

1 **BEFORE THE COMMISSIONER OF**
2 **POLITICAL PRACTICES**

3 In the Matter of the)
4 Complaint Against)
5 Bozeman Taxpayers for)
Responsible Planning)

6 **SUMMARY OF FACTS AND STATEMENT OF FINDINGS**

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8 Rich Noonan filed a complaint against Bozeman Taxpayers
9 for Responsible Planning. The complaint alleges that Bozeman
10 Taxpayers for Responsible Planning violated Montana Code
11 Annotated §§ 13-35-218 and 13-35-225 when it conducted a
12 telephone poll concerning a local ballot measure.

13 **SUMMARY OF FACTS**

14 1. Initiative 19 (I-19) is a local ballot measure in
15 Bozeman, Montana that will appear on the November 3 ballot.

16 2. Bozeman Electors for Sensible Taxes (BEST) is the
17 political committee that was formed to support I-19. Rich
18 Noonan is the treasurer of the committee.

19 3. Bozeman Taxpayers for Responsible Planning (BTRP) is
20 the political committee that was formed to oppose I-19.

21 4. BEST claims that representatives of BTRP made
22 telephone calls to potential voters urging them to vote against
23 I-19. BEST contends that this constituted an expenditure for
24 the purpose of financing a communication advocating the defeat
25 of I-19, and the communication did not clearly and
26 conspicuously state the name and address of the person who made
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1 or financed the expenditure, in violation of Montana Code
2 Annotated § 13-35-225.

3 5. BEST also claims that the calls constituted a "push
4 poll," and that they violated Montana Code Annotated § 13-35-
5 218, because they resulted in coercion or undue influence of
6 voters. Specifically, BEST contends that the calls amounted to
7 an inducement to refrain from voting for I-19 based on the
8 threat that I-19 will increase taxes.

9 6. Included with the complaint filed by BEST are two
10 affidavits. The first affidavit, signed by Carol Dietrich of
11 Bozeman, states that she received a telephone call on
12 September 26, 1998, from a person who read a script "that
13 attempted to convince me to vote against Initiative 19." Ms.
14 Dietrich's affidavit states that the person who read the script
15 refused to identify the organization that financed the
16 telephone call. The second affidavit, signed by Mary Hunter of
17 Bozeman, states that she received a telephone call on
18 September 29, 1998, from a person who, again, "attempted to
19 convince me to vote against Initiative 19." The affidavit also
20 states that "the person reading from the script informed me
21 that he was from Bozeman Taxpayers for Responsible Planning
22" Ms. Hunter's affidavit goes on to state that the
23 caller informed her I-19 would "add a \$7,000 tax to every
24 homeowner." She states that she considered the statement a
25 threat that the City of Bozeman would increase her taxes if
26 I-19 passed.

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1 7. During September 1998, representatives of BTRP made
2 telephone calls to potential voters. Those who made the calls
3 were given the following script to read:

4 Hi, may I speak with _____? Hi, this is
5 _____ calling from Bozeman Taxpayers for
6 Responsible Planning, we're the folks working to get
7 the facts out about Initiative 19.

8 Recently we sent you a survey asking for your
9 opinion on Initiative 19 and how it would effect
10 [sic] folks in Bozeman. Do you recall having seen
11 the survey? (If yes) Great, have you had a chance
12 to complete the survey? (If yes "Great" go to I.D.
13 sequence) (If no) I understand. The survey is
14 very short -- only seven questions. And we really
15 do want to know your opinion -- we'll even pay the
16 postage. Please take a moment to send your response
17 today.

18 (I.D. Sequence)

19 Have you heard or read anything about Initiative 19?
20 Well, here are some reasons why our group is
21 opposing Initiative 19.

22 Initiative 19 would raise the housing tax
23 in Bozeman by \$7,000.

24 Initiative 19 would also raise taxes on
25 commercial development and keep employers
26 from bringing new jobs to Bozeman.

27 And planning experts predict Initiative 19
28 would force people to build outside
29 Bozeman to avoid the new tax. If that
30 happens, there would be more sprawl, more
31 traffic, and more ridge development.

32 These are just some of the reasons we're urging
33 people to vote against Initiative 19. Can we count
34 on you to join us?

35 (If yes) Great! Don't forget to vote on November
36 3rd. (If no) I understand. Thanks & goodbye. (If
37 maybe/undecided) I understand. Would you like me
38 to send you some additional information about
39 Initiative 19. (If yes) No problem. We'll mail
40 you something today. (If no) Okay, thanks for your
41 time & goodbye.

1 STATEMENT OF FINDINGS

2 Montana Code Annotated § 13-35-225 requires paid
3 communications advocating the success or defeat of a candidate,
4 political party, or ballot issue to identify the person who
5 financed the communication. BEST submitted two affidavits in
6 support of its complaint. One of the affidavits alleges that
7 the caller stated he was from BTRP. The other affidavit states
8 that the caller refused to identify the organization that
9 financed the telephone call. BTRP provided a copy of the
10 script that callers were required to use. The script clearly
11 identifies BTRP as the source of the communication. I find
12 that there is insufficient evidence to establish that BTRP
13 violated Montana Code Annotated § 13-35-225.

14 Montana Code Annotated § 13-35-218 provides, in pertinent
15 part:

16 (1) No person, directly or indirectly, by himself
17 or any other person in his behalf, in order to
18 induce or compel a person to vote or refrain from
19 voting for any candidate, the ticket of any
20 political party, or any ballot issue before the
21 people, may:

22 (a) use or threaten to use any force, coercion,
23 violence, restraint, or undue influence against any
24 person; or

25 (b) inflict or threaten to inflict, by himself or
26 any other person, any temporal or spiritual injury,
27 damage, harm, or loss upon or against any person.

28 BEST alleges that BTRP violated this statute by claiming that
29 homeowners' taxes would increase if I-19 passes. BEST's claim
30 lacks any substance. BTRP's telephone calls were not coercive,
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1 nor can they reasonably be construed as having resulted in
2 undue influence in violation of the statute.

3 **CONCLUSION**

4 BTRP did not violate Montana Code Annotated §§ 13-35-218
5 or 13-35-225.

6 Dated this 19th day of October, 1998.

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8 _____
9 Ed Argenbright, Ed.D
Commissioner

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