

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

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In the Matter of the Complaint	)	<b>SUMMARY OF FACTS</b>
Against Montanans for a True	)	<b>AND</b>
Democrat Club	)	<b>STATEMENT OF FINDINGS</b>

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Jim Keane filed a complaint alleging that Montanans for a True Democrat Club violated Montana campaign finance and practices laws.

**SUMMARY OF FACTS**

1. The complaint alleges that Montanans for a True Democrat Club, a political committee, failed to report the costs for two campaign mailers, and that campaign finance reports filed by the committee were not signed by its treasurer, L.M. Minich. The complaint claims there was coordination between Montanans for a True Democrat Club and the Travis McAdam campaign. The complaint also alleges there was coordination between the Progressive Labor Caucus and the McAdam campaign.

2. The Progressive Labor Caucus (PLC) was formed in June, 2001 as an organization made up of trade unions, affiliated organizations, and individuals. Gene Fenderson was the Executive Secretary of PLC, and Dan Harrington (state senator in Senate District 38) was its President. PLC was formed as a result of dissatisfaction over the direction in which its founders perceived the AFL-CIO was moving. Over the years PLC took positions on issues of public policy, engaged in lobbying, and recruited and endorsed candidates for public office. The PLC-PAC was PLC's political committee, and first registered with the Commissioner of Political Practices (Commissioner) in 2002. PLC-PAC's stated purpose was to support candidates who shared PLC's philosophy and to support issues of interest to PLC. PLC disbanded in 2007.

3. PLC was funded with annual dues from members, individual contributions, and contributions from groups and organizations. Those who made contributions to PLC and to PLC-PAC typically did not know which specific candidates the money would be contributed to until the executive board of PLC-PAC voted on specific contributions.

4. Beginning in 2002 PLC-PAC supported a number of candidate campaigns. On March 17, 2006, PLC-PAC decided to support the following candidates: Carol Juneau, Margie MacDonald, Jennifer Pomnichowski, Travis McAdam, Dan Villa, and Michele Reinhart.

5. Montanans for a True Democrat Club (MTDC) is a political committee that filed a Statement of Organization (form C-2) with the office of the Commissioner on April 21, 2006. MTDC listed as its statement of purpose: "To support true Democrats for public office." MTDC was formed by Gene Fenderson. The C-2 lists L.M. Minich as Treasurer and Larry Gregor as Deputy Treasurer. Gregor was also a member of PLC.

6. Jim Keane, a Democrat, is the representative in House District (HD) 75. Keane ran for re-election in 2006. Travis McAdam was Keane's opponent in the primary election in 2006. Keane ultimately won the primary election and was elected in the general election in November, 2006.

7. McAdam moved to Butte in 2005. McAdam said that he was not satisfied with Jim Keane's performance as a legislator. McAdam decided that if no other viable candidate filed to run against Keane in HD 75, he would run. McAdam let others know that he was contemplating becoming a candidate.

8. In January or February, 2006, before McAdam had decided to become a candidate in HD 75, Gene Fenderson spoke with him by telephone. Fenderson told McAdam he had heard McAdam was thinking about running for the Legislature in HD 75. Fenderson asked McAdam whether he was serious about becoming a candidate and inquired about McAdam's positions on various issues. During this conversation

McAdam and Fenderson did not specifically discuss PLC or MTDC. (MTDC did not exist at this time -- See Fact 5).

9. McAdam filed as a candidate for HD 75 on March 17, 2006.

10. On March 31, 2006, PLC-PAC contributed \$130 to McAdam's campaign.

11. Around April 20, 2006, Gene Fenderson approached Larry Gregor and discussed the idea of forming MTDC. According to Gregor, initially the main purpose of MTDC was "to get anyone but Jim Keane elected to HD 75." Fenderson agreed that the primary purpose of MTDC was to defeat Jim Keane. Although MTDC's focus in 2006 was on the Democratic primary election in HD 75, MTDC may become involved in future elections or campaigns. Gregor agreed to be Deputy Treasurer of MTDC. As noted in Fact 5, MTDC's statement of organization was filed on April 21, 2006.

12. On April 28, 2006, PLC-PAC convened a meeting to discuss possible political contributions. Larry Gregor spoke to the members of the PAC about the recent creation of MTDC. Gregor noted that the "first target" of MTDC would be the primary race for HD 75. Gregor asked PLC-PAC for a contribution. PLC member Randy Siemers made a motion that the executive board of PLC-PAC be authorized to support the MTDC "as they see fit for the primary." The motion was seconded and carried.

13. In 2006 MTDC received six contributions. Dan Harrington, PLC President, contributed \$50. Gene Fenderson and Randy Siemers each contributed \$100. Neither Harrington nor Siemers were members of or associated with MTDC. PLC-PAC made three contributions to MTDC: \$1,500 on May 23, \$300 on May 30, and \$6,840 on June 23, 2006, for a total contribution to MTDC from PLC-PAC of \$8,640. MTDC raised a total of \$8,890 from all contributors.

