

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

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In the Matter of the Complaint	)	<b>SUMMARY OF FACTS</b>
Against Celebrate Billings	)	<b>AND</b>
	)	<b>STATEMENT OF FINDINGS</b>

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Janet Green filed a complaint alleging violations of Montana's campaign finance laws on January 8, 2008, and amended the complaint on January 29, 2008. The complaint alleges that Celebrate Billings failed to properly file as an incidental committee, and report certain contributions and expenditures under Montana's Campaign Finance and Practices Act made relating to a 2004 Public Safety Mill Levy, 2006 Cobb Field Bond Issue, 2006 Fight to Repeal Public Safety Mill Levy, and a 2007 School District 2 Public School Mill Levy.

**I. SUMMARY OF FACTS**

1. Celebrate Billings was, from 2002 through 2007, a community organization comprised of four entities: The Billings Gazette, St. Vincent HealthCare, the Billings Clinic, and Montana State University – Billings Foundation<sup>1</sup> (MSU-B).
2. The mission statement of Celebrate Billings reads:

“The Celebrate Billings Partners are committed to establishing a leadership group that provides our community with one voice, common goals and a platform to successfully pursue regional excellence in the areas of economic development, civic climate and education.”
3. Each of the four entities paid \$75,000 in 2006 and again in 2007 for total sponsorship payments of \$300,000 in each year.<sup>2</sup>
4. Members were presented a package of benefits for their sponsorship of Celebrate Billings, breaking down the estimated benefit versus cost to the member.
5. Membership benefits in 2006 were advertised to potential sponsors for the following package of activities, with a total value of \$221,585, in exchange for an investment, per member, of \$75,000:

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<sup>1</sup> From the Foundation website, “Established in 1968, the MSU Billings Foundation is an independent, non-profit organization under Internal Revenue Service code 501(c)(3).”

<sup>2</sup> Payments were made in prior years as well, but this decision will address only the 2006 and 2007 payments.

- a. Identify and prioritize community needs and set action plans and timetable for addressing each; print quarterly tab discussing progress in the areas of Downtown development, Economic drivers, and Workforce training; establish and execute on action plans to address the three priorities as identified through the Billings 2020 process - \$10,000
  - b. Complete neighborhood-zoning regulations, present to community and City Planning Department for comment, revise with feedback, submit for consideration by the council - \$75,000
  - c. Hold four leadership breakfasts and develop and execute a Quality of Life Community Survey - \$20,000
  - d. With citizen input, develop and communicate a community initiative agenda for the future - \$5,000
  - e. Lead 2<sup>nd</sup> Annual Partners in Education salute honoring a business partnership a business volunteer, and Billings High School's 2006 Valedictorians - \$5,000
  - f. Lead 4<sup>th</sup> Annual Principal for a Day Event - \$2,500
  - g. Provide updates on Celebrate Billings initiatives and offer an interactive platform for community members to share their feedback - \$5,000
  - h. Lead 5<sup>th</sup> Annual 20 Under Twenty Award Program - \$6,000
  - i. Engage young people in schools in Celebrate Billings activities through journalism, events, and requests for submissions - \$2,500
  - j. 6 Full Page, Full Color Ads - \$30,535
  - k. 12 Full Page, Full Color Ads in Western Business - \$13,745
  - l. Logo in all Celebrate Billings Ads, Banners, Website, and Promotional Materials - \$46,305
6. Minutes from the August 23, 2006, Celebrate Billings meeting show the group discussed the Ballpark Bond Issue and the Fight to Repeal Public Safety Mill Levy. It was determined that "Celebrate Billings will support both issues with a series of ads for each and possibly a four page insert which could be a voters (*sic*) guide."
  7. Membership benefits in 2007 were advertised to potential sponsors for the following package of activities, with a total value of \$251,114, in exchange for an investment, per member, of \$75,000:

