**BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)**

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| **SHEILA HOGAN**<br><br>**v.**<br><br>**AUSTIN FOR MONTANA, (*AUSTIN KNUDSEN's* re-election campaign), and LOGAN OLSON (candidate for Attorney General)** | **COPP-2024-CFP-017**<br><br>**SUMMARY OF RELEVANT FACTS, DISMISSAL OF COMPLAINT AND FINDING OF FACTS SUFFICEINT TO SUPPORT REPORTING VIOLATIONS BY OLSON** |

## PROCEDURAL BACKGROUND AND COMPLAINT

On May 8, 2024, Sheila Hogan of Helena, MT, filed campaign practices complaints against Attorney General Austin Knudsen and Logan Olson, Republican candidates for the position of Attorney General in the 2024 Montana primary election. As Commissioner, I review and process complaints under Mont. Code Ann. (MCA) § 13-37-111 (2023), and Admin. R. Mont. (ARM) 44.11.106. (2023). Facts pertinent to this complaint are contained in the COPP docket for COPP-2024-CFP-017 (*Hogan v. Knudsen*) and 018 (*Hogan v. Olson*) which can be accessed on COPP's website, www.politicalpractices.gov. This includes the facts contained in the original complaint, the amended complaint, and also includes the responses provided by Austin for Montana (AFM) on behalf of Attorney General Knudsen, and the responses from Mr. Olson.

On June 19, 2024, I prepared and sent a statement of facts to each of the parties. I provided an opportunity for each party to comment on the facts I prepared and invited them to further respond. These prepared facts are herein referenced and incorporated into this decision. AFM provided an additional response on June 24, 2024, and this response is also referenced and incorporated into the record.

I previously determined that while Mr. Olson could not support his claim that he met the qualifications to run for Montana Attorney General in 2024, Mr. Olson did not act knowingly and there was no evidence to support such a claim. *Hogan v.*

*Olson,* COPP-2024-CFP-0018. Consequently, I dismissed that single allegation and reserved the right to decide all other remaining issues together with this matter, *Hogan v. Knudsen*, COPP-2024-CFP-017. Both complaints are now combined to resolve all outstanding issues currently presented to the agency.

Ms. Hogan's complaint asserts that Mr. Olson is not a "legitimate candidate" because he filed to run for the nomination at the bidding of Montana's current Attorney General, Austin Knudsen, in order to provide Knudsen with a contested primary which would allow him to accept contributions for both the primary and general elections, essentially allowing him to collect twice the amount from each contributor than would be permitted if there was not a contested primary. MCA § 13-37-216(6). To that end, Ms. Hogan contemporaneously filed complaints against both Mr. Olson and Attorney General Knudsen. The allegations and asserted facts are in every essence the same or substantially similar, which justifies combining the complaints.

I determined that the complaints met the basic filing requirements of ARM 44.11.106 and requested responses from Mr. Olson and Attorney General Knudsen. Both respondents timely filed responses on May 28 and May 20, 2024, respectively. While Mr. Olson's response addressed some issues regarding his eligibility, both respondents asserted that Ms. Hogan's complaint should be dismissed under ARM 44.11.106(2)(b)(iii) because her complaint failed to include specific citations to all statutes or rules alleged to have been violated.

Upon further review, I determined that additional information was necessary in order to fully resolve the matters presented. Therefore, in accordance with the discretion provided to me by ARM 44.11.106(4), I sent communications to the parties on May 29, 2024, informing them that I was requesting additional information under the aforementioned rule. Mr. Olson and Ms. Hogan both provided the additional information before the noon deadline on May 31, 2024. Attorney General Knudsen did not provide any further response at that time.

Additionally, I determined that certain issues in the submitted complaints may be appropriate for determination by declaratory ruling. Therefore, concurrent with my requests for additional information, I invited the complainant and both respondents to petition COPP for a declaratory ruling in accordance with ARM 44.11.102(1) and ARM 1.3.226 *et seq.* On May 31, 2024, Ms. Hogan responded to my request for supplemental information by submitting an amended complaint containing the requested information and a request for a declaratory ruling. (Hogan Amend. Compl.) A request for a declaratory ruling was accepted in *Wanzenreid v. Graybill,* where a specific question existed as to the validity of Mr. Graybill's Declaration of Nomination and Oath of Candidacy. COPP-2020-CFP-0002, *decided as* COPP-2020-DR-001. In *Ankney v. Montana Democratic Party,* the commissioner refused to issue a declaratory ruling because there was no ambiguity or issues of uncertainty with respect to statutes, rules, or rights, that need be addressed. COPP-2020-DR-002.

Here, there are no issues involving a determination of statutes and rules within my jurisdiction or authority which will resolve uncertainty for the parties. Additionally, upon review of the relevant statutes and rules, I determined them to be unambiguous. Therefore, a declaratory ruling is not appropriate. Consequently, the request for declaratory ruling is denied and I chose to decide these remaining issues through the conventional complaint process under MCA § 13-37-111.

I do appreciate that Ms. Hogan took the additional time to amend her complaint to include specific reference to statutes and rules, and that she also took the time to prepare a request for a declaratory ruling at my invitation. While I dismiss the request for a declaratory ruling, as discussed below, I will not simply dismiss the complaint in the manner suggested by the respondents. Consequently, I must decide the complaint and I do that now as follows:

## ASSERTIONS AND SUMMARY OF FACTS

*Facts asserted by the complainant.*

Incorporating Ms. Hogan's complaint, amended complaint, and additional information she provided to COPP, I summarize her factual assertions as follows:

In her May 8, 2024, complaints, Ms. Hogan correctly asserts that, Montana law establishes limits on campaign donations and there is a base contribution limit for each election, which for the attorney general race in 2024 is $790. (Hogan Compl's., 2., citing MCA § 13-37-216(5).) Ms. Hogan also asserts that "[a]n "election" means the general election or a primary election that involves two or more candidates for the same nomination." *Id.* In addition, Ms. Hogan asserts that if there is not a contested primary, there is only one election to which the contribution limits apply. *Id.* Ms. Hogan also maintains that when Attorney General Knudsen filed to run for office on November 6, 2023, he did not have a primary election opponent, yet he solicited and received "dozens of donations" exceeding the $790 limit. *Id.* Thus, Ms. Hogan maintains, at a minimum, Attorney General Knudsen could not have solicited or received such contributions until Mr. Olson entered into the Republican primary, which Mr. Olson did not do until March 11, 2024.

Ms. Hogan contends that because Mr. Olson was not qualified to run for attorney general, and because he has not engaged in any activity to support his campaign (no "reported donations, fundraising events, or travel"), and because both campaigns use Katie Wennetta, of Burning Tree Consulting, that Mr. Olson "is not a legitimate, good faith candidate." *Id.* 3.

As to Attorney General Knudsen, Ms. Hogan asserts that "Knudsen actively uses Olson's *nominal presence* in the Republican primary to continue to solicit donations in excess of $790." *Id. (emphasis mine).* Ms. Hogan contends that "Olson's candidacy and Knudsen's receipt of excess donations violate Montana's campaign finance laws. *Id.* 3.

At the conclusion of her initial complaint, Ms. Hogan requests that I declare "Logan Olson's candidacy for Montana Attorney General in the 2024 Primary election invalid." *Id.* She also asks I take steps to inform the public and "get [Olson's] name off the ballot." *Id.* Further, Ms. Hogan asks that I fine Mr. Olson for

"cynical and abusive behavior" because it is "unbecoming of a Montana attorney under oath." *Id.*

Ms. Hogan also asks that I consider fining Attorney General Knudsen "for his participation in this *scheme* that misleads Montana voters and *abuses a loophole* that was never intended to allow him to raise twice as much money for his campaign as he would normally and legally be allowed." (Hogan Amend. Compl. ¶ 3 (*emphasis mine).)* Lastly, Ms. Hogan requests I compel Attorney General Knudsen to return and reimburse every dollar that he raised from donors for the June 4, 2024 primary election that exceeds the $790 he might have normally raised. *Id.*

On May 15, 2024, Ms. Hogan supplemented her complaint with articles from the Daily Montanan, indicating she was working on getting audio of a recording from the event described in the article. The article provided by Ms. Hogan contains a photo of the invitation to the event and attributes the following as a quotation from Attorney General Knudsen at the event:

> I do technically have a primary. However, he is a young man who I asked to run against me, because our campaign laws are ridiculous. So, he is a young man from my part of the state. His name is Logan Olson. He's not running. He filed to run against me simply because under our current campaign finance laws in Montana, it allows me to raise more money. So, he supports me and he's going to vote for me. He literally did it because I asked him to. He's a good kid. I shouldn't say kid; he's a good lawyer up in Plentywood. A good young man. But technically I have a primary opponent, I think we're going to be okay in that one. (Hogan Compls. citing Daily Montanan, May 14, 2024.)

Pursuant to ARM 44.11.106(4), I requested additional information from Ms. Hogan. Specifically, I asked that Ms. Hogan to provide citation to each rule or statute alleged to have been violated in accordance with ARM 44.11.106(2)(b)(iii).

In response to my request for additional information, Ms. Hogan filed an "Amended Complaint and Petition for Declaratory Relief," which, in addition to offering further compliance with ARM 44.11.106(2)(b)(iii) to my satisfaction, included the following allegations and additional information:

Ms. Hogan asserts that under MCA § 13-35-221, Montana law prohibits improper nominations. She points to the language in the statute that a "person may not pay or promise valuable consideration, in any manner or form, for the purpose of inducing the other person to be…a candidate, and a person may not solicit or receive any payment or promise from another for that purpose." (Hogan Amend. Compl. ¶ 4, citing MCA 13-35-221(1).) Ms. Hogan further provides that "[a] person also may not…be nominated…as a candidate at an election" and that a person also may not "become, individually or in combination with any other person or persons, a candidate for defeating the nomination or election of any other person, without a bona fide intent to obtain the office. *Id.* citing § MCA 13-35-221(2)(a)(b).

Ms. Hogan also maintains a person is guilty under MCA § 13-35-105 for accountability, as provided for in MCA § 45-2-302. *Id.* ¶ 5. Ms. Hogan more specifically asserts in ¶¶ 11-19 of her amended complaint that:

- Mr. Olson is not a legitimate or bona fide candidate because he ran at the request of Knudsen so Knudsen could retain the excess contributions he received in violation of MCA § 13-37-216 and continue to receive such contributions.
- The Attorney General "bragged" about it and Hogan reasserts the quotation attributed to Attorney General Knudsen at the Dillon event.
- Mr. Olson raised "$0" for his campaign and is not engaged in any activity to support his campaign.
- Mr. Olson's March campaign finance report shows a debt to Standard Consulting to reimburse payment of Mr. Olson's filing fee, and the owner of Standard Consulting is an individual who has taken advantage of the fact that Knudsen has a primary and a general election to which the individual can make a contribution of $1,580.
- Mr. Olson's subsequent reports no longer show the debt, nor do they explain where the debt went.

