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*Pro hac vice application to be made when case number is assigned.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

Montanans for Community Development, *Plaintiff*, v. **Jonathan Motl**, in his official capacity as Commissioner of Political Practices, **Timothy Fox**, in his official capacity as Attorney General of the State of Montana, and **Leo Gallagher,** in his official capacity as Lewis and Clark County Attorney, *Defendants*.	Case No. _____ **Verified Complaint For Declaratory and Injunctive Relief**

Plaintiff Montanans for Community Development ("MCD") complains against Defendants as follows:

Introduction

1. This is a civil action for declaratory and injunctive relief arising under the First and Fourteenth Amendments to the Constitution of the United States. It concerns the constitutionality of Montana election statutes and administrative regulations that **1)** define political committees, MCA § 13-1-101(22), ARM 44.10.327; **2)** define expenditures, MCA § 13-1-101(11)(a), ARM 44.10.323; **3)** define contributions, MCA § 13-1-101(7)(a)(i), ARM 44.10.321; **4)** establish investigatory procedures for the Commissioner of Political Practices, MCA § 13-37-111; and **5)** authorize publication of complaints filed with and sufficiency decisions prepared by the Commissioner of Political Practices, ARM 44.10.307(3) & (4).

2. Political committees are required to report certain contributions in excess of $35 (both received and made, along with contributor information) and certain expenditures they make. MCA §§ 13-37-225, 13-37-229, 13-37-230. Political committees who fail to comply with these reporting requirements are subject to investigation, MCA § 13-37-111(1) and (2), MCA §13-37-125; civil prosecution, MCA § 13-37-124; and, if convicted, are subject to potentially substantial fines, MCA §13-37-128. *See, e.g., American Tradition Partnership v. Motl,* No. BDV-2010-1120, slip op. (Mont. 1st Jud. Dist. 2013) (attached as Ex. 1) (fining a 501(c)(4) organization over $260,000 for failing to report expenditures).

3. Plaintiff MCD, a 501(c)(4) organization, complains that these definitional, investigatory and publication provisions burden and chill its speech and association. They are unconstitutional under the First and Fourteenth Amendments to the United States Constitution because **1)** they are unconstitutionally vague, **2)** they are unconstitutionally overbroad, or **3)** they fail strict scrutiny.

Jurisdiction and Venue

4. Because this case arises under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the Constitution of the United States, this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a). It also has jurisdiction pursuant to the Declaratory Judgment Act, codified at 28 U.S.C. §§ 2201 and 2202.

5. Venue is proper under 28 U.S.C. § 1391(b) because events giving rise to the claim occurred, and Defendants reside, in this Division.

Parties

6. Montanans for Community Development ("MCD") is a non-profit corporation organized Montana law that is exempt from federal income taxes under 26 U.S.C. 501(c)(4). MCD is located in Helena, Montana, which is in Lewis and Clark County.

7. As Commissioner of Political Practices, Defendant Jonathan Motl has

the authority to investigate violations of, enforce the provisions of, and hire attorneys to prosecute violations of, Montana Code Chapters 35 and 37 and the regulations adopted to carry out these provisions. MCA §§ 13-37-111, 13-37-113, 13-37-114, and 13-37-124. The Commissioner acts under color of law and is sued in his official capacity.

8. As Montana Attorney General, Defendant Timothy Fox has the power to investigate and prosecute violations of Montana Code Chapters 35 and 37 by and through the county attorneys under his supervision. MCA §§ 2-15-501(5), 13-37-124, 13-37-125, and 13-37-128. The Attorney General acts under color of law and is sued in his official capacity.

9. As Lewis and Clark County Attorney, Defendant Leo Gallagher has the power to investigate and prosecute violations of Montana Code Chapters 35 and 37. *See* MCA §§ 7-4-2716, 13-37-124, 13-37-125, 13-37-128 (granting investigative and prosecutorial power to Montana's county attorneys). The county attorney acts under color of law and is sued in his official capacity.

Facts

10. Chapters 35 and 37 of Title 13 the Montana Code impose campaign finance restrictions and bans on political speakers, including corporations and organizations, that fall within the scope of these chapters.

11. MCA § 13-1-101(22) (hereinafter "the Political-Committee Statutory

Definition") states that:

> "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:
> (a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or
> (b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or
> (c) as an earmarked contribution.

"Person" is defined as "an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6)." *Id.* 13-1-101(20).

12. ARM 44.10.327 (hereinafter "the Political-Committee Regulatory Definition") establishes three types of political committees: "(a) principal campaign committee; (b) independent committee; and (c) incidental committee." ARM 44.10.327(1).

13. A "principal campaign committee" is defined as "a political committee that is specifically organized to support or oppose a particular candidate or issue." ARM 44.10.327(2)(a).

