice violations.

**Introduction**

Deschamps' complaint is the second complaint against MLRV dealing with its actions in certain 2014 Montana elections. On December 8, 2014, Steve Gibson, a resident of East Helena, filed a comparable complaint against MLRV. On May 13, 2015, The Office of the Commissioner of Political Practices (COPP) issued its findings on the *Gibson* complaint determining sufficient facts existed to show that MLRV engaged in campaign practice violations. *Gibson v. MLRV*, No. COPP-2014-CFP-064. On December 3, 2015 the COPP settled the

sufficiency finding with MLRV, resulting a \$2,700 fine payment by MLRV to the State of Montana.<sup>1</sup>

## **Discussion**

The Complaint is lengthy (17 pages with 15 multi-page exhibits) and came after an earlier Gibson complaint on the same issues. The Complaint is examined with the *Gibson* Complaint and Decision in mind.

### 1. Issues Resolved by the *Gibson* Decision

The Complaint alleges that MLRV failed to disclose contributors, contributions and the details of expenses related to its activity in the 2014 Montana elections.<sup>2</sup> These same issues were discussed thoroughly and resolved through the *Gibson* Decision and Settlement Agreement.<sup>3</sup>

The *Gibson* Settlement Agreement resolves MLRV's failure: "to properly itemize its support of or opposition to particular candidates" (§ 4); "to timely register" (§9); "to follow the proper reporting schedule" (§11); to "list candidates in its statement of organization" (§10); and to "properly disclose contributions" (§12). The Commissioner determines that there are no reporting and disclosure violations in the Complaint that were not covered in the *Gibson* Decision. In turn the Gibson settlement "fully and finally resolves all of the issues as set forth in the Decision." (§14). The 2014 election reporting and disclosure obligations allegations against MLRV are resolved by the Gibson

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<sup>1</sup> Please see the Settlement Agreement posted on the COPP website, along with the Decision at *Gibson v. MLRV*, COPP-2014-CFP-064.

<sup>2</sup> These are listed as items 1 through 4 on page 2 of the Complaint.

<sup>3</sup> See Footnote 1.

settlement. The Commissioner hereby dismisses these portions of the Complaint.

## 2. Coordination

The Complaint alleges coordination between MLRV and certain candidates. A reading of the Complaint and its exhibits shows that the entire basis of the coordination claim, detailed by several examples, is that coordination lies through shared cross-entity association between individuals, accentuated by a shared physical location. The Complaint offers no actual evidence of coordination in the form of an activity jointly planned or carried out by the candidate and MLRV.

As to coordination, this Complaint presents the same “shared relationship” issue and approach that was asserted in *Dick/MDP v. Republican State Leadership Committee*, No. COPP-2012-CFP-038 and *Pennington v. Bullock*, No. COPP 2013-CFP-012. The *Dick* and *Pennington* Decisions rejected “any basis under Montana law for assumed coordination based solely on a shared vendor or shared relationship.” The reasons for this determination were discussed at length in the *Dick* and *Pennington* Decisions. The reasoning of the *Dick* and *Pennington* Decisions is incorporated herein by reference and applied to dismiss the coordination allegations of this Complaint.

## 3. Disclosure of Contributors

Any issue of MLRV’s failure to disclose contributors was decided and settled by *Gibson*. The Commissioner notes that as part of *Gibson* settlement, the MLRV was required to report and disclose its contributors. This disclosure

was made and was a factor in determining the amount of settlement. The disclosure and reporting further established that contributions to the MLRV PAC funded the expenditures it reported.