- Mr. Olson practices at the same law firm where the Attorney General worked prior to his election as Attorney General.
- The clear tie between the two campaigns is unlawful.
- The Attorney General and Mr. Olson have conspired to violate MCA § 13-35-221(1) regarding improper nominations.

This conspiracy, as asserted by Ms. Hogan, may have involved others. The purpose of the "conspiracy" was to violate MCA § 13-37-216 (contribution limits). Id. ¶ 27.

In relief, Ms. Hogan asks that pursuant to ARM 44.11.102, I determine it is a violation of MCA § 13-35-221 for a legitimate candidate (Knudsen) to recruit a candidate without any bona fide intent to obtain the office to run against him for the sole purpose of allowing the legitimate candidate to raise more money. *Id.* ¶ 28. She also asks that I determine this is also a violation of MCA § 13-37-216, and whether each of the respondents is legally accountable for each other's violation, pursuant to MCA § 13-35-105. Ms. Hogan again asks that I declare Mr. Olson is not qualified and that I invalidate his candidacy. Additionally, Ms. Hogan requests any other relief I deem appropriate. *Id.*, (a)(i)-(iv), (c)-(d).

*Facts asserted by the respondents Attorney General Knudsen and Mr. Olson.*

In his initial response provided to COPP, Mr. Olson asserts and provides facts to support his claim that he was admitted to the practice of law in September 2019, that he is therefore qualified to serve as Attorney General and did not violate MCA § 13-35-207. (Olson Response, May 28, 2024.)

In addition, he maintains the complaint should be dismissed because Ms. Hogan did not comply with ARM 44.11.106(2)(b)(iii), which requires she specifically include reference to any law or rule she alleges were violated. *Id.* 2. In his response to my request for additional information, Mr. Olson reasserts his position as to dismissal for failure to comply with the aforementioned rule and includes a statement that if elected during the June 4, 2024, he would accept the nomination, run in the general election as the Republican candidate, and if then elected on

November 5, 2024, he "intend[s] to serve as Montana's next Attorney General. (Olson Response, May 30, 2024, 2.)

Attorney General Knudsen provided a one-page response through an agent of his campaign to the initial complaint and did not provide any subsequent responses following my ARM 44.11.106(4) request of May 15, 2024, though it was clear from the request that I predominantly needed additional information from Ms. Hogan and Mr. Olson. In any event, Attorney General Knudsen's campaign, Austin for Montana (AFM) provided an initial response, which is summarized as follows:

Ms. Hogan's "semi-coherent ramblings" do not allege specific violations of any Montana statute or rule as required by ARM 44.11.106(2)(b)(iii). As a consequence, the complaint should be dismissed for failure to comply with threshold procedural requirements and minimum standards of due process. This is fundamental to the right to notice and the opportunity to be heard. (AFM Response, May 20, 2024.)

AFM further asserts that the only specific allegation Ms. Hogan articulates is in fact no violation at all. "Ms. Hogan has asked for the first time ever in the history of Montana that MCA 13-37-216(6) somehow be interpreted to mean that campaigns cannot accept Primary and General Election contributions until they have a contested primary opponent that has filed with the Secretary of State. *Id.* ¶ 3. AFM represents this as being absurd and without rational basis or being supported by the statute. *Id.* AFM relies on an assertion that it is a "longstanding interpretation and practice for campaigns to collect contributions for the primary and the general and simply return the funds if no contested primary occurs." *Id.* AFM further asserts that presently several Democratic campaigns are in violation of the provision if the statute is ever interpreted in the manner Ms. Hogan requests with her "new interpretation." *Id.* ¶ 4. AFM's list includes the leading Democrats for attorney general, governor and lieutenant governor, secretary of state, and the office of public instruction. These candidates prevailed in the Democratic primary election on June 4, 2024. AFM also lists a candidate for Chief Justice of the Montana Supreme Court, though this position is nonpartisan. *Id.*

While conveying a difficultly to respond to a matter predicated on dislike, and due to my persistent pursuit of the matter, AFM provided an additional response in connection with my June 19, 2024, correspondence with each of the parties. AFM responds that their position has not changed. (AFM Response, June 24, 2024.) They continue to maintain that Ms. Hogan's complaint, whether original or amended, is procedurally improper and fails to meet minimum standards of due process. *Id.* AFM again asserts that Ms. Hogan fails to articulate any violations of law, and that the claims she does assert are not supported by any evidence. *Id.* AFM maintains that MCA § 13-37-221 is not violated because neither the Attorney General, nor any of his agents, paid or promised valuable consideration, in any manner or form, for the purpose of inducing a person to be a candidate. *Id.* AFM points out that Ms. Hogan has not filed a similar complaint against Democratic gubernatorial candidate Jim Hunt, who raised and spent nothing on his campaign for the nomination. *Id.* AFM further asserts that MCA § 13-35-105 is not violated because there is no violation of any election laws and invoking MCA § 45-2-302 is likewise improper. *Id.*

AFM maintains that Ms. Hogan's assertion that candidates must await an opponent before collecting primary election contributions is absurd and without rational basis given the actual text of the statute. *Id.* They rely on longstanding interpretation and list several Democratic candidates also taking the same approach. *Id.* AFM illustrates their point by using a year-long primary election battle where one candidate ultimate decided not to run. *Id.* AFM concludes its response by pointing to hypocritical stance of the complainant, which it maintains must end because the complaint is not legitimate, and it is not supported by any actual evidence. *Id.*

*Additional Facts obtained by COPP.*

Mr. Olson was admitted to the Montana State Bar (Bar) on September 30, 2020, and has worked for O'Toole Law Firm from September 2020 until the present. Mr. Olson also currently serves as the Daniels County Attorney. (COPP Records.)

On March 11, 2024, Mr. Olson formally filed as a Republican candidate for election to the office of Attorney General with Montana's Secretary of State by filing a Declaration for Nomination and Oath of Candidacy. In doing so, Mr. Olson provided under oath that he meets the constitutionally prescribed qualifications for Attorney General. *Id.*

On March 14, 2024, Mr. Olson filed a C-1 Statement of Candidate as a Republican candidate seeking election to the office of Attorney General with COPP. *Id.* On the C-1, Katie Winetta of Helena, MT is listed as the campaign treasurer. *Id.* Mr. Olson also filed a D-1 Business Disclosure Statement with COPP on March 14, 2024. *Id.* Subsequently, Mr. Olson has timely filed all required C-5 campaign finance reports. To date, Mr. Olson has reported two debts owed, one in the amount of $1,508.76 to Standard Consulting described as "Reimbursement for filing fee," and the second in the amount of $1,500.00 to Burnt Timber Consulting, LLC, for "Bookkeeping and Compliance for Primary Election." *Id.* No other contributions or expenditures have been reported by Olson's campaign.

The COPP investigator, Scott Cook, received an unsolicited article from an anonymous source that Mr. Cook later confirmed and authenticated. See *Daniels County Leader*, Plentywood, MT, Vol. 30, Issue 2, Thursday, March 28, 2024, "*Semi-candidate.*" The article reports that "Logan Olson, a 2014 Westby High School graduate is a candidate (kind of) for the Republican nomination for the Montana attorney general's office." The article notes that Olson is the current Daniels County attorney, and that in March he told the Daniels County Leader, "I am in full support of Austin Knudsen as attorney general. Unfortunately, our campaign finance laws are broken. For Austin to have an adversary in the primary race is advantageous for him in his bid for re-election. As such I made the decision to file against Austin in an effort to support him." The article notes further, Olson's graduation from Montana State University in Political Science, his University of Montana Law degree, and his association with the O'Toole Law Firm in Plentywood "for four years."

As indicated, Attorney General Knudsen provided an initial comment from his campaign and recently provided COPP with supplemental information. I did not specifically request that he do so when deciding whether Mr. Olson could support his claim he was qualified or whether Mr. Olson violated MCA § 13-35-207. The Attorney General and his representative did make limited public comments in response to media inquiries during that time, which I am able to take note of for the limited purpose of providing some additional context. Attorney General Knudsen continues to take the position that the law in question is "ridiculous."

In a radio interview on KGEZ in Kalispell, MT, Knudsen states that he wasn't trying to hide anything and meant to disclose his efforts to recruit an opponent as a demonstration of the state's "quite silly" laws. He told the Dillon audience about recruiting Olson so that he could be transparent. Following his defeat of Olson at the primary on June 4, 2024, Attorney General Knudsen said,

> I made a public statement that was recorded surreptitiously, but I mean that's fine. That happens. But yes, I was making a comment about our campaign finance laws in Montana. I happen to think they're quite silly the way that they're structured. And I was making a comment about that. Yes. Darrell Ehrlick, Daily Montanan, June 7, 2024.

Attorney General Knudsen is also publicly quoted as saying,

> I was being completely transparent with the people in Montana, which doesn't often happen in these primaries. Lots of times a shadow opponent shows up in a primary, doesn't raise any money, doesn't do any work. No one bats an eye at this. So, yeah, there's nothing untoward here. *Id.*

Knudsen also said, he recruited Olson as a way to challenge the campaign finance laws, and that,

> I just happen to think that this system we've got in place, you know, where you're encouraged to run against a sitting incumbent in order to let that incumbent raise more money. I happen to think that's pretty silly. *Id.*

COPP also requested and reviewed information maintained by the Montana Secretary of State regarding official candidates from 1996 to the present and applied that to COPP data to determine which candidates may have met this nominal campaign participation assertion being presented.

Additionally, COPP reviewed all of Attorney General Knudsen and Mr. Olson's campaign disclosure reports to identify any campaign disclosure issues.

*Comment as to facts and remaining issues*

I note that neither of the respondents articulates the law very well as to their respective positions. This was one reason I considered a declaratory ruling. Though as indicated above, I find no matters of ambiguity involving rights with respect to our enforcement of a statute and the law itself is clear. However, to use Ms. Hogan's words there is a "loophole." If a "loophole" exists, the question is why. While any abuse always concerns me, in this instance quite frankly, I am more concerned with the loophole itself. The difference between the situation here, and those using the loophole now and in previous campaigns, is that the Attorney General has rather brazenly and publicly discussed doing what others have quietly done for years. Others are quietly doing it right now. In looking at reports readily available to me, there are numerous instances where, in the words of the complainant, this purported "scheme" was employed. The approach is systematically and universally employed by Republicans and Democrats alike, and both Republican and Democratic legislatures have done nothing to stop it.