14. An "independent committee" is defined as "a political committee that is not specifically organized to support or oppose any particular candidate or issue but one that is organized for the primary purpose of supporting or opposing various candidates and/or issues." ARM 44.10.327(2)(b).

15. An "incidental committee" is defined as "a political committee that is not specifically organized or maintained for the primary purpose of influencing elections but that may incidentally become a political committee by making a contribution or expenditure to support or oppose a candidate and/or issue." ARM 44.10.327(2)(c).

16. MCA § 13-1-101(11)(a) (hereinafter "the Expenditure Statutory Definition") states that an "'[e]xpenditure' means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election."

17. ARM 44.10.323 (hereinafter "the Expenditure Regulatory Definition") interprets the Expenditure Statutory Definition, stating that "the term 'expenditure' as defined in 13-1-101, MCA, includes, but is not limited to" a list of various expenses, payments, and types of expenditures.

18. MCA § 13-1-101(7)(a)(i) (hereinafter "the Contribution Statutory Definition") states that a "contribution" means "an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election; . . ."

19. ARM 44.10.321 (hereinafter "the Contribution Regulatory Definition") interprets the Contribution Statutory Definition, stating that "the term 'contribution' as defined in 13-1-101, MCA, includes, but is not limited to" a list

of various purchases, payments, candidate self-funding, and in-kind contributions.

20. Those accused of violating or attempting to violate campaign finance laws predicated on these definitions are subject to investigation, MCA § 13-37-111(1), and potentially civil prosecution, MCA § 13-37-128.[1]

21. MCA § 13-37-111 provides that "the commissioner is responsible for investigating all of the alleged violations of the election laws," MCA § 13-37-111(1), and authorizes the commissioner to:

> (a) investigate all statements filed pursuant to the provisions of chapter 35 of this title or this chapter and shall investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of chapter 35 of this title or this chapter. Upon the submission of a written complaint by any individual, the commissioner shall investigate any other alleged violation of the provisions of chapter 35 of this title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter.
>
> (b) inspect any records, accounts, or books that must be kept pursuant to the provisions of chapter 35 of this title or this chapter that are held by any political committee or candidate, as long as the inspection is

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[1]MCA Section 13-37-128 provides that:

> (1) A person who intentionally or negligently violates any of the reporting provisions of this chapter, a provision of 13-35-225, or a provision of Title 13, chapter 35, part 4, is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to $500 or three times the amount of the unlawful contributions or expenditures, whichever is greater.

MCA § 13-37-128(1).

made during reasonable office hours; and

> (c) administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements of a political committee or candidate, or other records that are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapter 35 of this title or this chapter.

22. Additionally, ARM 44.10.307(3) and (4) (the "Publication Provisions") state that "[t]he commissioner, upon completion of the investigation, shall prepare a written summary of facts and statement of findings, which shall be sent to the complainant and the alleged violator," ARM 44.10.307(3), and that "[a] filed complaint and the summary of facts and statement of findings shall be public record," ARM 44.10.307(4).

23. Those convicted of violating or attempting to violate Montana's campaign finance laws through the procedures of the Investigatory Procedures Provision, the Publication Provisions, and subsequent civil action are subject to fines. MCA § 13-37-128(1).[2]

24. MCD, a non-profit corporation exempt from federal income taxation

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[2]The Commissioner is seeking to increase penalties to also revoke corporate charters. *See Montana political practices commissioner seeks expansion of powers*, *available at* http://m.missoulian.com/news/state-and-regional/montana-political-practices-commissioner-seeks-expansion-of-powers/article_49303056-ede1-11e3-b564-0019bb2963f4.html?mobile_touch=true (June 6, 2014) (attached as Ex. 2).

under I.R.C. 501(c)(4) (2006), is a non-sectarian and non-partisan organization. (*See MCD Bylaws,* attached as Ex. 3, at 1, § 2.) It is not connected with any political candidate or political party. Nor is it connected with any political committee.

25. MCD's mission is to "to promote and encourage policies that create jobs and grow local economies throughout Montana." (*Id.*) It "engages in grassroots advocacy and issues-oriented educational campaigns to further [its] goals." (*Id.*) In pursuit its mission, MCD engages in political speech.

26. For example, in 2013, MCD prepared a variety of economic development ads, including one that mentioned grassroots activist John Quandt, an individual who also was at the time a Republican City Council candidate in Billings. (*See, e.g., 2013 Ads,* attached as Ex. 4.) Such ads are issue advocacy. *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 470 (2007).