- a. Develop media/public campaign to generate public support and passage of the school mill levies (elementary school and high school levies.); actively campaign for passage of School District 2 mill levy - \$25,000
- b. Hold a public presentation by Nelessen on next steps and why this process is critical to our community - \$5,000
- c. Hold four leadership breakfasts (one each quarter focusing on Billings 2020, Education, Community Development, and Leadership) - \$20,000
- d. Lead efforts to push for the city, county and state to develop the Shiloh Road corridor and work with legislators and other key individuals for tax reform - \$10,000
- e. Actively support a Safe Routes to School Initiative and invest in bike path infrastructure - \$5,000
- f. Explore a Community Health Assessment and identify priority issues for further action - \$5,000
- g. Leadership Lab Initiative (develop a leadership training program which expands the capabilities of current leaders and develop ability of future leaders) - \$15,000
- h. Help fund a communications consultant to aid School District 2 in connecting with people in the greater Billings area - \$15,000
- i. Lead 3<sup>rd</sup> Annual Partners in Education Salute honoring a business partnership, a business volunteer, and Billings High Schools 2007 Valedictorians - \$10,000
- j. Lead 5<sup>th</sup> Annual Educator for a Day event - \$10,000
- k. Provide updates on Celebrate Billings initiatives and offer an alternative platform for community members to share their feedback (celebratebillings.com) - \$5,000
- l. Lead 6<sup>th</sup> Annual 20-Under-Twenty Award Program - \$6,000
- m. Engage young people in schools in Celebrate Billings activities through journalism, events, and requests for submissions (newspapers in the classroom) - \$25,000
- n. Full Color Ads - \$32,062
- o. Full Color Ads in Billings Business - \$14,432
- p. Celebrate Billings Ads, Banners, Website and Promotional Materials \$48,620

8. On November 12, 2002, Celebrate Billings registered as an incidental political committee with the Commissioner's office and filed a closing report indicating it had spent \$8,254.32 to support a 2002 Fluoridation Ballot Issue. Celebrate Billings' 2002 filings with the Commissioner's office did not list contributors or the dollar amounts contributed by individual contributors. Scott Patrick was the treasurer for Celebrate Billings in 2002.
9. Celebrate Billings ran newspaper advertisements supporting the 2004 Public Safety Mill Levy, 2006 Cobb Field Bond Issue, and opposing the 2006 Referendum to Repeal Public Safety Mill Levy.
10. Celebrate Billings did not register as an incidental committee or report its 2004 expenditures supporting the 2004 Public Safety Mill Levy until January 14, 2008. Celebrate Billings reported making expenditures of \$12,322.04 to support the 2004 Public Safety Levy in its January 14, 2008, closing report. Celebrate Billings' 2008 filings for its 2004 ballot issue expenditures did not list contributors or the dollar amounts contributed by individual contributors. Scott Patrick, the Billings Gazette's Controller, was the treasurer for Celebrate Billings in the 2008 filings.
11. Celebrate Billings did not register as an incidental committee; did not report its 2006 expenditures supporting the 2006 Cobb Field Bond Issue; and did not report its expenditures opposing the 2006 Referendum to Repeal the Public Safety Levy until January 14, 2008. Celebrate Billings reported making expenditures of \$10,651.28 to support the 2006 Cobb Field Bond Issue and \$2,051.28 to oppose repeal of the Public Safety Levy in its January 14, 2008, closing reports. Celebrate Billings' 2008 filings for its 2006 ballot issue expenditures did not list contributors or the dollar amounts contributed by individual contributors. Scott Patrick, the Billings Gazette's Controller, was the treasurer for Celebrate Billings in the 2008 filings.
12. In 2007 Celebrate Billings spent \$22,343.12 to support the 2007 School District 2 Public School Mill Levy.
13. Celebrate Billings did not register as an incidental committee or file its final closing report regarding its 2007 expenditures supporting the 2007 School District Mill Levy until September 13, 2007. Celebrate Billings reported making expenditures of \$22,344.00 to support the 2007 School Levy. Celebrate Billings incorrectly listed the Billings Gazette as the sole contributor of the \$22,344.00 spent on advertisements supporting the School Levy. Celebrate Billings did not report earmarked contributions from St. Vincent Healthcare, the Billings Clinic, and MSU-B Foundation. Scott Patrick, the Billings Gazette's Controller, was the treasurer for Celebrate Billings in the 2007 filings.
14. The Billings Gazette, St. Vincent HealthCare, the Billings Clinic, and MSU-B Foundation did not register as incidental committees or report their respective contributions/expenditures supporting the 2007 School Levy.