So, the question now remains what should be done. Is this actually a "loophole" or does a plain reading of the law permit such activity to occur? If the law does not allow the activity, should Attorney General Knudsen be singled out and held accountable either because he openly spoke about it or because he is the only respondent presently before me? COPP is statutorily obligated to inspect reports and determine compliance. MCA § 13-37-121. If I determined that the Attorney General and/or Mr. Olson violated the law, there are other candidate campaigns that are similarly situated. Does my determination here to apply the law in those

instances as well? When previous commissioners made drastic changes that impact numerous others, they commonly provided notice to those impacted and began enforcing their new interpretations correcting past customary practices in all future matters. See e.g., *O'Hara v. Madison County Republican Central Committee*, COPP-2016-CFP-011 and COPP-2016-AO-013. This gives candidates, committees, and their supporters notice. In this instance, it provides the legislature an opportunity to address the matter.

I will now determine whether the complaints submitted by Ms. Hogan assert violations of Montana campaign finance laws and whether those assertions are supported with required facts to show a violation occurred. This requires that I determine whether either respondent violated reporting and disclosure laws or contribution limits, and whether recruitment or use of common vendors impacts this analysis. As to Ms. Hogan's requested relief, I must consider how, if, and when candidates are removed from primary elections. I must also determine whether it is necessary to insert or omit language from these statutes in order to take the action Ms. Hogan requests of me.

## DENIAL OF REQUEST FOR DISMISSAL AND GENERAL LEGAL FRAMEWORK

*Request for dismissal*

As an initial matter, both respondents requested that I dismiss Ms. Hogan's complaints based upon a failure to comply with ARM 44.11.106. MCA § 13-37-111, charges the commissioner to investigate complaints. COPP adopted ARM 44.11.106 to assist the commissioner and the public, including candidates and committees, with the orderly processing of complaints. Specifically, ARM 44.11.106(2)(b)(iii), requires the complainant to cite to specific statutes and rules alleged to have been violated. The basis for the respondents' request was that Ms. Hogan had not cited the specific statutes alleged to have been violated and therefore they had not received notice in accordance with their rights of due process.

While I resolved the current situation using ARM 44.11.106(4) by requesting additional information from Ms. Hogan, this need not always be the case. First, commissioners regularly proceed with complaints that adequately describe violations of law, even when the complainant does not provide specific citation.

Second, this requirement is contained in the rule, but is not contained in the statute. Ultimately, courts interpret statute rather than rules. Third, and to support this position, as determined in *COPP v. Wittich*, a complaint of campaign-law violations filed with the Commissioner of Political Practices against a state House candidate was sufficient to initiate the Commissioner's investigation into a state Senate candidate, even though the complaint did not name the Senate candidate, and even though the Commissioner did not issue the Senate candidate a notice and order of noncompliance. 388 Mont. 347, 400 P.3d 735, 2017 MT 210, ¶¶ 6, 24-26 *Id.* In *Wittich*, the author of the initial COPP complaint merely referenced to other candidates during COPP's investigation of another complaint. *Id.* ¶¶ 6, 24, 25. The commissioner was still able to investigate and to file a civil action in state district court. *Id.*

Here, both respondents relied on ARM 44.11.106(2)(b)(iii) to support their position that I dismiss Ms. Hogan's complaint for failure to provide citation to statutes or rules. While I did request Ms. Hogan provide additional information and specific citations pursuant to ARM 44.11.106(4), this is not some rigidly applied rule that necessitates an immediate dismissal. Complaints that sufficiently describe violations of a statute under COPP authority are commonly investigated and processed, even those that lack specific citation. Investigations are conducted. Decisions are reached. Matters are referred to county attorneys and prosecuted. This will continue.

When a complainant's allegations, or facts asserted in support, are unclear to COPP, or respondents could be disadvantaged by a complainant's failure to include citation, I will seek additional information under 44.11.106(4), but simply dismissing complaints will be avoided whenever possible. Dismissal on minor

procedural technicalities when complaints are otherwise sufficiently crafted is always a matter of last resort because it wastes time and resources by merely delaying the established process. That was certainly the case here, and the respondents' requests for dismissal are denied.

*Constitutional basis.*

An analysis of campaign finance law typically begins with *Citizens United v. FEC*, which means reaching back to *Buckley v. Valeo*. Fundamentally, these cases predominate the landscape of campaign finance law, including disclosure, disclaimers, and as is the case here, the government's ability to limit direct campaign contributions to candidates. Since *Buckley*, there have been numerous cases regarding the propriety of contribution limits. For the most part, these cases typically focus on how the government sets the amount of the limit appropriately. (*McCutcheon, Randall, Eddleman, Lair v. Motl* referenced and cited below.) To the extent these cases deal with circumvention of established contribution limits, cases generally evaluate the use of individuals or entities to provide the appearance that these funds are not coming from the source that already exceeded its, or their, contribution limit. The cases also focus on whether candidates can effectively run their campaigns while adhering to the contribution limits. *Randall* and *Lair v. Motl*.

In 1994, Montana passed Constitutional Initiative I-118, reforming campaign contribution limits. Montana's law, like many other state laws, underwent, and ultimately survived, numerous challenges. Basic notions of applicable and acceptable law are derived from these decisions. The decisions include *Eddleman* and *Lair v. Motl* among others. COPP was, quite necessarily, involved and interested in the outcome of these cases.

*MCA, ARMs, and Role of the commissioner.*

As directed under the Montana Constitution, the Montana Legislature is tasked with safe-guarding Montana's election system by establishing laws to

accomplish those directives. *Montana Democratic Party v. Jacobsen*, 416 Mont. 44, 545 P.3d 1074, 2024 MT 66, ¶ 13. The MCA provides the statutory laws that govern Montana campaigns and elections. *Id.* These powers have limits. *Id.*, ¶ 19.

Campaign finance laws outline the responsibilities of the Commissioner of Political Practices and other officials and establish the responsibilities of candidates and committees. Campaign finance laws ensure disclosure of political contributions and expenditures to ensure transparency and make certain that pertinent campaign disclosure information is available to the public. Violations of campaign disclosure laws, if found, are punishable pursuant to MCA § 13-37-128. COPP administrative rules are contained in ARM Title 44, chapter 11. The commissioner adopts administrative rules (ARMs) based on statute, so the rules are developed to implement the provisions of the MCA under the commissioner's authority.

Whether by provisions of the State Constitution, the MCA, or rule, the commissioner must protect the public interest while balancing the rights of individuals, including individuals who seek public office. *Doty v. Montana Commissioner of Political Practices*, 340 Mont. 276, 173 P.2d 700, 2007 MT 341. *Doty* provides important guidance because the Montana Supreme Court specifically addresses COPP's role and authority. *Id.*

While the commissioner has legitimate enforcement powers to protect the public interest, those laws must still be tailored and enforced to achieve the purpose and objective of the law (government interest). See, generally, *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612. Consequently, when enforcing provisions of the law a commissioner must be mindful of the plain language used within the law, and how individuals subject to enforcement might reasonably interpret its provisions and applicability. *Citizens United v. Fed. Election Comm'n.*, 558 U.S. 320, 130 S.Ct. 876, ¶ 20, *Montana Auto. Ass'n v. Greely*, 193 Mont. 378, 632 P.2d 300 (1981). When the plain language of the law is open to too much interpretation, it is the role of the Legislature, not the commissioner, to change or clarify the law. *Montana Commissioner of Political Practices v. Montana Republican Party*, 404 Mont. 80, 485

P.3d 741, 2021 MT 99, ¶¶ 9-12. The commissioner must avoid the temptation to insert language or meaning into a statute, even when in the commissioner's view the additional language is supported by an obvious intent of the legislature when the law was enacted. MCA § 1-2-101 and *Id.* ¶7. The same is true when the commissioner is asked to omit language that is clearly present, even when it appears entirely superfluous. *Id.*

## DISCUSSION

According to the complainant, Mr. Olson and Attorney General Knudsen engaged in a scheme or conspiracy to knowingly circumvent Montana's established campaign contribution limits for the 2024 election. With reference to the facts provided above, the complainant asserts that due to the fact Mr. Olson was recruited to run for the office of Attorney General and made no serious effort to conduct a serious campaign, he was not a legitimate, bona fide, or good faith candidate for the purposes of creating a contested election. The complainant also asserts that there was no contested election because Mr. Olson did not meet the constitutionally prescribed qualifications to serve as attorney general. If there was not a contested primary election, there was only one election, and Attorney General Knudsen's campaign committee could only receive $790 from each contributor. Ultimately, the complainant requests that I remove Mr. Olson from the ballot due to the qualification deficiencies contained in his Declaration for Nomination and Oath of Candidacy. As I determined in *Hogan v. Olson*, and further explained herein, this is not a request I can grant because I lack any such authority. COPP-2024-CFP-018.

In response, both Mr. Olson and Attorney General Knudsen take the position that Mr. Olson properly declared his candidacy when he filed his declaration. They assert a rather rudimentary approach in their responses that their activity is allowed because Montana laws are ridiculous and silly. The basis for their position stems from their perception that this provision has never been enforced in the

manner that the complainant asserts that it should. To avoid continued ridicule of the law, or an appearance that I condone it, I must take a more scholarly approach than what the respondents provide.

During the course of these proceedings, and over COPP's history of nearly 50 years, we have never directly addressed the issues presented here. COPP has decided numerous cases pertaining to MCA § 13-37-216 and adopted rules relating to contribution limits and what occurs when an election is contested or not contested. 44.11.222, ARM. However, COPP has never squarely addressed matters pertaining to whether an election is contested in these particular circumstances. Montana law does not provide a definition of bona fide (i.e. legitimate) candidate. It merely defines the term candidate. MCA § 13-1-101(8). Neither does Montana law address the notion of a straw candidate, as New Hampshire has done. N.H. Rev. Stat. 655:31.

Ultimately, I must evaluate laws and apply facts to reach a determination regarding whether the law was violated. Context and opportunity have a lot to do with creating the environment in which laws are enforced. Therefore, I examine whether Mr. Olson and Attorney General Knudsen violated MCA § § 13-35-211 or 13-37-216. Next, I will consider how past activities have provided a framework for the respondent's actions and consider the implications if COPP breaks from this framework to apply the approach the complainant advocates. Finally, I will finish by addressing reporting issues discovered in the investigation of this complaint.

## I. Attorney General Knudsen and Mr. Olson did not violate MCA § 13-35-221 because by a plain reading of the statutes, a contested primary occurred, Mr. Olson was a candidate, and the alleged activity did not violate MCA § 13-35-221.

Montana law addresses the notion of a candidate being "bona fide" or "good faith" in MCA § 13-35-221. This statute deals with "improper nominations," and is premised on the exchange of valuable consideration. The statute provides that a person may not become a candidate for the purpose of defeating the nomination or

election of any other person for such purposes, "without a bona fide intent to obtain the office" or that the person would withdraw if nominated. MCA § 13-35-221(2)(b), (c). The statute prohibits providing anything of value to an individual to encourage them to run or refrain from running for office. Again, this must be done by way of offering anything of value to achieve such a result, which could include money, a job, or even the promise of a job.

