

COMMISSIONER OF  
POLITICAL PRACTICES

 COPY



STATE OF MONTANA

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[www.politicalpractices.mt.gov](http://www.politicalpractices.mt.gov)

November 14, 2008

Larry Grinde  
1313 North Last Chance Gulch  
Helena MT 59601

Subject: Complaint received October 29, 2008 against Patriot Majority West

I have carefully reviewed the complaint you recently filed. It alleges that Patriot Majority West (PMW), an IRS Section 527 committee, received contributions in 2008 from various organizations that are "funded with corporate and union dollars." It alleges that in October, 2008 PMW ran two ads – one critical of candidate Tim Fox and one supportive of candidate Steve Bullock.

According to the complaint these ads, which you argue do not qualify as "issue ads," violate the prohibition on corporate money being spent in support of or in opposition to a political candidate (13-35-227, MCA).

You allege that PMW is funded by various organizations, which in turn are funded by corporate money. This allegation is insufficient to state a violation of the law by PMW – it alleges a connection between the alleged contribution of corporate money and PMW that is far too tenuous.

For the reasons discussed above, I am dismissing the complaint based on ARM 44.10.307(3)(a):

... [N]o investigation shall be required if the complaint does not contain sufficient allegations to enable the commissioner to determine that it states a potential violation of a statute or rule within the commissioner's jurisdiction.

While I'd like to be more helpful, I am unable to undertake an investigation based on tenuous allegations.



Dennis Unsworth  
Commissioner of Political Practices

COMMISSIONER OF POLITICAL PRACTICES  
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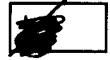
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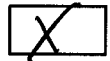
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CERTIFIED MAIL



SIGNED/NOTARIZED



### CAMPAIGN FINANCE AND PRACTICES

### COMPLAINT FORM (07/01)

**TYPE OR PRINT IN INK ALL INFORMATION ON THIS FORM EXCEPT FOR VERIFICATION SIGNATURE**

#### PERSON BRINGING COMPLAINT (COMPLAINANT):

COMPLETE NAME Larry Grinde

COMPLETE MAILING ADDRESS 1313 N. Last Chance Gulch

Helena, MT 59601

TELEPHONE NUMBERS: WORK 442-6467 HOME \_\_\_\_\_

#### PERSON OR ORGANIZATION AGAINST WHOM COMPLAINT IS BROUGHT (RESPONDENT):

COMPLETE NAME Patriot Majority West

COMPLETE MAILING ADDRESS 300 M St. S.E., Suite 1102

Washington D.C., 20003

TELEPHONE NUMBERS: WORK \_\_\_\_\_ HOME \_\_\_\_\_

**PLEASE COMPLETE THE SECOND PAGE OF THIS FORM AND DESCRIBE IN  
DETAIL THE FACTS OF THE ALLEGED VIOLATION.**

#### VERIFICATION BY OATH OR AFFIRMATION

STATE OF MONTANA, COUNTY OF Lewis + Clark

I, Jane Ann Nelson, being duly sworn, state that the information in this  
Complaint is complete, true, and correct, to the best of my knowledge and belief.

(SEAL)

[Signature]  
Signature of Complainant

Subscribed and sworn to before me this 29<sup>th</sup> day of  
October, 2008.

[Signature]  
Notary Public

My Commission Expires: 02-05-2011

**STATEMENT OF FACTS:**

Describe in detail the alleged violation(s) and cite the statute or statutes you believe have been violated. Please attach copies of documentary evidence to support the facts alleged in your statement.

If the space provided below is insufficient, you may attach additional pages as necessary.

*Attached*

**TYPE OR PRINT IN INK ALL INFORMATION ON THIS FORM EXCEPT FOR  
VERIFICATION SIGNATURE**

**COMPLAINTS MUST BE:**

- SIGNED
- NOTARIZED
- DELIVERED IN PERSON OR BY CERTIFIED MAIL

## Narrative Substance of the Complaint

### Background Facts

1. Patriot Majority West (hereinafter "PMW") is an IRC Section 527 committee administered by Craig Varoga at 300 M Street SE Suite 1102 in Washington DC.
2. PMW lists several contributors in 2008, including the Democratic Attorneys General Association, at \$425,000; the NEA Fund for Children & Public Education at \$200,000, a union; Progressive Americans at \$100,000; AFSCME at \$775,000; and DRIVE Committee at \$300,000. The organizations listed are funded with corporate and union dollars.
3. MCA § 13-35-227 prohibits corporate/union money from being spent to influence an election. Specifically, "a corporation may not make a contribution or an expenditure in connection with a candidate or political committee that supports or opposes a candidate or political party."
4. In October 2008, PMW began running a political advertisement critical of Tim Fox, the Republican candidate for Attorney General. A transcript of that advertisement follows:

*"Tim Fox says that our hunting and fishing heritage must be protected and preserved for future generations. But Fox actually defended an out of state mining company that was sued for polluting a river in Montana with cyanide, arsenic, and other dangerous chemicals. That's not good for our health, or for our way of life. Call Tim Fox and tell him to stop supporting companies that pollute our streams and rivers."*