15. Celebrate Billings responded to the complaint on February 5, 2008. Significant in the response was:
  - a. An admission of failure to file as an incidental committee;
  - b. An admission of failure to file reports related to each of the above ballot issues; and
  - c. Qualification that any potential violation of statute was entirely unintentional and a result of "innocent inadvertence."
16. Celebrate Billings made its records available to Commissioner's office upon request.

## II. THE STATUTE OF LIMITATIONS ISSUE

Section 13-37-130, MCA, imposes the following statute of limitations for civil penalty actions that may be filed under §13-37-128, MCA:

**13-37-130. Limitation of action.** An action may not be brought under 13-37-128 and 13-37-129 more than 4 years after the occurrence of the facts that give rise to the action. No more than one judgment against a particular defendant may be had on a single state of facts. The civil action created in 13-37-128 and 13-37-129 is the exclusive remedy for violation of the contribution, expenditure, and reporting provisions of this chapter...

Section 13-37-130, MCA, was interpreted and applied in the August 7, 2002, decision in *Griffin v. Mont-PIRG, et al.*, pp. 3-9 (*Mont-PIRG*). I concur in former Commissioner Linda Vaughey's interpretation of §13-37-130, MCA, in *Mont-PIRG*. Commissioner Vaughey duly noted that Montana's commitment to the full disclosure of campaign contributions and expenditures requires both timely and accurate reporting of such transactions. (*Mont-PIRG* p. 6.) If, for whatever reason, contributions or expenditures are not accurately reported in a timely report, there is a continuing duty to file an accurate accounting in an amended report or the next report. The duty to accurately report campaign contributions and expenditures does not end on the date of the election. The duty to fully and accurately report contributions and expenditures continues until a political committee ceases to function and files a closing report with the Commissioner's office. (*Mont-PIRG* p. 6.)

The failure of Celebrate Billings, the Billings Gazette, St. Vincent's Healthcare, the Billings Clinic, and MSU-B Foundation to timely register as incidental political committees and timely report expenditures supporting or opposing the 2004 Public Safety Mill Levy, the 2006 Cobb Field Bond Issue, and the 2006 Referendum to Repeal Public Safety Mill Levy for the most part, occurred more than four years prior to the issuance of this decision. Except for the closing

reports filed by Celebrate Billings on January 14, 2008, §13-37-130, MCA, precludes the filing of a civil penalty action under §13-37-128, MCA,<sup>1</sup> based on Celebrate Billings' failure to timely report its 2004 and 2006 ballot issue expenditures. Similarly, Celebrate Billings' 2002 ballot expenditures will not be addressed in this decision because Celebrate Billings' closing report for its 2002 expenditures occurred more than four years ago and more than four years before the Green complaints were filed in this matter.

It is unfortunate that this office's investigation of Green's complaints took 36 months. The Commissioner's office accepts responsibility for not addressing the serious allegations in Ms. Green's complaint sooner.<sup>2</sup> It must also be noted, however, that Green's complaints were filed in January of 2008, more than four years after Celebrate Billings made its 2002 expenditures and more than three years after Celebrate Billings' 2004 ballot issue expenditures.