27. Presently, MCD would like to circulate issue ads that mention individuals who also are candidates at the end of September 2014, which will be during the 2014 election cycle. (*See 2014 Ads*, attached as Ex. 5.) One ad mentions grassroots activist Joshua Sizemore, presently a candidate for House District 47. (*Id.* at 2.) The other mentions environmentalist and legislative official Mary McNally, presently up for re-election to House District 49. (*Id.* at 4.) Both ads support 21st Century Energy's plan to promote job growth in the energy sector

and provide recipients with contact information to further educate themselves regarding that Plan. (*Id.*)

28. MCD's organizational documents show that MCD does not have the major purpose or priority of nominating or electing any candidate(s). (*See MCD Bylaws,* attached as Ex. 3, at 1, § 2.)

29. MCD has spent neither time nor money either contributing to, coordinating spending with, or making independent expenditures for or against, candidates.

30. MCD does not intend to report to the commissioner its spending on its issue ads.

31. In 2013, a Montana trial court imposed substantial fines against the 501(c)(4) organization American Tradition Partnership ("ATP") for failing to report its spending on issue ads regardless of its major purpose. *See Western Tradition Partnership v. Gallik,* No. BDV-2010-1120, slip op. at 12, 16 (Mont. 1st Jud. Dist. 2011)(attached as Ex. 6) (discussing how ATP's primary purpose is in factual dispute); *American Tradition Partnership v. Motl,* No. BDV-2010-1120, slip op. at 2-3, 9 (attached as Ex. 1) (imposing a $261,600 fine against ATP without any factual resolution regarding ATP's major or primary purpose).

32. Because of that investigation, MCD sought an advisory opinion from the Commissioner to secure a predetermination that its 2013 ads, which it intended

to circulate prior to the November 3, 2013, election, did not need to be reported. *See Montanans for Community Development v. Motl,* No. 13-cv-70, 2014 WL 977999 at *1 (Mar. 12, 2014). It was not able to secure such an opinion prior to the 2013 election,[3] so it did not engage in its desired speech.

33. Now, during the 2014 primary election cycle, the Commissioner has been investigating and initiating civil actions against candidates associated with ATP, in part asserting that ATP's issue ads are an in-kind expenditure and therefore an illegal and unreported contribution to the candidates who "benefit" from the ads. *See Comm'n of Political Practices v. Miller*, Cause. No. CDV-2014-62 (1st Jud. Dist. 2014) (attached as Ex. 8) (pursuing civil action against candidate Miller in part because ATP's issue ad mentioning his opponent was allegedly an illegal and unreported in-kind contribution); *Comm'n of Political Practices v. Murray,* BDV-2014-170 (1st Jud. Dist. 2014) (attached as Ex. 9) (same); *Comm'n of Political Practices v. Bannan,* CDV-2014-178 (1st Jud. Dist. 2014) (attached as Ex. 10) (same); *Comm'n of Political Practices v. Wittich,* ADV-2014-251 (1st Jud. Dist. 2014) (attached as Ex. 11) (same). (*See also Commissioner Letter to Candidates,* attached as Ex. 12) (encouraging candidates to "protest" flyers and

[3]That advisory process has been closed. *See Notice of Refusal to Issue a Declaratory Ruling, available at* http://www.politicalpractices.mt.gov/content/5campaignfinance/MontananasforCommunityDevelopmentDeclaratoryRuling (Mar. 7, 2014) (attached as Ex. 7).

letters that have undisclosed and unreported costs).)

34. The Commission has also sent letters to conservative organizations advising them that it expects timely and full reporting of any expenditures on "oppositional" flyers and candidate surveys they make. (*See Commission Letter to Organizations,* attached as Ex. 13; *Commission Letter to Survey Groups*, attached as Ex. 14.) The letters make no mention of major or primary purpose.

35. MCD reasonably fears that if it engages in its desired issue advocacy, it, like ATP, will be presumed to be a political committee under Montana law and be subject to Montana's political committee burdens, which require: registration with the state, treasurer-designation, and bank account designation, MCA §§ 13-37-201, 13-37-205; record-keeping requirements, MCA § 13-37-208; periodic reporting requirements, MCA § 13-37-228; source bans on contributions received, MCA § 13-35-227; and disclosure of contribution sources, MCA § 13-37-225.

36. Additionally, regardless of its political committee status, MCD reasonably fears that its issue ad spending will be construed not only as a reportable expenditure, *see ATP*, No. BDV-2010-1120, slip op. at 5-7 (attached as Ex. 1), but also as an in-kind contribution and therefore an illegal and unreported contribution to a candidate, exposing it and the "benefitting" candidate to fines and the candidates to possible removal from the ballot or office. *See, e.g., Miller,* Cause No. CDV-2014-62, at 16-17 (attached as Ex. 8) (seeking as a penalty for

alleged violations Rep. Miller's removal from office pursuant to MCA § 13-35-106(3)); *Wittich,* ADV-2014-251, at 16-17 (attached as Ex. 10) (same).