5. Tim Fox is a recognized candidate for Attorney General in Montana. Tim Fox is also an attorney at the Gough, Shanahan, Johnson & Waterman law firm in Helena, Montana. In 2004, Fox represented the Kendall gold mine in a frivolous lawsuit brought by an environmental group in connection with a statewide ballot issue being promoted by the same group. **The lawsuit was dismissed and the pollution alleged in the suit was disproved.** Mr. Fox had not represented a mining company prior to that 2004 lawsuit, and he has not represented a mining company since.
6. PMW has also run a television political advertisement in support of Steve Bullock, the recognized Democratic candidate for Attorney General. The PMW ad in support of Bullock praises him for working as the former Montana Executive Assistant Attorney General to defend the clean environment and public access to natural resources. It shows images of pristine Montana scenery, and ends with, "*Call Steve Bullock and tell him to keep fighting for our rights.*" See both ads at: <http://www.patriotmajoritywest.us/index.php?v=featuredVideo&id=8>
7. Steve Bullock is currently an attorney in private practice in Helena, Montana. He is no longer an official in the Montana Department of Justice, and is therefore unable to "keep fighting for our rights," as the ad instructs the viewers to request of him.
8. **These advertisements violate Montana law's prohibition on corporate or union money being spent in support of, or opposition to, a political candidate.** These ads are not permissible "issue advocacy" uses of corporate or union money, because they are clearly designed to influence an election, not to advocate action on an issue.

## Legal Reasoning

Montana law prohibits corporate/union expenditures in support of or against the election of a candidate. Montana Code Annotated § 13-35-227. However, it does not outlaw these expenditures on issue advocacy. To determine the difference between express advocacy for or against a candidate (corporate/union funds not allowed) versus issue advocacy (corporate/union funds allowed), the Montana Commissioner of Political Practices has relied heavily upon federal court interpretations. See *Close v. People for Responsible Gov't & Gallatin Tavern Ass'n*. (10/7/02) at 25-27 <<http://politicalpractices.mt.gov/2recentdecisions/campaignfinance.mcpix>> (accessed October 27, 2008).

But since the Commissioner's consideration of this issue, the United States Supreme Court has spoken again on the issue, and that ruling should be the relevant standard.

The United States Supreme Court first established the standard for express advocacy in *Buckley v. Valeo*, 424 U.S. 1 (1976), which recognized as express advocacy any advertisement speaking for or against a candidate with a series of key advocacy terms which are common in the market. However, the Court clarified its definition in *FEC v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652, 2667 (2007), when it established a test to find that an ad is "the functional equivalent of express advocacy...only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."

The *WRTL* Court found the issue ads in question were not express advocacy because they:

1) "focus on a **legislative issue**, take a position on the issue, exhort the public to adopt that position, and urge the public to contact **public officials** with respect to the matter;" **and** 2) "their content lacks indicia of express advocacy: The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate's character, qualifications, or fitness for office."<sup>1</sup>

The Court clarified the role of "context" in determining the underlying intent of an issue advocacy effort:

Courts need not ignore basic background information that may be necessary to put an ad in context-such as **whether an ad describes a legislative issue that is either currently the subject of legislative scrutiny or likely to be the subject of such scrutiny in the near future**-but the need to consider such background should not become an excuse for discovery or a broader inquiry of the sort we have just noted raises First Amendment concerns.<sup>2</sup>

These political ads clearly fail the test for issue advocacy established by the Supreme Court *WRTL*. They do not actually identify a legislative issue, they do not urge any public officials to

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<sup>1</sup> *Id.* (emphasis added)

<sup>2</sup> *Id.* (citations and quotations omitted)(emphasis added). This decision deals with the Bipartisan Campaign Reform Act ("BCRA"), AKA McCain-Feingold Act. The more recent and mandatory authority of the Supreme Court is the governing law; the Ninth Circuit's case law interpreting the Federal Election Campaign Act must now comply with the Supreme Court's view or be considered superceded. See *FEC v. Furgatch*, 807 F.2d 857, 864 (9<sup>th</sup> Cir. 1987), and *California Pro-Life Council*, 328 F.3d 1088, 1098 (9<sup>th</sup> Cir. 2003).

act in any manner, and they do not urge the public to contact public officials because neither Fox nor Bullock are public officials.

It is immaterial that the ads do not mention the election, the fact that both men are candidates for the office of Attorney General, or that they do not specifically use, "vote for," "vote against," or other advocacy words. The Court's use of the word "and" in setting out a two-prong test for issue advocacy means the ads must meet both elements of the test to be permissible issue advocacy. **These ads fail the first element of the Supreme Court's test.**

The ads do not urge public officials to take action on a **legislative or governmental issue**, nor do they urge the public to focus their attention on **public officials** dealing with a legislative or governmental issue. They attack the integrity and fitness for duty of private individuals running for a public office, with the clear implication that one is well-suited for responsibility and deserving of our trust, and one is not. **These are political advocacy ads illegally using corporate and union funds to influence an election.**

The final problem with the ads is that they are misleading. **Tim Fox has not, does not, and will not support pollution of Montana's waters and habitat.** He defended a mining company – a source of some of the highest-paying blue collar jobs in Montana – from a frivolous lawsuit by a predatory environmental group that was thrown out of court. He has a track record as a former state employee of opposing and regulating pollution, not supporting it.

Steve Bullock is being praised for actions he undertook while serving as a state employee in the Department of Justice. He cannot continue those actions dealing with recreation access, because he is no longer a state employee in the Department of Justice. The ad is therefore urging the public to ask Steve to do something he cannot do **unless he wins the upcoming election for Attorney General.** Clearly, this is really an ad designed to support Bullock's candidacy for Attorney General using illegal corporate and union money.

### **Request for Justice**

I urge you to immediately enjoin PMW from illegally funding campaign ads against Tim Fox and in support of Steve Bullock using corporate and union funding, and to issue an order immediately pulling the ads already on the airwaves. I ask you to undertake whatever necessary investigative steps of this issue are necessary, and to find against PMW and its agents, associates and affiliated groups to the full extent of the law. And I urge you to take other reasonable and necessary steps in furtherance of justice. I also ask, if permissible, that PMW pay the costs and attorney fees associated with the prosecution of this complaint.