14. Fenderson and Siemers also contributed directly to the McAdam campaign. Fenderson contributed \$130, and Siemers contributed \$50.

15. MTDC's campaign finance reports listed expenditures of \$8,787.47 in support of the candidacy of McAdam in HD 75. MTDC reported spending various sums

for radio ads, billboards, newspaper ads, printing of campaign flyers and postcards, and incidental expenses such as postage and copying, all for what MTDC designated in its campaign finance reports as an “independent campaign in support of Travis McAdam, HD 75.”

16 PLC records show that McAdam became a member of PLC on March 1, 2005. He renewed his membership on October 13, 2006. McAdam did not recall being a member prior to October, 2006. McAdam stated he joins lots of groups and organizations, and he was never actively involved in PLC. McAdam said he never attended any PLC meetings. McAdam said that the only contact he had with PLC during his campaign was when he received PLC-PAC’s \$130 contribution on March 31, 2006 (see Fact 10), and a letter from PLC dated April 4, 2006, advising McAdam of the contribution.

17. Larry Gregor stated he does not know McAdam personally, so he would not have known whether McAdam ever attended PLC meetings. Gregor stated that typically 30 to 40 people attended PLC meetings. According to Gregor, a lot of people who paid dues to be members of PLC never showed up for meetings.

18. Dan Harrington, President of PLC, does not recall ever seeing McAdam at any of PLC’s meetings.

19. McAdam stated he did not know anything about MTDC until he started campaigning door-to-door in Butte. Someone mentioned that they really liked his billboard. McAdam realized the person was talking about a billboard ad purchased by MTDC, not by his campaign. McAdam stated that he and his campaign did not have any contact with MTDC during his campaign, and that there was no coordination between MTDC and his campaign. McAdam was unaware that MTDC was going to organize as a political committee or that the committee planned to support his candidacy.

20. Christine Kaufmann is a member of the PLC executive board. Kaufmann and McAdam both work for the Montana Human Rights Network. Kaufmann sometimes advised McAdam of what happened at PLC meetings, but she did not discuss with McAdam PLC's decision to support his candidacy or PLC's decisions to contribute money to McAdam or to MTDC.

21. During his campaign McAdam telephoned Fenderson to obtain the name of an employer of an individual who contributed to his campaign, for purposes of completing a campaign finance report to be filed with the Commissioner's office. McAdam thought the contributor was a member of the union, so he telephoned Fenderson to obtain the information. He was unable to reach Fenderson and Fenderson did not return the call. Later in his campaign McAdam again telephoned Fenderson to obtain advice on how to handle a union circle in Butte. Again Fenderson did not return his call. Later McAdam began to suspect that Fenderson may have been involved with MTDC. McAdam made no further effort to contact Fenderson.

22. Fenderson stated he was always careful to avoid contact with candidates that the groups he is involved with are independently supporting.

23. During his campaign McAdam had limited contact with Dan Harrington and Randy Siemers regarding certain aspects of McAdam's campaign, but they did not discuss PLC or MTDC. McAdam and Siemers engaged in an email exchange on April 13, 2006, in which Siemers provided some background information to McAdam prior to McAdam's appearance before the Butte Building Trades Council. McAdam also communicated with Dan Harrington regarding Jim Keane's planned appearance on a local Butte radio talk show. Harrington told McAdam that there may be a rule that requires radio stations to give opposing candidates equal time. McAdam believes that his communications with Siemers and Harrington do not constitute coordination between his campaign and PLC, because he did not understand them to be acting on behalf of PLC and they did not engage in any discussions regarding PLC. Harrington confirms that he did not discuss PLC with McAdam.

24. A review of the files maintained by MTDC, PLC, and the McAdam campaign disclosed no emails, notes, memoranda, records of telephone conversations, correspondence, or other documents or evidence that would support a conclusion that there was coordination, cooperation, or consultation between the McAdam campaign and either MTDC or PLC.

25. MTDC hired MSHC Partners, Inc. (MSHC), a Washington D.C. firm, to produce a number of large campaign mailers for MTDC's use in supporting the candidacy of McAdam. MSHC submitted two invoices, each for \$1,900, to MTDC for the work. Both invoices were dated May 25, 2006.

26. MTDC paid both invoices on June 23, 2006. The payment for both invoices was reported as a single expenditure of \$3,800 on MTDC's campaign finance report for the period June 22 to October 21, 2006.

27. MTDC's campaign finance report for the period May 21 to June 21, 2006, did not report the \$3,800 debt owed to MSHC.

28. In a response to the complaint submitted by Larry Gregor on behalf of MTDC, he contends that MTDC was disputing the charges submitted by MSHC and did not reach agreement on the amount to be paid until after the May 21 to June 21, 2006 reporting period had closed.