37. Last, MCD reasonably fears that it, those candidates mentioned in its issue ads, or opponents to those mentioned could be the target of investigation in the next four years, *see* MCA § 13-37-130. The Commission has characterized lawful, unreported issue advocacy spending as "dark money," inherently warranting scrutiny and investigation. (*See Dark Money Article,* attached as Ex. 15; *see also Welch Complaint*, attached as Ex. 16 (renewing investigation into ATP and organizations associated with it).) MCD fears that such investigation could **1)** destroy MCD's reputation, (*see Dark Money Article,* attached as Ex. 15 (quoting the Commissioner as advising Montanans to treat 2014 ATP issue advocacy emails as suspect, asserting that ATP no longer has the public trust, and disparaging the group for being unable to properly defend and protect itself during investigation and civil prosecution even though ATP has only been adjudicated to have failed to report issue advocacy expenditures)); **2)** subject MCD to substantial fines, and **3)** cause the individuals it mentions or their opponents to be investigated and either removed from the ballot or from office, all because its ads were not reported and/or are construed as an illegal contribution made to a candidate.

38. Should it be investigated because of its issue ads, MCD reasonably

fears that confidential information and conclusions (whether correct or not) about its strategies and associations attached to a complaint filed with the Commission or secured during that investigation (whether by subpoena or voluntarily supplied) will be publicly disclosed. (*See, e.g., Bonogofsky v. Kennedy,* attached as Ex. 17, at 24-28.) Complaints and commissioner sufficiency decisions are sent to the complainant (who often is a political opponent) and are published on the Commissioner's website. *See Commissioner of Political Practices Status of Official Complaint Docket*, http://politicalpractices.mt.gov/2recentdecisions/docket.mcpx (last visited August 18, 2014); *Campaign Finance and Practices Decision Page,* http://politicalpractices.mt.gov/2recentdecisions/campaignfinance.mcpx (last visited August 18, 2014).

39. Because it can be construed as a political committee, its ads treated as both expenditures and contributions, and its associations and strategies made public during an investigation before they are even adjudicated through due process as relevant or even true, MCD will not run its desired ads.

40. MCD intends to circulate the ads attached as Exhibit 3 on October 3, 2014, and would run substantially similar ads in the future but for the statutes and regulations here challenged. MCD's speech is therefore chilled.

41. MCD has no adequate remedy at law.

Count I
The Political-Committee Statutory Definition Is Facially Overbroad.

42. Plaintiff MCD realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

43. The Political-Committee Statutory Definition states that:

> "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:
> (a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or
> (b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or
> (c) as an earmarked contribution.

MCA § 13-1-101(22). "Person" is defined as "an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6)." *Id.* 13-1-101(20).

44. A law or regulation "is overbroad if it does not aim specifically at evils within the allowable area of State control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech." *Klein v. San Diego County*, 463 F.3d 1029, 1038 (9th Cir. 2006) (internal citations omitted).

45. To avoid overbreadth, the government may impose political-committee or political-committee-like burdens, *see Citizens United v. FEC,* 558

U.S. 310, 337-339 (2008), on an organization only if (1) it is "under the control of a candidate" or candidates, or (2) "the major purpose" of the organization is "the nomination or election of a candidate" or candidates in the jurisdiction. *Buckley v. FEC,* 424 U.S. 1, 79 (1976).

46. In reviewing *Buckley*'s overbreadth concerns, the Ninth Circuit has held that such overbreadth can also be avoided when the political committee definition only applies to groups that have "a 'primary' purpose of political activity." *Human Life of Washington v. Brumsickle*, 624 F.3d 990, 1011 (2010). This "limitation ensures that the electorate has information about groups that make political advocacy a priority, without sweeping into its purview groups that only incidentally engage in such advocacy." *Id.* If the group had a primary purpose of engaging in political activity rather than an incidental one, it is constitutionally subject to political committee burdens. *Id.* at 1012.[4]

47. The Political-Committee Statutory Definition is not tailored to cognizable state interest, but is instead overbroad. *See Wisconsin Right to Life v. Barland,* 751 F.3d 804, 840 (7th Cir. 2014) ("*WRTL-III*"). It nowhere limits its

[4]The resulting "priority-incidentally" test is unconstitutionally vague for two reasons: It is based on "political advocacy[,]" 624 F.3d at 1011, so it is vague under *Buckley,* 424 U.S. at 42-43, and the boundary between "priority" and "incidentally" is unclear. But until it is so declared, it remains mandatory law for this Court.

applicability to organizations having either the major purpose of nominating or electing candidates as required by *Buckley* or having a priority of engaging in political advocacy as required by *HLW*. Nor has it been construed within these constitutional parameters. It is therefore facially overbroad in violation of the First and Fourteenth Amendments.