That Commissioner notes that, prior to the 2014 election cycle, the COPP engaged in minimal discussion of the overall reporting and disclosure requirements for entities making independent expenditures in Montana elections.<sup>4</sup> Before the bevy of complaints at the end of the 2014 campaign cycle, independent expenditure discussion had focused on whether or not a particular third party election expense advocated for or against a candidate (“express advocacy”) such that it became a reportable election expense.<sup>5</sup>

Independent expenditures are third party election expenditures that are not coordinated with the candidate.<sup>6</sup> Independent expenditures in Montana elections increased following the 2010 *Citizens United* decision by the US Supreme Court.<sup>7</sup> Independent expenditures are generally carried out in the form of an election communication (in Candidate Gibson’s case, two flyers) issued by a third party (MLRV), attacking a candidate (Gibson).

The 2014 Montana election cycle involved significant independent expenditure activity by multiple entities in multiple elections. The entities making the independent expenditures, as shown by this Decision, did so within a reporting and disclosure culture that lacked the adherence to transparency

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<sup>4</sup> The COPP has discussed narrow issues regarding independent expenditures in Montana elections as early as 2003. *See Haines v. Bianco*, (March 2003, Commissioner Vaughey).

<sup>5</sup> *See Bonogofsky v. NGOA*, COPP-2010-CFP-008.

<sup>6</sup> Independent expenditures are those “not made with, at the request or suggestion of, or the prior consent of a candidate...” 44.10.323(3) ARM.

<sup>7</sup> *Citizens United v. Fed. Election Comm.* 130 S. Ct. 876 (2010).

that is seen in reporting and disclosure by the campaigns of the candidates themselves. There were seven complaints filed over 2014 independent expenditure activity, including the complaint in this Matter.<sup>8</sup>

As explained in this Decision, entities involved in independent expenditures in Montana's 2016 election cycle will need to adapt such that they fully and timely report, disclose and itemize independent expenditures, with those independent expenditures listed on a candidate-by-candidate basis. This disclosure, timely made and itemized by candidate, is what Montana law requires and it is what the press, public and the opposing candidate need if there is to be transparency in election expenditures. This failure to disclose allegation is dismissed.

#### 4. Notice Laws Issues Are Dismissed

Montana law requires that any entity producing an attack flyer provide notice to the affected candidate of printed material "intended for public distribution in the ten days prior to an election..." §13-35-402(1) MCA. When the printed material is "disseminated by direct mail" a copy must be provided to the affected candidate before or "on the date of the postmark". (§13-35-402(3)(b) MCA). The Complaint alludes to such a violation but lacks specificity for the Commissioner to apply the law to any particular document. This portion of the Complaint, to any degree it was intended to be plead, is dismissed.

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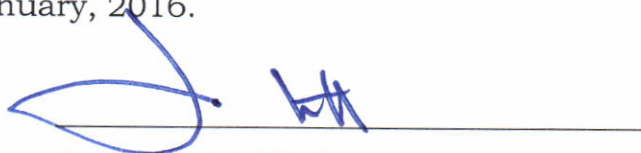
<sup>8</sup> The six additional complaints concerning 2014 independent expenditure activity are: *Shellnutt v. Planned Parenthood*, COPP-2014-CFP-058; *Perea v. MDP*, COPP-2014-CFP-055; *Buttrey v. MDP*, COPP-2014-CFP-050; *Kary v. MDP*, COPP-2014-CFP-056; *Gibson v. MDP*, COPP-2014-CFP-062; and *Gibson v. MLRV*, COPP-2014-CFP-064.

## Overall Dismissal

The Complaint is dismissed in its entirety. In making this dismissal the Commissioner notes that the result would have been different had not the *Gibson* Decision and Settlement already been made and accomplished. The Complainant, of course, would not have known of the results in *Gibson* at the time this Complaint was filed.

The Commissioner notes that third party independent expenditure efforts in the 2012 and 2014 elections were generally carried out with some failure to meet Montana's campaign practice standards. This is somewhat understandable, given the expanded independent expenditure role allowed corporations in Montana's elections following the *Citizens United* Decision. The COPP expects improved and conforming independent expenditure election activity by corporations and political committees in 2016 elections.

DATED this 27<sup>th</sup> day of January, 2016.



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