To find a violation of MCA § 13-35-221 and conclude Mr. Olson's nomination was improper, a determination is required that Mr. Olson was not a candidate, the recruitment of Mr. Olson was improper, that he was not a bona-fide, good faith candidate with the intent to serve, or that he was provided consideration in exchange for his candidacy.

1. *The fact the Mr. Olson was recruited to run for office does not impact his legal status as a candidate.*

In and of itself, recruitment is not a disqualifying issue. "Any committee (or individual) can seek and encourage anyone to participate in our democratic process." *Garner v. Montana Citizens Right to Work*, COPP-2018-CFP-003, 3. Past commissioners have discussed recruitment but never has any complainant or commissioner suggested that it is not allowed. In *Garner*, the commissioner addressed whether costs related to recruiting candidates created a reportable expenditure. In determining that it did not, the commissioner suggests a number of reasons committees or individuals might engage in candidate recruitment, including to "promote the ideas and issues of a committee regardless of the outcome." *Garner,* 5. Whether this activity is proper has not been addressed by COPP or the courts. "With the statutes and rules being silent on this issue, if the legislature or the citizenry would like the committees to report recruitment expenditures or contributions for similar efforts, then the cure is through the citizen initiative or legislative action." *Garner*, 7. Although *Garner* speaks specifically to any affiliated reporting requirements which are not applicable here, his statement

is nevertheless true as applied to recruiting in general. If Montana citizens take exception to individual or committee recruiting efforts, the proper channels to address the issue lies not with COPP but with the Montana legislature or citizen initiative. *Id.*

2. *Any authority to conclude a candidate is not a bona fide or good faith candidate lies with the district court and not COPP.*

There is also the notion that "the person's candidacy for the nomination is not in good faith," but this is contained in MCA § 13-35-221(3), which clearly establishes these considerations are the exclusive province of district court judges. The complaint must be presented in the form of an injunction restraining the officer whose duty it is to prepare official ballots from placing the name of a person on the ballot if the judge is convinced that the person has sought the nomination or seeks to have the person's name presented to the voters for any mercenary or venal consideration or motive, and that the person's candidacy for the nomination is not in good faith. *Id.* The term "mercenary" describes someone mainly concerned with making money at the expense of ethics. OXFORD LANGUAGE DICTIONARY, (2024). Venal describes someone showing or motivated by susceptibility to bribery. CAMBRIDGE ENGLISH DICTIONARY (2024). According to the Legal Information Institute "good faith" is a broad term that is used to encompass honest dealing. (2024). Depending on the exact setting, good faith may require an honest belief of purpose, faithful performance of duties, observance of fair dealing standards, or an absence of fraudulent intent. *Id.*

First and foremost, this section of law contemplates a state district court judge may restrain an election administrator from placing a person's name on the ballot. MCA § 13-35-221(3). This can only occur when the judge is convinced that the person seeks nomination by any political party for mercenary or venal consideration or motive *and* that the person's candidacy for the nomination is not in good faith. *Id.* (*emphasis mine*).

To effectuate the purpose of this statute and allow its remedy, the district court action must obviously occur prior to the preparation of the ballots. Otherwise, there is no official to restrain from performing an act. This complaint was never submitted to a district court, and it was not submitted to COPP until May 8, 2024. The Montana Secretary of State prepares the ballot for statewide elected positions. The certification of who was to appear on the ballot was completed on March 21, 2024. As commissioner, I have no authority to remove a candidate from the ballot. I do certify to election administrators, including the Secretary of State, the candidates who have and have not complied with reporting and disclosure laws. See MCA § 13-37-126 and *Womack v. Jenks*, COPP-2013-CFP-023, citing to *In Re Fisher*, COPP (1998). Even in this instance COPP does not remove candidates from the election or even the ballot. COPP merely functions to ministerially provide required information and notify election administrators of their own statutory duties.

Mr. Olson complied with COPP reporting provisions. He filed a Statement of Candidacy (Form C-1) and Business Disclosure Statement (Form D-1) on March 14, 2024, which was within the time permitted. My March 19 letter to the Montana Secretary of State served to notify her that Mr. Olson was in compliance. She then certified Mr. Olson's name to appear on the ballot. While being on the printed ballot is beneficial for the candidate and offers certain facial evidence that a person is a candidate, this is not determinative as a matter of law as to who is a candidate. MCA § 13-1-101(8). Even a candidate removed from the printed ballot under MCA § 13-37-126 or by other means is still a candidate because they filed a declaration for nomination and oath, paid the filing fee, and meet the definition of a candidate.

Mr. Olson was a candidate and I hold no authority to remove him from the ballot.

3. *Mr. Olson's nomination is not improper because if elected he intended to serve.*

Here, Mr. Olson, in his response, has indicated that, if nominated, he would run in the general election as the Republican candidate, and that he would serve as

Montana's Attorney General if elected. (Olson Response, 2, May 30, 2024.) While I do not entirely overlook Mr. Olson's rather cavalier public statements of support for Attorney General Knudsen, I cannot ignore this ultimate assertion as to the legal position he maintains or its implications.

4. *COPP is not provided the authority to determine the validity of a Declaration of Nomination or Oath of Candidacy*

As indicated here and in *Senecal v. Decker*, COPP-2024-CFP-003, the ability of COPP, or any executive branch official, to remove a candidate in the manner requested is not permitted. The declaration and oath are filed by the person becoming a candidate pursuant to MCA § 13-10-201. Each candidate in the primary election shall file a declaration for nomination. The declaration must be signed and sent with the required filing fee. Pursuant to MCA § 13-10-201(4) each declaration must include an oath. The oath affirms the candidate possesses or will possess the qualification prescribed by law. "The candidate affirmation included in this oath is presumed valid unless proven otherwise in a court of law." *Id.* As further provided in MCA § 13-10-201(5), "[t]he declaration, when filed, is conclusive evidence that the elector is a candidate for the nomination by the elector's party". MCA § 26-1-102(2)(a), defines "conclusive evidence" as that which the law does not permit to be contradicted." Further, "no evidence is by law made conclusive unless so declared in statute." MCA § 26-1-102(2)(b). Here the statute is declared as conclusive evidence.

This provision of law is perhaps suspect and unreliable. Statutes that establish conclusive evidence have been found unconstitutional because they are so absolute that they invade upon powers reserved to the judiciary. Cases declaring conclusive evidence unconstitutional date back to 1889. See *Bielenberg v. Montana Union Ry. Co.*, 8 Mont. 271 (1889), *State ex rel. Zander v. Fourth Judicial Dist.*, 180 Mont. 548 (1979). However, the statutes at issue here are enacted more recently and remain unchallenged. These are the current statutes pertaining to Montana law both with respect to the declaration and the evidence.

The statutes also protect individuals from having their declarations called into question. The Legislature adopted this policy. The policy protects and promotes an individual's constitutional right to run for political office and the public's constitutional right to associate with that individual. There is a federal constitutional right to run for office. *Sadler v. Connolly*, 175 Mont. 484, 575 P.2d 51 (1978). Qualification statutes that bear no relation to an ability to serve in the office are invidious and constitutionally invalid. In *Sadler*, the Montana Supreme Court also determined that violations of laws pertaining to a declaration for nomination must show a "deliberate, serious and material" violation of law by way of false attestation. *Sadler*, 486. In this light, and being mindful of the constitutional rights being implicated, I am compelled to apply the provisions of the statute as it stands by giving effect to the provision's plain wording.

Based on MCA § 13-35-221(3), if not for MCA §§ 13-10-201(5) and 26-1-102(2), Mr. Olson could conceivably be declared a candidate who did not act in good faith. The complaint presents evidence of this and COPP reports support this evidence, if the complainant's theory is to be adopted. Mr. Olson made public statements of support for his opponent, and maintained he only entered the race because Montana's laws were ridiculous. He made no efforts to run a campaign. He received no contributions and made no expenditures other than his filing fee. The Attorney General made similar statements as to what precipitated Mr. Olson entering the race. But I cannot decide that, and even under MCA § 13-10-201(4), I would need to await a judicial determination that his oath is not valid.

5. *Candidate Olson and Attorney General Knudsen cannot be found to have violated MCA § 13-35-221 because COPP finds no evidence of consideration.*

In addition to these legal difficulties, as previously mentioned, the statute requires a finding that there is some form of consideration exchanged between Mr. Olson and Attorney General Knudsen. MCA § 13-35-221. While consideration in this regard can be in "any manner or form," it must be for the "purpose of inducing"

the other person to be a candidate. *Id.* There is simply no evidence whatsoever in the complaint or on the record here that shows a payment or promise of valuable consideration was provided by Attorney General Knudsen, or a surrogate of his campaign, to Mr. Olson. MCA § 13-35-221(1). Mr. Olson attests to this fact in his May 30, 2024, response. So does AFM on June 24, 2024.

The strongest argument that Mr. Olson violated this statute is that he became a candidate, individually or in combination with others, for the purpose of defeating the election of Attorney General Knudsen's general election opponent, Mr. Alke, without a bona fide intent to obtain the office. MCA § 13-35-221(2)(b). However, there is still the requirement that consideration was exchanged in some form. This is an overriding requirement in both subsections (1) and (2) of MCA § 13-35-221, and Mr. Olson has asserted as part of the record in this matter that if nominated he would run in the general election and if elected, he would serve. (Olson Response, May 30, 2024.)

In *Ravndal v. Halver and Obert*, the commissioner did specifically address the improper nomination statute—MCA § 13-35-221. COPP-2014-CFP-020. Obert was running for re-election and Halver was one of her opponents. Mr. Halver appeared at a public meeting and proposed creating a Chief Administrative Officer position and proposed that he be hired to fill the position. The election was discussed during the meeting, and the basis of that discussion for the purposes here are that Mr. Halver represented that if he was not hired, he was going to "fire up" his campaign "big time." *Halver*, 4. The commissioner evaluated the matter in context of "improper nominations," "illegal influence of voters," and "illegal consideration for voting," and determined that only MCA § 13-35-221, was implicated. *Halver.*

In evaluating whether this code provision was violated, the commissioner acknowledged that Title 13, chapter 35 contains criminal statutes and violations are misdemeanors. *Halver*, 5. The commissioner points to numerous cases decided over decades of enforcement to support this proposition. *Id.* He specifically relies on

*Bixler v. Suprock*, in deciding *Halver*. COPP-2013-CFP-013. The commissioner determined that MCA § 13-35-221, "prohibits manipulation of candidacy status as a means to secure employment." *Halver*, 6. To that end, the commissioner determined that the "timing, manner, and method of Mr. Halver's employment proposal, coupled with his campaign related activity" triggers review under the statute. *Halver*, 7. The commissioner relied on case law to determine whether the statute applied. In each of the cases something of value was distributed with the intent to influence votes. *Halver*, 7-10.