Count II
The Political-Committee Statutory Definition
Is Unconstitutional As Applied To MCD.

48. Plaintiff MCD realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

49. The Political-Committee Statutory Definition states that:

> "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:
> (a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or
> (b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or
> (c) as an earmarked contribution.

MCA § 13-1-101(22). "Person" is defined as "an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6)." *Id.* 13-1-101(20).

50. The government may impose political-committee or political-

committee-like burdens, *see Citizens United,* 558 U.S. at 337-339, on an organization only if (1) it is "under the control of a candidate" or candidates or (2) "the major purpose" of the organization is "the nomination or election of a candidate" or candidates in the jurisdiction. *Buckley,* 424 U.S. at 79.

51. In applying *Buckley*, the Ninth Circuit has held that overbreadth can also be avoided if the definition only applies to a group that has "a 'primary' purpose of political activity." *HLW*, 624 F.3d at 1011. This "limitation ensures that the electorate has information about groups that make political advocacy a priority, without sweeping into its purview groups that only incidentally engage in such advocacy." *Id.* If the group had a primary purpose of engaging in political activity rather than an incidental one, it is constitutionally subject to political committee burdens. *Id.* at 1012.[5]

52. MCD's sole purpose is "to promote the social welfare" by "engag[ing] in grassroots advocacy and issues-oriented educational campaigns" that "promote and encourage policies that create jobs and grow local economies throughout Montana." (*MCD Bylaws*, attached as Ex. 3, at 1 § 2.) So under *Buckley* and *HLW,* any political speech MCD engages in, whether issue advocacy or incidental express advocacy, cannot constitutionally be subject to political-

[5]The resulting "priority-incidentally" test is unconstitutionally vague. *See supra* n. 2.

committee or political-committee like burdens. *See Buckley,* 424 U.S. at 79; *HLW,* 624 F.3d at 1011.[6]

53. The Political-Committee Statutory Definition is unconstitutional as applied to MCD.

Count III
The Political-Committee Statutory Definition Is Unconstitutionally Vague.

54. Plaintiff MCD realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

55. The Political-Committee Statutory Definition states that:

> "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:
> (a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or
> (b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or
> (c) as an earmarked contribution.

MCA § 13-1-101(22). "Person" is defined as "an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6)." *Id.* 13-1-101(20).

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[6]Non-political committee, one-time, event-driven reporting can be constitutionally imposed. *See WRTL-III*, 751 F.3d at 841 (*citing Citizens United,* 558 U.S. at 366-69). Montana has no such reporting requirements.

56. "A statute must be sufficiently clear so as to allow persons of ordinary intelligence a reasonable opportunity to know what is prohibited." *Foti v. City of Menlo Park*, 146 F.3d 629, 638 (9th Cir. 1998); *WRTL-III,* 751 F.3d at 835. "A statute is vague if men of common intelligence must necessarily guess at its meaning and differ as to its application." *In re Doser*, 412 F.3d 1056, 1062 (9th Cir. 2005). "Statutes that are insufficiently clear are void for three reasons: (1) to avoid punishing people for behavior that they could not have known was illegal; (2) to avoid subjective enforcement of the laws based on "arbitrary and discriminatory enforcement" by government officers; and (3) to avoid any chilling effect on the exercise of First Amendment freedoms." *Foti*, 146 F.3d at 638.

57. The Political-Committee Statutory Definition uses the terms "expenditure" and "contribution" to establish the scope of its application. Because these terms are unconstitutionally vague, *see infra* Counts VIII-XIII, the Political-Committee Statutory Definition is also unconstitutionally vague.

58. The Political-Committee Statutory Definition uses the phrase "to support or oppose" to establish the scope of its application. This phrase is unconstitutionally vague. *See McConnell v. FEC,* 540 U.S. 93, 170 n.64 (2003); *WRTL III*, 751 F.3d at 837-38.

59. The Political-Committee Statutory Definition is unconstitutionally vague in violation of the First and Fourteenth Amendments.

Count IV
The Political-Committee Regulatory Definition Is Facially Overbroad.

60. Plaintiff MCD realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

61. The Political-Committee Regulatory Definition establishes three types of political committees: "(a) principal campaign committee; (b) independent committee; and (c) incidental committee." ARM 44.10.327(1).

62. A "principal campaign committee" is defined as "a political committee that is specifically organized to support or oppose a particular candidate or issue." ARM 44.10.327(2)(a).

63. An "independent committee" is defined as "a political committee that is not specifically organized to support or oppose any particular candidate or issue but one that is organized for the primary purpose of supporting or opposing various candidates and/or issues." ARM 44.10.327(2)(b).