Because of the statute of limitations issues in §13-37-130, MCA, this decision will only address;

- a. the reporting obligations applicable to Billings' September 13, 2007 closing report regarding 2007 School District 2 Levy contributions and expenditures;
- b. the reporting obligations applicable to Celebrate Billings' January 14, 2008 closing reports regarding 2004 and 2006 ballot issue contributions and expenditures; and
- c. the registration and reporting obligations applicable to the Billings Gazette, St. Vincent HealthCare, the Billings Clinic, and MSU-B Foundation based on Celebrate Billings' September 13, 2007 and January 14, 2008 closing reports.

### III. STATEMENT OF FINDINGS

#### A. ALLEGED REGISTRATION AND REPORTING VIOLATIONS

Green alleges Celebrate Billings committed numerous violations of applicable registration and reporting statutes and rules in making expenditures to support the 2007 School Levy. The following table lists the violations alleged by Green and indicates whether Celebrate Billings admits the violation and has corrected the violation.<sup>3</sup>

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<sup>1</sup> The legal action referred to in §13-37-128, MCA is a "civil action brought by the commissioner or a county attorney...for an amount up to \$500 or three times the amount of the unlawful contributions or expenditures, whichever is greater." Filing a complaint with the Commissioner's office does not toll the statute of limitations in §13-37-130, MCA.

<sup>2</sup> The Office of the Commissioner of Political Practices has experienced a significant increase in the number of campaign finance and practices complaints against local candidates and ballot issue committees in the past several years. The office has been involved in protracted litigation, the likes of which are unprecedented for this agency. There have been three different appointed Commissioners of Political Practices in the past 7 months.

<sup>3</sup> Celebrate Billings filed reports with the Commissioner's office in July 2008 – after the election was held.

Statute/Rule	Admission of violation?	Remedied?
§13-37-201, MCA; Campaign treasurer identified	Yes	Yes
§13-37-226, MCA; Time for filing reports	Yes	Yes
§13-37-205, MCA; Campaign depository identified	Yes	Yes
§13-37-207, MCA; Deposit of contributions - statement of campaign treasurer	Yes	Yes
§13-37-225, MCA; Reports of contributions and expenditures required	Yes	Yes
§13-37-228, MCA; Time period covered by reports	Yes	Yes
§13-37-229, MCA; Disclosure of contributions received	Yes	No
§13-37-230, MCA; Disclosure of expenditures made	Yes	Yes
§13-37-231, MCA; Reports to be certified as true and correct	Yes	Yes
40.10.411, Admin. R. Mont.; Statement of Organization as an incidental committee required prior to engaging in support of ballot issues	Yes	Yes
44.10.519, Admin R. Mont; Requires earmarked contributions reporting	No	No

Celebrate Billings filed all required reports for its 2004, 2006, and 2007 ballot issue expenditures, albeit late. Celebrate Billings' January 14, 2008 incidental committee registrations and closing reports, and Celebrate Billings' September 13, 2007 closing report regarding its School Levy expenditures, were filed less than four years ago and, may, if necessary be subject to a timely filed civil penalty action under §13-37-130, MCA,

Because MSU-B Foundation, St. Vincent's Healthcare, Billings Clinic, and the Gazette knew a portion of their membership fee for Celebrate Billings would be used to support a ballot issue, before they paid their membership fee, they were each required to register as incidental committees and report expenditures in connection with a local ballot issue pursuant to 44.10.411(5), ARM. Each of the four entity members failed to register and report.

### B. ALLEGED VIOLATION OF §13-37-209

Green also alleged violation of §13-37-209, MCA, which reads, in pertinent part:

**Inspection of records.** Accounts kept by the campaign treasurer of a candidate or political committee may be inspected under reasonable circumstances before, during, or after the election to which the accounts refer by the campaign treasurer of any opposing candidate or political committee in the same electoral district.

Pursuant to 44.10.327(2)(c), Admin. R. Mont., an incidental committee is a political committee which is not organized or maintained for the primary purpose of influencing elections but which may incidentally become a political committee by reason of making a contribution or expenditure to support or oppose a candidate and/or issue.