Likewise, in *Kommers v. Palagi*, the Montana Supreme Court considered the issue. 111 Mont. 293, 108 P.2d 208 (1940). In *Kommers,* the incumbent sheriff maintained a secret slush fund that was used to purchase pencils, beer, and sewing kits that were later distributed by the candidate and his deputies with the intent to influence votes. *Kommers,* 308. In *Tipton v. Sands*, if a candidate promises to work for a lower salary than the one established by law, it saves taxpayers money and acts as a direct inducement to buy votes. 103 Mont. 1, 60 P.2d 662 (1936). As determined by the commissioner, this was not the case in *McFadden v. Stanko* where the candidate openly declared he would donate his public salary to charity. COPP-1994-CFP-01/06/94. In *Stanko,* the benefit or consideration element with respect to the inducement was not direct, and therefore, it was not sufficiently present to constitute a violation. *Id.* There was no consideration exchanged and Tipton did not apply. *Id.*

Here, the only benefit to the asserted arrangement is provided to Mr. Knudsen and not to Mr. Olson. There are no facts asserted which indicated any consideration or other inducement was offered to Mr. Olson which would make this a corrupt practice.

A plain reading of this statute simply does not permit me to determine the statute was violated by Mr. Olson or Attorney General Knudsen in the manner prescribed. No facts are offered indicating that I should. Facts are asserted indicating I should not. The facts presented by the complainant are insufficient for

me to reach a determination that the statute was violated. The substantive facts presented by Mr. Olson and Attorney General Knudsen are sufficient to defeat the claim that this statute was violated, so questions pertaining to MCA § 13-35-221 are dismissed.

## II. I cannot determine Candidate Olson and Attorney General Knudsen violated MCA § 13-37-216 because a contested election occurred and there is no statutory prohibition on the manner in which Knudsen raised funds.

In reaching this determination I examine the history and constitutionality of contribution limits, determine whether there was a contested election in the present situation, and whether contributions to the AFM campaign were lawfully accepted.

### 1. *An examination of contribution limits and their application here, requires a discussion of the constitutional framework which allows Montana to limit campaign contributions.*

*Federal campaign finance law*

Significant First Amendment interests are implicated by contribution limits. Contributing money to a candidate is an individual's right to participate in the election process through both free expression and association. As previously noted, *Citizens United* re-establishes *Buckley* as the predominant case related to this issue. The government clearly has the authority to establish and enforce reasonable contribution limits to guard against quid pro quo corruption or the appearance of quid pro quo corruption. *Buckley v. Valeo*, 424 U.S. 1, 26-27. Government may not regulate contributions simply to reduce the amount of money in politics or restrict the participation of some to enhance the influence of others. *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 131 S,Ct. 2806, 2825-2826.

Because First Amendment rights of association and speech are implicated, the standard applied to the government interest is exacting scrutiny to expenditure restrictions. *Buckley*, 44-45. Exacting scrutiny allows the government to regulate

protected rights only if the government's regulation promotes a compelling interest and is the least restrictive means to further the articulated interest. *Id.* Because contribution limits impose less restraint on political speech, a lesser "but still rigorous" standard of review is permitted. *McCutcheon v. FEC*, 572 U.S. 185, 197, 134 S.Ct. 1434, 1444, citing *Buckley v. Valeo*24 U.S. 1, 44-45, 96 S.Ct. 612. In the area of contribution limits, the limits are sustained if the government employs means that are closely drawn to avoid abridgment of associational freedoms. *Buckley*, 25. In *Buckley*, the U.S. Supreme Court found that the primary purpose of the federal campaign law—preventing quid pro quo corruption and its appearance—was a sufficiently important governmental interest. *Buckley*, 26-27.

Although *McCutcheon* addressed issues related to aggregate contributions limitations rather than base limit contributions, which are limits by donors made to candidates, it is still pertinent here because it also deals with circumventing limits. In *McCutcheon*, base limits were permitted but aggregate limits were more suspect because aggregate limits prohibited an individual from fully contributing to the primary and general election campaigns, even if all contributions fell within the base limits. 193. The whole point of the First Amendment is to protect the individual's right to speech, even and especially when the majority view prefers that it be restricted. *Id.* 206. This applies to legislators and judges who might not view it as useful to the democratic process. *Id.*

The U.S. Supreme Court identified only one legitimate interest for restricting contributions. Namely, corruption. Moreover, the only type of corruption the government may target is quid pro quo corruption. *Buckley*, 424 U.S. 1, 26, *McCutcheon*, 206-207. Spending even large sums of money is not quid pro quo corruption, unless there is a correlation to control the officeholder in the performance of their official duties. *McCutcheon*, 208. Mere attempts to garner influence or access are also insufficient to establish quid pro quo corruption. *Id.*, *Citizens United*, 359. The line between quid pro quo corruption and influence must be respected to protect the First Amendment and the government must err on the

side of protecting speech rather than suppressing it. *FEC v. Wisconsin Right to Life*, 551 U.S. 449, 457.

*Montana campaign finance law*

Montana's contribution limits are established and set under MCA § 13-37-216. Issues related to the manner in which the Montana regulates campaign contribution limits is most squarely decided in *Montana Right to Life v. Eddleman*, 343 F.3d 1085 (2003) and *Lair v. Motl*, 873 F.3d 1170 (2017). Though the issue here is not directly addressed, the cases are nonetheless instructive.

In *Eddleman,* Montana Right to Life (MRL) brought an action challenging provisions of the Montana campaign finance reform initiative passed by Montana voters in 1994 (Initiative No. 118) against Stillwater County Attorney, Mr. Eddleman, claiming the contribution limits imposed undue burdens on their protected speech and association rights. The Court, in *Eddleman*, determined that there was adequate evidence that the limitations furthered a sufficiently important state interest and were closely drawn. Contributors were free to associate with candidates in other ways, and candidates could amass sufficient resources to wage an effective campaign. *Eddleman*, 1094. Montana established undue influence, in part, by offering evidence of a letter from a state senator to his colleagues, urging support for an industry bill to keep the industry PAC money in his party's camp. *Id.* 1093-1094. The letter specifically identified the industry PAC and the disproportionate amount of money favoring the senator's party. The letter urged colleagues to destroy it after reading, and provided explicitly that voting in favor of the particular bill was important to "keep the contributions coming our way." *Id.* 1093.

In upholding Montana's limits, the Court considered the contested primary provision to be an important factor. "Because these limits apply to "each election in a campaign," the amount an individual may contribute to a candidate doubles when the candidate participates in a contested primary." *Eddleman*, 1088. The Court affirmed the district court holding which applied *Shrink Missouri* standards to

determine Montana's political contribution limits were closely drawn to match the constitutionally sufficient interest of avoiding corruption and its appearance. *Id.* 1098, citing *Nixon v. Missouri Shrink PAC*, 528 U.S. 377 (2000). The limits were not so radical that they rendered political association ineffective, nor did they prohibit candidates from running effective campaigns. *Eddleman*, 1089-1090.

The effect of a contribution limit is minimal and there is only a marginal restriction on the contributor's ability to engage in free expression. *Eddleman*, 1090. Contributions are a symbolic act, so limiting the amount an individual may contribute to a candidate involves little direct restraint on the contributor's political communication. *Eddleman,* 1090. The symbolic expression in the form of a contribution is permitted, and its limits do not otherwise infringe on the contributor's freedom to discuss candidates or issues. *Eddleman*, 1090. Limiting contributions leaves communications significantly unimpaired and government more readily clears hurdles before them than they would for expenditure limits. *Eddleman*, 1091 citing *Nixon v. Missouri Shrink PAC*, 528 U.S. 377 (2000).

In *Lair v. Motl*, Mr. Lair and others filed a civil action in federal district court against COPP asserting that Montana's contribution limits violated the First Amendment. A series of cases had placed the *Eddleman* decision on less stable footing. *Randall v. Sorrell*, 548 U.S. 230. The *Lair* situation itself is determined through a series of cases dating back to before the 2012 election, but *Lair v. Motl* provides the culmination to that long series of events.

Vermont's contribution limits had been invalidated in *Randall*. A plurality of the U.S. Supreme Court led by Justice Breyer had proposed a new two-part, multi-factor test regarding whether contribution limits statutes were closely drawn. The Court identified "danger signs" and one of the danger signs was that Vermont set its limits "per election cycle" rather than dividing it between primary and general elections. The larger focus was on the question of whether the established contribution limits were so radical that they prevented candidates from amassing

the resources necessary to run effect campaigns. The danger signs were identified, and the test was presented as follows:

*Test and Application*

To determine whether a contribution limit statute is "closely drawn" one should evaluate whether the restriction significantly restricts the amount of money available for challengers to run competitive campaigns; whether political parties must abide by the same low limits; whether volunteer services were included; whether the limits are adjusted for inflation; and any special justification that might warrant the limit.

While *Lair* did not abrogate *Eddleman*, it did acknowledge that *Citizens United* and *McCutcheon* "had limited the important state interest....to preventing quid pro quo corruption, or its appearance." *Lair II*, 798 F.3d 736. The definition of quid pro quo corruption is "a direct exchange of an official act for money" or "dollars for political favors" and the "appearance" of quid pro quo corruption as "public awareness" of the opportunity for abuse inherent in a regime of large individual financial contributions to a particular candidate." *Lair v. Motl*, 1177, citing *Citizens United*, and *McCutcheon*, 1441.

*Eddleman* relied on a broader definition of corruption that embraced both quid pro quo corruption and a generalized "access to influence" theory so the matter was remanded back to the federal district court. While the federal district court did find Montana's contribution limits unconstitutional, the Ninth Circuit reversed that decision. *Eddleman*, 1104-1106.

The Ninth Circuit concluded that Montana's limits were closely drawn, and that Montana presented sufficient evidence to sustain them. *Id.* Together with other testimony, the senator's letter to colleagues from 1981, sufficiently established the necessary evidence. *Id.* 1093. Three additional circumstances underscored the Court's decision. Montana permitted political parties to contribute far more than individuals or other political committees and it prohibited incumbents from

amassing war chests because the statute did not allow candidates to preserve funds for the next election cycle. Most pertinent to the matter at hand, the Court specifically noted as one of its three underscored circumstances, that Montana applies limits to each election rather than to each cycle, "meaning a contributor may give up to the limit twice if the candidate runs in a contested primary." *Lair*, 1185.

2. *Mr. Olson was a candidate and therefore a contested election occurred which allows contributions to be accepted for two elections.*

Pursuant to subsection ARM 44.11.227(1)(b) a candidate for statewide office in 2024 is limited to $790 *per election, (emphasis added).* See also, ARM 44.11.222. For purposes of MCA § 13-37-216, "election" means the general election or a primary election that involves two or more candidates for the same nomination. If there is not a contested primary there is one limit. If there is a contested primary there are two limits. The section of code and the rule do not define "contested election" or provide a separate definition of who is a candidate. Consequently, in order to determine if the election was contested, I must determine if Mr. Olson was a candidate by applying the definition of "candidate," provided by MCA § 13-1-101(8), and other election statutes.