29. Larry Gregor contends that he signed all of MTDC's campaign finance reports as the Deputy Treasurer as a matter of convenience, because he lives closer to the Commissioner's office than MTDC's Treasurer, L.M. Minich, who lives in Butte. Gregor believed he had full authority to sign the reports because he was designated by MTDC as the Deputy Treasurer of the committee.

30. MTDC and PLC both deny that there was any coordination between the two committees and the McAdam campaign.

## STATEMENT OF FINDINGS

### **The Coordination Question**

The complaint alleges that MTDC's campaign activities in support of the candidacy of McAdam were coordinated with the McAdam campaign and with PLC. Both MTDC and PLC deny the allegation and contend that their efforts were independent of the candidate. Likewise, McAdam denies that he engaged in any activities that could be construed as coordination with either of the two committees.

§ 13-37-216, MCA addresses the concept of independent committees. The statute establishes limits on contributions by political committees and individuals (other than the candidate) to a candidate. In 2006, in the case of a candidate for the legislature, the contribution limit was \$130 for each election in a campaign. § 13-37-216(1)(a)(iii), MCA. A contribution to a candidate "includes contributions made to the candidate's committee and to any political committee organized on the candidate's behalf." § 13-37-216(1)(b), MCA. According to § 13-37-216(2)(a), MCA:

A political committee that is not independent of the candidate is considered to be organized on the candidate's behalf. For the purposes of this section, an independent committee means a committee that is not specifically organized on behalf of a particular candidate or that is not controlled either directly or indirectly by a candidate or candidate's committee and that does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions.

Thus, to qualify as an independent committee for purposes of the contribution limits established in the statute, a political committee must meet all of the following criteria:

1. It must not have been specifically organized on behalf of a candidate;
2. It must not be directly or indirectly controlled by a candidate or a candidate's committee; and
3. It must not act jointly with a candidate or candidate's committee in making expenditures or accepting contributions.

The terms “contribution” and “expenditure” are defined in § 13-1-101, MCA. A “contribution” is generally defined as “an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election.” § 13-1-101(7)(a), MCA. An “expenditure” is “a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.” § 13-1-101(11)(a), MCA. The Commissioner’s rules provide additional guidance and specificity regarding the terms. ARM 44.10.321(1)(d) provides that a “contribution” includes an “in-kind contribution” as defined in the rule. ARM 44.10.321(2) defines an “in-kind contribution” as:

the furnishing of services, property, or rights without charge or at a charge which is less than fair market value to a candidate or political committee for the purpose of supporting or opposing any candidate . . .

ARM 44.10.321(2)(a)(iv) provides that an in-kind contribution also includes a “coordinated expenditure” as defined in ARM 44.10.323(4).

ARM 44.10.323 defines the terms “independent expenditure” and “coordinated expenditure.” An “independent expenditure” is:

an expenditure for communications expressly advocating the success or defeat of a candidate or ballot issue which is not made with the cooperation or prior consent of or in consultation with, or at the request or suggestion of, a candidate or political committee or an agent of a candidate or political committee.

According to ARM 44.10.323(3), independent expenditures are required to be reported as provided in ARM 44.10.531. A “coordinated expenditure” is:

an expenditure made in cooperation with, consultation with, at the request or suggestion of, or the prior consent of a candidate or political committee or an agent of a candidate or political committee.

ARM 44.10.323(4) requires coordinated expenditures to be reported as in-kind contributions as provided in ARM 44.10.511 and 44.10.513.

Thus, independent expenditures are not coordinated with or made in consultation with a candidate. Such expenditures enjoy considerable constitutional protection because



they are, according to the Supreme Court, far removed from the legitimate goal of preventing election corruption. *Buckley v. Valeo*, 424 U.S. 1, 19-23, 78-81 (1976). In contrast, regulations and limits on contributions to candidates impose “only a marginal restriction upon the contributor’s ability to engage in free communication.” *Buckley*, 424 U.S. at 20-21. Such limits leave persons free to “engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited though nonetheless substantial extent in supporting candidates and committees with financial resources.” *Buckley*, 424 U.S. at 28.

Applying these legal principals in the context of the facts revealed during the investigation, both PLC and MTDC are political committees that operated independently of McAdam. In particular, 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. Therefore, they do not constitute “coordinated expenditures” that should have been reported as in-kind contributions to the McAdam campaign. See *Colorado Republican Fed.Campaign Comm. V. Fed. Election Comm’n*, 518 U.S. 604, 613-14, 617-23 (1996) (absent evidence of coordination, independent expenditures by a political party are entitled to First Amendment protection and may not be treated as “coordinated” with a candidate or as an indirect campaign contribution to the candidate).