64. An "incidental committee" is defined as "a political committee that is not specifically organized or maintained for the primary purpose of influencing elections but that may incidentally become a political committee by making a contribution or expenditure to support or oppose a candidate and/or issue." ARM 44.10.327(2)(c).

65. A law or regulation "is overbroad if it does not aim specifically at

evils within the allowable area of State control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech." *Klein*, 463 F.3d at 1038 (internal citations omitted).

66. The government may impose political-committee or political-committee-like burdens, *see Citizens United,* 558 U.S. at 337-339, on an organization only if (1) it is "under the control of a candidate" or candidates or (2) "the major purpose" of the organization is "the nomination or election of a candidate" or candidates in the jurisdiction. *Buckley,* 424 U.S. at 79.

67. In applying *Buckley*, the Ninth Circuit has held that the relevant inquiry is whether the political committee definition applies only to groups that have "a 'primary' purpose of political activity." *HLW*, 624 F.3d at 1011. This "limitation ensures that the electorate has information about groups that make political advocacy a priority, without sweeping into its purview groups that only incidentally engage in such advocacy." *Id.* If the group had a primary purpose of engaging in political activity rather than an incidental one, it is constitutionally subject to political committee burdens. *Id.* at 1012.[7]

68. The Political-Committee Regulatory Definition is not closely drawn to a cognizable state interest. *WRTL-III*, 751 F.3d at 841. It nowhere limits its

[7]The resulting "priority-incidentally" test is unconstitutionally vague. *See supra* n. 2.

applicability to organizations having either the major purpose of nominating or electing candidates under *Buckley* and only has one type of committee—the independent committee—that requires a "primary purpose" or priority of engaging in political advocacy under *HLW*. And it goes beyond nominating or electing candidates under *Buckley* or engaging in political advocacy under *HLW* to include supporting or opposing issues. Moreover, it expressly includes those organizations that do not have a major purpose or priority of nominating or electing candidates but who incidentally do so as "incidental committees," contrary to *HLW*. ARM 44.10.327(2)(c).

69. The Political-Committee Regulatory Definition is facially overbroad, in violation of the First and Fourteenth Amendments.

Count V
The Political-Committee Regulatory Definition
Is Unconstitutional As Applied to MCD.

70. Plaintiff MCD realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

71. The Political-Committee Regulatory Definition establishes three types of political committees: "(a) principal campaign committee; (b) independent committee; and (c) incidental committee." ARM 44.10.327(1).

72. An "incidental committee" is defined as "a political committee that is not specifically organized or maintained for the primary purpose of influencing

elections but that may incidentally become a political committee by making a contribution or expenditure to support or oppose a candidate and/or issue." ARM 44.10.327(2)(c).

73. The government may impose political-committee or political-committee-like burdens, *see Citizens United,* 558 U.S. at 337-339, on an organization only if (1) it is "under the control of a candidate" or candidates or (2) "the major purpose" of the organization is "the nomination or election of a candidate" or candidates in the jurisdiction. *Buckley,* 424 U.S. at 79.

74. In applying *Buckley*, the Ninth Circuit has held that political committee definitions can avoid overbreadth by applying only to groups that have "a 'primary' purpose of political activity."*HLW*, 624 F.3d at 1011. This "limitation ensures that the electorate has information about groups that make political advocacy a priority, without sweeping into its purview groups that only incidentally engage in such advocacy." *Id.* If the group had a primary purpose of engaging in political activity rather than an incidental one, it is constitutionally subject to political committee burdens. *Id.* at 1012.[8]

75. MCD's exclusive purpose is "to promote the social welfare" by "engag[ing] in grassroots advocacy and issues-oriented educational campaigns"

[8]The resulting "priority-incidentally" test is unconstitutionally vague. *See supra* n. 2.

that "promote and encourage policies that create jobs and grow local economies throughout Montana." (*MCD Bylaws*, attached as Ex. 3, at 1 § 2.) So under *Buckley* and *HLW*, any political speech MCD engages in, whether issue advocacy or incidental express advocacy, cannot constitutionally be subject to political-committee or political-committee like burdens. *See Buckley,* 424 U.S. at 79; *HLW,* 624 F.3d at 1011. Yet the Political-Committee Regulatory Definition can apply to MCD because it expressly includes as political committees those organizations that do not have a major purpose of nominating or electing candidates but who incidentally do so as "incidental committees," ARM 44.10.327(2)(c), in direct contravention of *HLW*.

76. The Political-Committee Regulatory Definition is unconstitutional as applied to MCD.

Count VI
The Political-Committee Regulatory Definition Is Unconstitutionally Vague.