Montana statute provides two ways in which an individual becomes a candidate. First, "'Candidate' means an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law." MCA § 13-1-101(8)(a).

On March 11, 2024, within the time permitted by law, Mr. Olson filed a Declaration for Nomination on a combined form that included his Oath of Candidacy, as required by MCA § 13-10-201. MCA § 13-10-201(4) provides that the oath is valid unless declared otherwise by a court. Mr. Olson's declaration is "conclusive evidence" that he is a candidate. MCA § 13-10-201(5).

The definition of "candidate" also provides that, "for the purposes of chapters 35, 36, and 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individuals behalf to secure nomination or election to any office at any time..." MCA § 13-1-101(8)(b). This would seem to provide some credibility to the complainant's assertions that a candidate showing zero contributions or expenditures is not a candidate. However, as determined by the Montana Legislature in 2017, a candidate's filing fee is considered a campaign expenditure. Prior to 2017 the definition of expenditure (now MCA § 13-1-101(21)) specifically excluded the filing fee, but the Legislature struck that language. (S.B.. 3 (2017), MT Ch. Law 63), see also, *Tonkay v. Caferro*, COPP-2022-CFP-003, 3-5. Services provided to the campaign are also expenditures that must also be reported.

Here, Mr. Olson shows a filing fee and professional services listed as a debts. (COPP Records.) The definition of expenditure also includes loans, advances, promises, pledges or anything of value. MCA § 13-1-101(21). Consequently, Mr. Olson became a candidate when he paid his filing fee or made an expenditure by acquiring a debt or loan to pay the filing fee.

*A contested election exists even if Mr. Olson is disqualified.*

It is also critical to note that had Mr. Olson won the primary election he would have become the Republican nominee for the general election, even though that primary election may have been subject to challenge based on his lack of qualifications. MCA § 13-36-101 et seq. More importantly, Attorney General Knudsen would not automatically advance to the general election, even in the event of Mr. Olson's election being invalidated due to his lack of qualifications. Under, MCA § 13-36-209, a court could determine the removal unjust. Under, MCA § 13-36-210, a nominee is deprived their primary election due to corrupt practice, illegal act, or undue influence, a vacancy is created and the "vacancy must be filled in the

manner provided by law." *Id.* A vacancy after the primary election and prior to the general election for statewide positions is filled by the affected state central committee as provided by the rules of the party. MCA § 13-10-327(1)(a).

The point here is that, even for purpose of the controlling rule 44.11.222 ARM, even if Mr. Olson's nomination is deprived, Attorney General Knudsen does not automatically advance. In fact, a timely challenge would be filed, a court would reach a determination that creates a vacancy, and the Attorney General would need to be selected by the assembled party delegates. Because Attorney General Knudsen does not "automatically" advance, the election is, in fact, contested irrespective of Mr. Olson's qualifications. All necessary events to reach this conclusion occurred on March 24, 2024, when the Secretary of State certified Mr. Olson's name to appear on the primary election ballot.

Based on the above analysis, I am legally compelled to conclude Mr. Olson was a candidate for Attorney General during the 2024 Montana primary election. Furthermore, in the event Mr. Olson was disqualified, Attorney General Knudsen would not automatically advance. This, by necessity, leads to the legal conclusion that the 2024 Montana primary election for the Republican nomination was contested. Montana law plainly provides that, "[i]f there is a contested primary then there are two elections to which the contribution limits apply." MCA § 13-37-216(6), 44.11.222 ARM.

*3. Fundraising is permitted before a primary challenger is known to exist.*

The complainant also asserts that a candidate may not begin to collect contributions for the primary election until such time as they have an actual opponent. There is no basis in law to support such a proposition. As a factual matter, I am unaware of an instance where this has occurred. More importantly, as a legal matter, there is no statute or rule that supports such a proposition. The law requires only that there be a contested primary election. It says nothing about the triggers or timeframes upon which that can occur. It certainly does not provide that

a candidate is precluded from receiving a contribution prior to having another declared candidate enter the race. It is common practice for candidates to anticipate having primary elections and to collect contributions for both the primary and general elections at the start of their campaigns. Candidates who anticipated a primary and collected contribution for both the primary and general elections that ultimately end up not having a primary election opponent must return those funds. This is common practice and has always been allowed. There is no legal basis upon which I could direct otherwise. This portion of the complaint lacks merit and is dismissed in full.

*4. Common vendors do not create coordination*

The complainant asserts that the fact that Mr. Olson and Attorney General Knudsen have employed the same campaign treasurer indicates unlawful coordination between the two campaigns. Montana law and past COPP decisions do not support this supposition. The Montana rule, 44.11.602, ARM(4)(a), specifically provides that coordination does not exist solely because of "personal or professional relationships between a candidate and other person."

In *Pennington v. Bullock*, Mr. Pennington alleged that gubernatorial candidate Steve Bullock and several political committees supporting him violated campaign finance laws by coordinating their efforts. COPP-2013-CFP-012. The substantive question was whether shared vendors and the association between individuals and groups could result in coordination. According to the commissioner, the *Pennington* complaint boiled down to an assumption that association, by itself, creates coordination. p.1. The commissioner determined, "[f]or a number of reasons, including constitutional considerations, such an assumption, if adopted into law and applied equally across the board to all candidate races *would have an insidious and far-reaching effect on candidates across Montana.*" *Pennington*, 1, 2, (*emphasis mine).*

The complaint was, at least in part, based on the use of common vendors by the Bullock campaign and many of the named third-party groups. The commissioner rejected the notion that Montana law assumes coordination based solely on shared vendor or shared person relationships. The commissioner relied on *Harmon and Sweet v. Citizen for Common Sense Government,* to determine that there was no coordination even where "extensive crossover" existed because there was no evidence to support such a conclusion. COPP-1997-CFP-12/31/97. In *Close v. People for Responsible Government,* coordination was rejected even where there was crossover between contributors to the political committee and the candidate. COPP-2005-CFP-12/15/05. Again, coordination is rejected in *Keane v. Montanans for a True Democrat,* even through there were crossover contributors and activity by people involved in both the candidate campaign and the political committee. COPP-2008-CFP-04/02/08. There was no supporting evidence of coordination.

In *Little v. Progressive Missoula,* the commissioner did find sufficient evidence of coordination because numerous documents showed direct and continued contact between the candidate and the political committee throughout the entire campaign. COPP-2004-CFP-07/22/04. In the series of cases involving Western Tradition Partnership, the commissioner describes this as "actual evidence" relying on the Federal Election Commission. See *Pennington,* 9, n. 6. *Pennington* was dismissed when the same actual evidence standard failed as applied to Bullock and his supporters. The claim of coordination based solely on a personal relationship was also dismissed because there was no evidence that any campaign strategy was discussed between the candidate campaign and any of the political committees. *Pennington,* 12, citing *Dick/MDP v. Republican State Leadership Committee,* COPP-2012-CFP-038.

The same is true with respect to the present matter. There is simply no evidence that Mr. Olson and Attorney General Knudsen engaged in anything beyond personal communications which are exempt under ARM 44.11.602(4)(a). There is no evidence of any other contact or ongoing communication.

Additionally, common vendors, such as those shared by Mr. Olson and Attorney General Knudsen, perform simple and ordinary acts that do not require them to share campaign strategies or plans relating to timing, content, or anything else for that matter.

There is no evidence to support any claims so pertaining to coordination, shared vendors or association. Consequently, these allegations are dismissed in full.

## III. I am precluded from addressing this statutory 'loophole' in the manner requested by the respondent.

In most, if not all, COPP cases addressing MCA § 13-37-216, the commissioner deals exclusively with whether the base limit contribution was exceeded or not properly designated. *Tuininga v. Bullock*, COPP-2012-CFP-10/17/13, 15. The situation here is a case of first impression for COPP.

### *1. Reliance and COPP decisions regulating MCA § 13-37-216.*

COPP issued decisions relating to campaign contribution limits going back many years, but the provisions of the code most relevant to the issues presented here were adopted by initiative in 1994. Issues with respect to candidate recruitment, circumvention, and whether a candidate is "bona fide," "legitimate," or a "good faith candidate," have not been addressed. Nonetheless, COPP has reached decisions related to MCA § 13-37-216 and participated in litigation to defend the statute. How COPP employs its authority with respect to any statute creates a pattern and practice upon which a regulatory atmosphere or expectation exists. Regulated individuals, in this case candidates, rely on these patterns and practices to govern their own behavior with respect to the statute. In essence, the manner in which a statute is enforced provides notice to candidates as to how they should conduct themselves and their affairs. Quintessentially, this is the issue the respondents highlight when they rather crassly describe the laws as "ridiculous" or "silly." What they are actually doing in legal terms is asserting a reliance.

While reliance is a developing area of law, it certainly does apply to

situations involving agency regulation. A judge would ultimately determine its value or applicability here, but as commissioner I can be mindful of what defenses are available and how they generally apply. I do so by way of exercising discretionary authority with respect to whether or not prosecution is justified. See *Powell v. Motl,* OP 14-0711, *MFC v. Rep. Zephyr*, COPP-2023-CFP-010, 23-26. Recognizing a reliance interest promotes stability in the law and ensures that agencies are not acting arbitrarily or capriciously. An agency, like COPP, must examine relevant facts and articulate a rational explanation for its action, including making a connection between the facts presented and the choices made. Of course, this must be clearly based in law.

As the U.S. Supreme Court explained in *Smiley v. Citibank*, a "[s]udden and explained change that does not take account of a legitimate reliance on prior interpretation, is arbitrary and capricious or an abuse of discretion." 517 U.S. 735, 742, 116 S. Ct. 1730, 1734 (1996). Though the concept of a reliance interest ultimately had no appreciable impact on the agency action in *Smiley*, the decision did form the basis upon which reliance interest would be applied in *FCC v. Fox Television Stations, Inc.,* 556 U.S. 502, 129 S.Ct 1800 (2009). When prior policy has engendered a serious reliance interest that interest must be taken into account. *Id.* 515. "It would be arbitrary and capricious to ignore such matters." *Id.* A reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy. *Id.* 516.

Admittedly, there is no actual written policy established here, but one can extrapolate that the enforcement approach allowed a continuation of known facts and circumstances that in effect did create something akin to a policy. It certainly created a regulatory atmosphere that the respondents were obviously aware of, and the respondents are not alone in this assessment. If zero or very limited campaign activity involving contributions or expenditures is the standard, the campaign landscape over the course of the 30-year history of this particular provision is

riddled with violations. Taken in context, candidates would face new regulation and face serious consequences, all without notice to any of these candidates. I am not inclined to determine that the present situation is different merely because the respondent candidates were more open about it. In essence, that would allow the activity to continue, but only so long as it continued quietly or in secrecy. Nothing is more repugnant to the purpose of campaign finance laws than that.