Celebrate Billings was acting as an incidental committee, as their primary organizational function was not to support or oppose a candidate or ballot issue, but rather to “to establishing a leadership group that provides our community with one voice, common goals and a platform to successfully pursue regional excellence in the areas of economic development, civic climate and education.” (Fact 2) Therefore, Celebrate Billings is subject to the requirements of §13-37-209, MCA. There is no indication in the complaint that Green asked to see the Celebrate Billings books, or that a request was denied. Rather, Green alleged Celebrate Billings failed to give full access to this office. No information presented to or unearthed by this office showed any indication of resistance to the requirements of the statute.

### *C. ALLEGED INCIDENTAL COMMITTEE REPORTING VIOLATIONS*

The Billings Gazette, St. Vincent HealthCare, the Billings Clinic, and MSU-B Foundation are clearly not organizations whose primary organizational function is to support or oppose ballot issues, but by virtue of giving a sponsorship of \$75,000 each, of which 6.6% (\$5,000 per entity) was earmarked to be spent on supporting a ballot issue, they were, pursuant to 44.10.327(2)(c), Admin. R. Mont., acting as incidental committees to support a ballot issue. Therefore, the four entities were required to register and report with this office accordingly.

In 2007 Celebrate Billings spent \$22,343.12 of the advertised \$25,000 to support the school mill levy, or 7.4% of the total investment money received from the four entities involved (Fact 9). This amount was solicited to support the school mill levy ballot issue. In that year’s membership solicitation, the very first item on the list of how the money would be spent was “[a]ctively campaign for passage of School District 2 mill levy - \$25,000” (Fact 7). This line item makes the portion of the money given by the four organizations for supporting the 2007 School Levy an earmarked contribution to the incidental committee, Celebrate Billings.<sup>4</sup> Celebrate Billings had an obligation to accurately report the name and address of each contributor and the amount of the

<sup>4</sup> Of note is that in 2006, the Celebrate Billings sponsorship package did not, at the time of solicitation, advertise that any ballot initiatives would be supported or opposed. That determination was made after the money had been deposited into the Celebrate Billings account (Fact 6).



earmarked contribution by each contributor in its September 13, 2007, and January 14, 2008, closing reports. *See Admin. R. Mont. 44.10.411(5).*

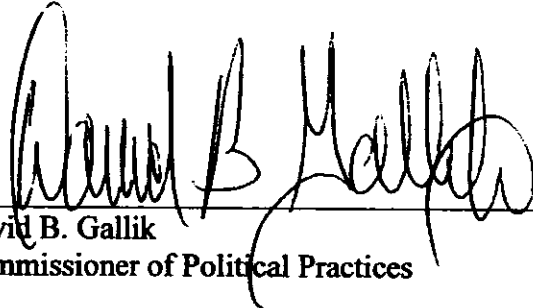
*D. ALLEGED CODE OF ETHICS VIOLATION*

Green alleges a violation of §2-2-121, MCA, rules of conduct for public officers and public employees. My predecessor, on January 15, 2008, advised Green of the separate procedure covering potential ethics violations, and advised her that if she wished to proceed with such an allegation, she should submit a separate ethics complaint pursuant to the requirements of §2-2-101, et seq. No such ethics complaint was received, and therefore the alleged ethics violation will not and cannot be addressed in this decision.

**CONCLUSION**

Based on the preceding Summary of Facts and Statement of Findings there is evidence to conclude that Celebrate Billings, in addition to the Billings Gazette, St. Vincent HealthCare, the Billings Clinic, and MSU-B Foundation, violated Montana's campaign finance and reporting laws, and that a civil penalty action under § 13-37-128, MCA, is warranted.

DATED this 10<sup>th</sup> day of June, 2011.

  
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David B. Gallik  
Commissioner of Political Practices