77. Plaintiff MCD realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

78. The Political-Committee Regulatory Definition establishes three types of political committees: "(a) principal campaign committee; (b) independent committee; and (c) incidental committee." ARM 44.10.327(1).

79. A "principal campaign committee" is defined as "a political

committee that is specifically organized to support or oppose a particular candidate or issue." ARM 44.10.327(2)(a).

80. An "independent committee" is defined as "a political committee that is not specifically organized to support or oppose any particular candidate or issue but one that is organized for the primary purpose of supporting or opposing various candidates and/or issues." ARM 44.10.327(2)(b).

81. An "incidental committee" is defined as "a political committee that is not specifically organized or maintained for the primary purpose of influencing elections but that may incidentally become a political committee by making a contribution or expenditure to support or oppose a candidate and/or issue." ARM 44.10.327(2)(c).

82. "A statute must be sufficiently clear so as to allow persons of ordinary intelligence a reasonable opportunity to know what is prohibited." *Foti*, 146 F.3d at 638. "A statute is vague if men of common intelligence must necessarily guess at its meaning and differ as to its application." *In re Doser*, 412 F.3d at 1062. "Statutes that are insufficiently clear are void for three reasons: (1) to avoid punishing people for behavior that they could not have known was illegal; (2) to avoid subjective enforcement of the laws based on "arbitrary and discriminatory enforcement" by government officers; and (3) to avoid any chilling effect on the exercise of First Amendment freedoms." *Foti*, 146 F.3d at 638.

83. The Political-Committee Regulatory Definition uses the terms "expenditure" and "contribution" to establish the scope of its application. Because these terms are unconstitutionally vague, *see infra* Counts VIII-XIII, the Political-Committee Regulatory Definition is also unconstitutionally vague.

84. The Political-Committee Regulatory Definition uses the phrase "to support or oppose" to establish the scope of its application. This phrase is unconstitutionally vague. *See McConnell,* 540 U.S. at 170 n.64; *WRTL III*, 751 F.3d at 837-38.

85. The Political-Committee Regulatory Definition is unconstitutionally vague in violation of the First and Fourteenth Amendments.

Count VII
The Political-Committee Regulatory Definition Is Unconstitutional.

86. Plaintiff MCD realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

87. The Political-Committee Regulatory Definition establishes three types of political committees: "(a) principal campaign committee; (b) independent committee; and (c) incidental committee." ARM 44.10.327(1).

88. The Commissioner of Political Practices does not have the independent authority to make law but rather is authorized only to "adopt rules to carry out the provisions of chapter 35 of this title and this chapter in conformance

with the Montana Administrative Procedure Act." MCA § 13-37-114.

89. Because the Political-Committee Regulatory Definition helps carry out and enforce the unconstitutional Political-Committee Statutory Definition, the Political-Committee Regulatory Definition should be struck down in its entirety as unconstitutional. *See Davis v. FEC,* 554 U.S. 724, 744 (2008) (striking down as unconstitutional disclosure requirements "designed to implement [] asymmetrical contribution limits" because the limits were unconstitutional).

90. Insofar as the Political-Committee Regulatory Definition applies to MCD in a manner consistent with the Political-Committee Statutory Definition, it should be struck down as unconstitutional as applied to MCD. *See id.*

Count VIII
The Expenditure Statutory Definition Is Facially Vague.

91. Plaintiff MCD realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

92. The Expenditure Statutory Definition states that an "'[e]xpenditure' means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election." MCA § 13-1-101(11)(a).

93. "A statute must be sufficiently clear so as to allow persons of ordinary intelligence a reasonable opportunity to know what is prohibited." *Foti*,

146 F.3d at 638. "A statute is vague if men of common intelligence must necessarily guess at its meaning and differ as to its application." *In re Doser*, 412 F.3d at 1062. "Statutes that are insufficiently clear are void for three reasons: (1) to avoid punishing people for behavior that they could not have known was illegal; (2) to avoid subjective enforcement of the laws based on "arbitrary and discriminatory enforcement" by government officers; and (3) to avoid any chilling effect on the exercise of First Amendment freedoms." *Foti*, 146 F.3d at 638.

94. A Montana court has held that the Expenditure Statutory Definition suffers vagueness problems because of the use of the word "influencing." *WTP,* No. BDV-2010-1120, slip op. at 18 (attached as Ex. 6). To remedy that vagueness, the court interpreted the vague phrase "influencing the results of an election" to:

> only include communications and activities that expressly advocate for or against a candidate or ballot issue or that clearly identify a candidate or ballot issue by apparent and unambiguous reference and are susceptible of no reasonable interpretation other than to promote or oppose the candidate or ballot issue.

Id.