First and foremost, campaign finance law operates to promote transparency over secrecy, and the only real distinction between the respondents here and those employing the exact same tactics, was that other candidates were much more clever and quiet regarding their affairs. I cannot ignore the fact that this is the worst kept secret in all of Montana's campaign finance laws. It is without peer in that regard.

2. *If I did determine a violation occurred, I cannot find Mr. Olson or Mr. Knudsen violated MCA §§ 13-35-221 or 13-37-216 without determining they acted with the requisite mental state.*

While an action or activity may appear to be a violation, I must also establish that the alleged violator acted with the requisite mental state in order to conclude criminal prosecution is warranted. See *Seward v. Andrick*, COPP-12/13/2004.

In *Montana Automobile Assoc. v. Greely*, 193 Mont. 378, the Montana Supreme Court dealt with provisions contained in an initiative measure (I-85) passed by Montana voters in 1980. While the Court salvaged most of the measure it struck many of its provisions as unconstitutional. The Court determined these provisions were unconstitutionally vague. "A statute is unconstitutionally vague if it fails to give a person of ordinary intelligence fair notice that his contemplated activity is forbidden by the statute." *Id.*, 386.

*Mens Rea – Chapter 35*

In order for me to find that Mr. Olson or Attorney General Knudsen violated a statute under Title 13, chapter 35, I must have evidence that they acted

with the mental state of purposely or knowingly required by the criminal code.[1] MCA § 45-2-103, *see also Scott v. Doyle*, COPP-5/31/2011. To establish that Mr. Olson or Attorney General Knudsen, or anyone else for that matter, violated provisions of Mont. Code Ann. Title 13, chapter 35, it is necessary to prove that, acting with one of the above mental states, he either made a false statement under oath or filed a false written statement, knowing the information in the statement was not true. This needs to be intentionally deceptive.

In *Howell v. Stamey*, the candidate certified a closing report signed by his treasurer (who was also the candidate's wife and a candidate herself), which he undoubtably knew was false. COPP-2014-CFP-003. When asked to supply supporting information, Mr. Stamey was unable to do so while the complainant was able to supply convincing evidence that the report was false. *Id.* 5. Not only did the Stamey's attempt to mislead COPP, they also falsely claimed a legitimate debt had been forgiven and made no effort to reconcile the debt. *Id.* In *Stamey*, the commissioner determined the facts showed that the Stameys invited reliance on a writing they knew was untrue with the purpose of misleading a public servant in performance of an official function. *Id.* 8-9. Related to the present matter, in deciding whether Mr. Olson filed a false declaration in violation of MCA § 13-35-207, although there was some evidence to support a violation, there was also evidence to the contrary. When Mr. Olson filed his declaration for nomination and oath of candidacy, the Secretary of State website provided the judicial qualifications rather than the qualifications for Attorney General, which were more restrictive

[1] :A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstances exist. A person acts knowingly with respect to the results of conduct described by a statute defining an offense when the person is aware that it is highly probable that the results will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. MCA § 45-2-101(?).

A person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in the conduct or to cause that result. When a particular purpose is an element of the offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. MCA § 45-2-101(65) d

because they also included an active practice requirement. This is similar to the situation presented to the Montana Supreme Court in *Sadler v. Connolly*, 175 Mont. 484, 575 P.2d 51 (1979). In *Sadler*, a candidate was accused of submitting a false declaration. The form of the declaration, while containing other information dealing with relevant qualifications, did not contain information pertaining to the specific qualification at issue in *Sadler*. Consequently, it could not be held that the candidate deliberately, seriously, and materially violated the statute, which was also contained in the Montana Corrupt Practices Act.

Here, Mr. Olson's relied on the qualifications for becoming a judge, including running for Chief Justice of the Montana Supreme Court, rather than those for Attorney General. The evidence, while pointing to a hasty and minimally researched decision by Mr. Olson, did not allow me to conclude that Mr. Olson knowingly made a false declaration in violation of MCA §13-35-207.

*Mens Rea - Chapter 37*

If I were to pursue a case under MCA § 13-37-128, involving civil actions, a lesser mental state of negligence may apply. Regardless, in a civil action the statute that COPP imposes is potentially severe. Such statutes implicate constitutional rights, and they are by nature penal. Penal statutes implicating constitutional rights must be exercised with great care, especially by an agency. *Montana Republican Party v. Schweitzer*, COPP-2004-ETH-11/29/04, ultimately dismissed by Dep. Comm. J. Goetz, COPP-ETH-FINAL ORDER-03/01/2012.

This mandates that here I ultimately prove the violator acted knowingly. Given the circumstances presented and the enforcement history, I can do no such thing. Knudsen and Olson are not relying on ignorance of the law or otherwise misapprehension of it. They are referring to the long-accepted or permissible practice where this behavior was allowed. They openly and frankly discuss their understanding of the implications of their actions. Under these circumstances it is exceedingly difficult if not impossible to maintain a claim that they acted

knowingly. They are also acting as an ordinary person in their position would do, especially when I take into account the same activity is regularly engaged in by numerous other candidates and campaigns over the course of 30 years.

In the event I were able to determine that Mr. Olson or Mr. Knudsen violated MCA § 13-37-216 by creating a situation in which Mr. Knudsen was able to collect contributions in excess of allowable limits, I would not be able to find that either did so with the requisite mental state to justify prosecution.

## IV. Although all allegations asserted by the complainant are dismissed, even those that meet the indicia of a frivolous complaint often add value to public discourse and are worthy of analysis.

In deciding this matter, I also relied on principles established in *Landsgaard v. Peterson and Wilks.* COPP-2014-CFP-008. The increasing number of complaints COPP is faced with warrants that we adapt to the situation. *Landsgaard*, 4. Most complaints raise issues worthy of civic debate such that public resources should be expended. However, not all complaints meet this standard. The targets of such complaints bear unnecessary monetary costs in defending themselves and suffer the stigma of being accused of wrong-doing. In the course of establishing a process to deal with frivolous complaints the commissioner adopts certain principles. *Landsgaard.* To be clear, the majority of this complaint is not frivolous. Nevertheless, these same principles have other applications in law. In the wake of *Citizen's* United, and a plethora of subsequent challenges to Montana campaign finance law, the Commissioner in *Landsgaard* asserted basic principles by which a cavalcade of complaints could be managed.

I understand and am to a certain degree sympathetic to the complainant's reaction to the events that transpired here. Unlike other campaigns that engaged in this same behavior, the respondents were, to say the least, brash, in the conduct of their affairs. But clearly the conduct engaged in is not sufficiently distinct or different from the pattern and practice engaged in by numerous campaigns over the 30-year existence of the controlling statutory provision. MCA § 13-37-216(6).

While the complaint presently before me provides numerous issues worthy of being addressed and matters of first impression, some indicia of a frivolous complaint as provided in *Landsgaard* are also present here. *Landsgaard* involved a complainant requesting an interpretation of law that was focused too narrowly on a specific definition without taking the other laws and even accepted practices into consideration. The same can be said of *Pennington*.

Mr. Landsgaard argued that Jim Peterson and four members of the Wilks family violated Montana's campaign finance laws by contributions that were over the limit, failing to file as a political committee, bundling campaign contributions, and failing to properly report and disclose. *Landsgaard*. Only issues regarding the general election were in play and each of the four Wilks family members made a $160 contribution, which was the maximum amount allowed at the time for state legislative races. *Id.* 2. Mr. Landsgaard argued that the manner in which these affairs were conducted resulted in them acting together and creating a committee. *Id.* This would have limited them to one $160 contribution rather than four. *Id.* Mr. Landsgaard also asserted that the method of bundling the contributions and delivery of them by a surrogate—Sen. Peterson—indicated they were a political committee. *Id.* The commissioner used the complaint as an opportunity to establish the process of determining and dismissing frivolous complaints. The basis for designating complaints as frivolous and thereby dismissing them is grounded in the notion that Montana's COPP complaint process is informal and minimalistic. Montana devotes scant resources to reviewing political actions. *Landsgaard*, 3.

While I do not entirely share the *Landsgaard* commissioner's deep level of concern regarding this particular period, I do find value in the principles he sets forth to move forward in this new era of campaign finance law. Two basic principles asserted in *Landsgaard* are applicable in this situation.

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*Restricting participation*

First, complaints demanding an interpretation that restricts a contribution or expenditure that afford base-level participation in campaigns are frivolous. *Landsgaard*, 8. Citizen involvement in political campaigns is self-evident in the process of government. *Landsgaard*, 8-9. Citizen participation "is advanced by an unencumbered individual contribution limit," and further enhanced "by dismissing complaints challenging individual contribution limits" since dismissal will reduce participation costs, which are incurred when the accused are forced to defend themselves by engaging legal counsel. *Id.* 9. "[A]n approach of less restriction on individual contributions serves the related constitutional goal of lowering regulatory burdens." *Id.*

*Disclosure burdens on contributors*

The second 'indicia of a frivolous complaint' asserted in *Landsgaard* is one which increases disclosure burdens on individual contributors. p. 10. While this is not directly an issue in and of itself here, the reasoning for including the indicia is. Under the theory presented by Mr. Landsgaard, the approach would impact Montana policy of simplistic reporting. As the complainant requests here, we would disrupt that process and we would replace it with one whereby candidates wait for opposition to enter the race before they could consider themselves as being in a contested primary. For the reasons otherwise stated herein, and based on the reasoning provided in this indicia, such a suggestion must be rejected. *Landsgaard* discusses other factors such as "got you" complaints and trivial complaints that focus on de minimis violations. *Landsgaard*, 10-13. These sorts of complaints accomplish little, but they do unnecessarily drain finite agency resources.

The *Landsgaard* decision is also premised on the notion of custom and practice. Even though a husband and wife might technically qualify as a political committee under the legal definition, the practice of excluding them as such is a time-honored tradition. The fact that siblings and an in-law, together with a

surrogate, bundled and delivered the contributions, was inconsequential and in accordance with accepted practices. Recall that this scheme, if you want to call it that, resulted in $12,800 being disbursed to Montana legislative candidates. Under today's limits this method of disbursing contributions to the same number of candidates results in $36,000. The point is. this is not always a Montana couple sitting around the kitchen table deciding where to send their $900.

In many respects this is precisely what the complaint in this matter requests that I do here. A sudden and abrupt change will result in far reaching restrictions, overreach, and a severe liability for numerous candidates and their campaigns. Even though the right is characterized as symbolic, unilaterally cutting the right in half will have a dramatic effect on not only candidates but also on the individual citizens that support them.

## V. The complainant's assertion of disclosure violations on the part of Olson's candidacy are dismissed but additional irregularities must be addressed.