In addition, although there was some limited communication between two members of PLC and Travis McAdam, there is no evidence that those who communicated with McAdam did so as members of PLC or on behalf of PLC or PLC-PAC. While it may have been prudent for PLC members Harrington and Siemers to avoid any involvement with McAdam and his campaign given their association with PLC, there is no evidence that their contact with McAdam was on behalf of PLC or was undertaken with the prior knowledge or approval of PLC or the PLC-PAC. Likewise, there is no evidence that McAdam had advance notice that PLC planned to provide financial support to MTDC or to McAdam’s campaign. While McAdam was a member

of PLC beginning in March, 2005, the evidence supports a conclusion that he was at most a passive member who did not participate in PLC's activities, meetings, or decisions. In summary, there is no evidence of coordination or cooperation between PLC and the McAdam campaign.

### **The Campaign Treasurer Question**

The complaint alleges that campaign finance reports were improperly signed by Larry Gregor rather than L.M. Minich, MTDC's Treasurer. The C-2 filed by MTDC lists Larry Gregor as the committee's Deputy Treasurer. See Fact 5. § 13-37-202, MCA, authorizes the appointment of a Deputy Treasurer, who may exercise any of the powers and duties of a Treasurer. § 13-37-203, MCA states, in part:

No individual may serve as a campaign or deputy campaign treasurer or perform any duty required of a campaign or deputy treasurer of a candidate or political committee until he has been designated and his name certified by the candidate or political committee.

§§ 13-37-202 and 13-37-203, MCA, read together, authorize deputy treasurers to perform the same duties that a treasurer is authorized to perform, once the deputy treasurer is designated and his name certified on the political committee's C-2. As the Deputy Treasurer designated and certified on MTDC's C-2, Gregor had the authority to sign the reports.

### **Late Reporting of Expenditures**

The complaint alleges that MTDC failed to report the cost of two campaign mailers. MSHC prepared the mailers. The invoices for the mailers, totaling \$3,800, were submitted to MTDC on May 25, 2006. MTDC paid the invoices on June 23, 2006. MTDC's campaign finance report for the period May 21 to June 21, 2006, did not report the \$3,800 debt owed to MSHC because, according to Larry Gregor, MTDC was disputing the amount charged by MSHC for the mailers. The \$3,800 expenditure was

reported on MTDC's campaign finance report for the period June 22 to October 21, 2006. (Facts 25 through 28).

Subsection (6) of § 13-37-230, MCA requires campaign finance reports to disclose "the amount and nature of debts and obligations owed by a political committee or candidate in the form prescribed by the commissioner." The Commissioner has adopted ARM 44.10.535 to implement § 13-37-230(6), MCA:

DEBTS AND OBLIGATIONS OWED BY A CANDIDATE OR POLITICAL COMMITTEE, REPORTING

(1) Pursuant to section 13-37-230(6), MCA, each report required by section 13-37-226, MCA, shall disclose all debts and obligations owed by a candidate or political committee. Debts and obligations shall continue to be reported so long as they remain outstanding.

(2) A reporting candidate or political committee shall report the full name and mailing address (occupation and principal place of business, if any) of each person to whom a debt or obligation is owed at the end of a reporting period, including the amount, date contracted, and nature of each debt and obligation owed to each person. If the exact amount of a debt or obligation is not known, the estimated amount owed shall be reported.

MTDC's campaign finance report filed for the period from May 21 to June 21, 2006 should have listed a debt of \$3,800 owed to MSHC. Although MTDC contends it did not report the debt in a timely fashion because it was disputed, the last sentence of subsection (2) quoted above required MTDC to at least report an estimate of the amount owed. Candidates and political committees are required to disclose their debts, including when those debts are incurred, and to estimate debts if the exact amounts are not known. The public has a right to full disclosure of all debts and estimated debts incurred by a candidate or political committee during the appropriate reporting periods. See Summary of Facts and Statement of Findings in *Matter of Complaint Against Paul Bankhead* (Sept. 10, 1999); and *Matter of Complaint Against Paul Clark and Friends of Paul Clark* (March 26, 1999).

## CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is no evidence to conclude there was coordination or cooperation between PLC, MTDC, and the McAdam campaign. In addition, as Deputy Treasurer, Gregor had the authority to sign the MTDC's campaign finance reports. However, there is sufficient evidence to conclude that MTDC and the individual treasurer and committee members violated Montana campaign finance reporting and disclosure laws and rules by failing to timely report a debt owed to MSHC. A civil penalty action under section 13-37-128, MCA, is warranted.

Dated this 2<sup>nd</sup> day of April, 2008.

A handwritten signature in black ink, appearing to read "Dennis Unsworth", written over a horizontal line.

Dennis Unsworth  
Commissioner