The complaint additionally asserts that Mr. Olson violated reporting and disclosure laws because a debt to Standard Consulting of $1,508.76 for 'reimbursement of filing fee,' which first appeared on Mr. Olson's March finance report, does not appear on subsequent reports, nor are any transactions reported indicating this debt was paid or otherwise resolved. (Hogan Amend. Compl. ¶ 18.)

MCA§ 13-37-229 provides the statutory requirements candidates are to follow when reporting loans or debts. Specifically, part(1)(v) requires a candidate report "each loan from any person during the reporting period." As with any other activity requiring public disclosure, Montana candidates report all loans or debts incurred during each reporting period by filing a C-5 campaign finance report in Montana's Campaign Electronic Reporting System (CERS). When publicly viewed in CERS, each individual C-5 report will display only those loans and debt entered for that particular reporting period. The CERS system does not display loans or debts

entered on a previous report, as that information is already available by viewing that previous report. While the CERS system does not display every loan or debt previously reported by a candidate on every subsequent report they file, the system does track that information. When a candidate reports making payment on an outstanding loan or debt, the C-5 report covering that individual reporting period will show various information about the obligation, including the original amount of the loan or debt, the date payment was made, the amount of the payment made, and the amount still owed by the candidate.

Here, while there are other issues regarding the reported debt, there is no indication that Mr. Olson has wrongly removed it from subsequent filings, as may be inferred from the complaint. The absence of this debt from subsequent C-5 reports filed by Mr. Olson, is a feature of CERS and it simply indicates that he has yet to make any payments on the debt. It is expected that this obligation will show up on subsequent reports when Mr. Olson's campaign makes payment on the debt. Consequently, this allegation is dismissed.

*Reporting violation discovered during investigation of this complaint.*

The complainant's single allegation regarding Mr. Olson's reporting is addressed above. However, "Montana law also permits COPP to ascertain whether other violations exist." *MFC v. Rep. Zephyr (2023)*, 2.

There are only two transactions reported by Mr. Olson's campaign. The filing fee debt to Standard Consulting and a debt of $1,500 owed to Burnt Timber Consulting for 'Bookkeeping and Compliance for Primary Election." Mr. Olson's obligation to Burnt Timber Consulting is properly reported as a debt because it applies to unpaid services.

However, with respect to Standard Consulting, Mr. Olson did not accurately report the payment of a filing fee and accepted a contribution in excess of Montana's contribution limits. In 2017, the Montana Legislature amended MCA §§ 13-1-101 and 13-37-226 to remove an exception which previously excluding filing fees from

mandatory reporting. SB 03, (2017). Consequently, Mr. Olson, like all other candidates, is required report the payment of his filing fee, and he did so by including it as a debt for "reimbursement of filing fee." (COPP Records.)

> If a candidate pays the filing fee personally using personal funds, the activity would be considered a contribution under Mont. Code Ann § 13-1-101(9) with the candidate required to report it as an in-kind contribution received. If a candidate pays the filing fee using campaign funds, the activity qualifies as an expenditure under Mont. Code Ann. § 13-1-101(19) with the candidate required to report it as such." *Tonkay v. Caferro*, 3.

Here, Mr. Olson did not pay the filing fee in either of the ways described above, rather a consulting company did so for him. Chuck Denow, of Standard Consulting, provided a statement to the Associated Press which asserted 'I did pay Logan's filing fee. . .I did so because he asked me to." Mr. Olson reported this on his C-5 for the reporting period of January 1 through March 15, 2024, as a debt to Standard Consulting.

While the payment of the filing fee is indeed an expenditure, and Mr. Olson now has a debt to Standard Consulting, this is specifically an "in-kind expenditure" and reporting this as a debt provides only part of the picture.

"The term "in-kind expenditure" means a third-party reportable election activity expenditure, such as payment for goods or services, that does not go through the campaign depository" ARM 44.11.501(2). As described above, payment of the filing fee is a reportable election activity. Payment of this fee by a third party is an in-kind expenditure and therefore reportable as a contribution.

> "Contribution" means: (i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support of oppose a candidate or ballot issue. (ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate of ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution. MCA § 13-1-101(9).

Mr. Denow has stated that he paid the fee because Mr. Olson asked him to. There could be no clearer evidence that this activity was coordinated. This is not coordination as it relates to Attorney General Knudsen' s campaign, but in this instance, is coordination for the purposes of MCA § 13-1-101(9)(ii). Therefore, this transaction is an in-kind expenditure, made in coordination with the candidate, and is reportable as a contribution. While failing to report the filing fee payment as a contribution may appear to be a technicality, reporting in this manner allowed the Olson campaign to accept contributions in excess of legal limits. MCA §§ 13-37-216, 227.

Alternatively, Mr. Olson could have borrowed the amount of the filing fee from Mr. Denow and paid the fee through his campaign, creating a loan from Mr. Denow and an expenditure by the campaign. Nevertheless, "loans to a candidate are subject to the same limits as contributions and are aggregated into to candidate's total contributions pursuant to 13-37-216 and 13-37-218." ARM 44.11.405(1), see also, *Blatnick v. Garcia,* COPP-2018-CFP-025. The Olson campaign was obligated to report this transaction as either a loan or an in-kind expenditure, both of which are reportable as contributions and subject to contribution limits. MCA §§ 13-37-216, 227, ARM 44.11.501(2).

While it is possible that either of Mr. Olson's debtors might wish to forgive this debt, they may only do so up to the contribution limits allowed by MCA § 13-37-216. Contributions, other than by a political party committee, for Attorney General candidates are limited to $790 per election. Since Mr. Olson does not advance to the general election and therefore only participated in one election, Burnt Timber Consulting and Standard Consulting may forgive up to $790 of their respective debts. Any amount in excess of that must be paid by Mr. Olson or an excess contribution exists.

As outlined above, the filing fee paid by Standard Consulting is already a reportable contribution in the amount of $1,508.76, which exceeds the statutory limit by $718.76. Therefore, Mr. Olson has violated MCA §§ 13-37-216 and 229, by

accepting an excess contribution and failing to report a contribution received in the form of an in-kind expenditure.

## SUMMARY

Ultimately, I cannot reach a finding that Mr. Olson and Attorney General Knudsen acted in a manner that violated Montana law. Mr. Olson's declaration was valid as a matter of law even though I could not support his assertion that he was qualified. I still must treat his declaration and oath as being valid. For this reason, as well as those described above, the Republican primary election for Attorney General held on June 4, 2024, was contested. Since the election was contested, there are two elections and the prevailing candidate in the primary election was, and is, able to accept contributions up to the maximum limit allowed by law- twice, $790 for each election.

The regulatory environment, which COPP and the Legislature allowed, established a pattern and practice where this activity was commonly permitted. There have been seven (7) major statewide elections since the adoption of this provision (1996 through 2024). During all of these elections, over all of that time, this is the very first time anyone filed a complaint. Records maintained by the Montana Secretary of State and COPP show many instances where there was ample opportunity to do so. These situations were known and accepted. I cannot abruptly change course merely because the respondents currently before me were more open than others regarding their activity. If the Legislature finds these tactics offensive, it can stop the activity through legislative action. I cannot.

While I appreciate the opportunity to review and consider these important matters, after applying law to the facts presented, I must ultimately conclude that this complaint urges me to embark upon a fool's errand. The law with respect to Montana's contribution limits is tested and robust. There is a 30-year history with respect to how candidates have conducted their affairs based upon how COPP has enforced these provisions. The law includes contribution limits and contains a provision regarding contested primaries. The courts have found the contested

primary provision important with respect to upholding the law. The Legislature is the better choice to address whether such changes should occur, and courts can already address some of the concerns presented if such claims are timely presented. This includes the qualification to appear question, based on the declaration and oath to determine whether someone was not a serious, legitimate, or bona fide good faith candidate. At this time, with respect to Mr. Olson, I have no other choice than to conclude he was a candidate as a matter of law because that is what the statute directs. The implications of that, are that after reviewing the law and weighing the facts, and concluding an investigation, the complaint is dismissed. Attorney General Knudsen had a contested primary and he is not in violation of MCA § 13-37-216.

While a complaint may very well call for or reflect sound policy, my function is to construe Montana's statutes under the specific facts presented to me to determine if the statute was violated. I am guided by prior COPP decisions and enforcement, and I must be mindful of how courts construe certain matters and circumstances, including which standards apply, what the important facts are, and the results of those cases. I must support my conclusions by proving relevant facts and establishing them as sufficient evidence to bear the weight of constitutional burdens when constitutional rights are implicated. Those rights are implicated here, and the complainant's suggested approach, if I were to adopt it, will not bear the weight of a burden that imposes a rigorous standard.

Mr. Olson did receive a contribution with respect to his filing fee. There is sufficient evidence of that. The matter will be addressed pertaining to that issue. Since I cannot refer this to the local county attorney, because Mr. Olson holds that position, I will begin prosecution of this matter on my own, which MCA § 13-37-124(3), permits me to do in such instances.

## CONCLUSION

There being no violation of law based on the complaint's legal assertions or facts, after careful and considered review the determination is as follows:

Based on a plain reading of MCA § 13-10-201(4)-(5), and MCA § 13-35-221(3), and applying to them MCA § 13-37-216, there was a contested Republican primary election for the office of Montana Attorney General and the facts asserted are insufficient to allow me to determine otherwise. As a result, these complaint allegations are herby dismissed.

Of less weight to the ultimate determination above, I also determine that candidate recruitment is permitted so long as there is not an ongoing effort to communicate that would result in coordination. There are no facts showing Mr. Olson and Attorney General Knudsen engaged in such efforts, as the communication involved was personal and excluded under 44.11.602(4)(a) and COPP has previously held that recruitment is not an expenditure. *Garner*.

Further, and still of less conclusive weight than my finding with respect to MCA § 13-37-216 (above), is my conclusion that the requested action is ill-advised due to the manner in which the provisions have been enforced by COPP over a 30-year period. Such an action would result in an abrupt change without notice to candidates exposing them to severe penalties. These penalties include that I would compel all contributions be returned and in addition I would fine each candidate three times that amount under MCA § 13-37-128.

For the reasons described above, I dismiss these portions of the complaint. However, Mr. Olson did engage in activity that violated Montana campaign finance reporting laws by failing to report the payment of his filing fee as a contribution and accepting a contribution in excess of the legal limits. I find sufficient evidence exists and prosecution is justified.

Mr. Olson is the county attorney who I would normally refer this matter to. Obviously, that cannot be done. MCA § 13-37-124(3) permits me to prosecute without referral when this situation arises. Consequently, as is normal COPP practice, I will contact Mr. Olson to negotiate a fine. If those negotiations are unsuccessful, I will file a civil action and seek a penalty of approximately $4,525.

This represents three times the amount of his filing fee, which he failed to properly report. Any other allegation addressed herein are dismissed in their entirety.

Dated this 18th day of July, 2024

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