95. This interpretation of the Expenditure Statutory Definition renders it vague because it:

> ultimately depend[s] . . . upon a judicial judgment (or is it—worse still—a jury judgment?) concerning "reasonable" or "plausible" import that is far from certain, that rests upon consideration of innumerable surrounding circumstances which the speaker may not even be aware of, and that lends itself to distortion by reason of the decisionmaker's

> subjective evaluation of the importance or unimportance of the challenged speech. In this critical area of political discourse, the speaker[s] cannot be compelled to risk felony [or other] prosecution with no more assurance of impunity than [their] prediction that what [t]he[y] say[] will be found susceptible of some "reasonable interpretation other than [to promote or oppose] a specific candidate." Under these circumstances, "many persons, rather than undertake the considerable burden (and sometimes risk) vindicating their rights through case-by-case litigation, will choose simply to abstain from protected speech—harming not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas." *Virginia v. Hicks*, 539 U.S. 113, 119 (2003) (citation omitted).

FEC v. Wisconsin Right to Life, Inc., 551 U.S. 449, 493-94 (2007) ("*WRTL-II*") (Scalia, J., concurring in part and concurring in the judgment) (brackets in original omitted).

96. The Expenditure Statutory Definition is facially vague in violation of the First and Fourteenth Amendments.

Count IX
The Expenditure Statutory Definition Is Unconstitutionally Vague As Applied to Issue Ads.

97. Plaintiff MCD realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

98. The Expenditure Statutory Definition states that an "'[e]xpenditure' means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election." MCA § 13-1-101(11)(a).

99. "A statute must be sufficiently clear so as to allow persons of ordinary intelligence a reasonable opportunity to know what is prohibited.", 146 F.3d at 638. "A statute is vague if men of common intelligence must necessarily guess at its meaning and differ as to its application." *In re Doser*, 412 F.3d at 1062. "Statutes that are insufficiently clear are void for three reasons: (1) to avoid punishing people for behavior that they could not have known was illegal; (2) to avoid subjective enforcement of the laws based on "arbitrary and discriminatory enforcement" by government officers; and (3) to avoid any chilling effect on the exercise of First Amendment freedoms." *Foti*, 146 F.3d at 638.

100. A Montana court has held that the Expenditure Statutory Definition suffers vagueness problems because of the use of the word "influencing." *WTP,* No. BDV-2010-1120, slip op. at 18 (attached as Ex. 6). To remedy that vagueness, the court interpreted the vague phrase "influencing the results of an election" to:

> only include communications and activities that expressly advocate for or against a candidate or ballot issue or that clearly identify a candidate or ballot issue by apparent and unambiguous reference and are susceptible of no reasonable interpretation other than to promote or oppose the candidate or ballot issue.

Id. The court then went on to conclude that "it could be . . . reasonable to intepret" the issue ad before it as an "appeal to vote," *id*. at 20, and as "advocat[ing] for the defeat" of that candidate, *id.* at 19, and subjected the ad to the reporting requirements of a political committee. *ATP*, No. BDV-2010-1120 at 6 (attached as

Ex. 1).

101. This application of the Expenditure Statutory Definition renders it vague as applied to issue ads. It is unclear whether the standard is "no other reasonable interpretation" or "a reasonable interpretation" and whether and when an issue ad will be construed as promoting or opposing a candidate or ballot issue. *See WRTL II,* 551 U.S. at 493 (Scalia, J., concurring) ("There is not the slightest doubt that these ads had an issue-advocacy component. . . . The question before us is whether something about them caused them to be the "functional equivalent" of express advocacy. . . . Do[es this test] answer this question with the degree of clarity necessary to avoid the chilling of fundamental political discourse? I think not.").

102. The Expenditure Statutory Definition is unconstitutionally vague as applied to issue ads in violation of the First and Fourteenth Amendments.

Count X
The Expenditure Regulatory Definition Is Unconstitutional.

103. Plaintiff MCD realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

104. The Expenditure Regulatory Definition interprets the Expenditure Statutory Definition, stating that "the term 'expenditure' as defined in 13-1-101, MCA, includes, but is not limited to" a list of various expenses, payments, and

types of expenditures. ARM 44.10.323.

105. The Commissioner of Political Practices does not have the independent authority to make law but rather is authorized only to "adopt rules to carry out the provisions of chapter 35 of this title and this chapter in conformance with the Montana Administrative Procedure Act." MCA § 13-37-114.

106. Because the Expenditure Regulatory Definition is designed to help carry out and enforce the facially vague Expenditure Statutory Definition, the Expenditure Regulatory Definition should be struck down in its entirety as unconstitutional. *See Davis v. FEC,* 554 U.S. 724, 744 (2008) (striking down as unconstitutional disclosure requirements "designed to implement [] asymmetrical contribution limits" because the limits were unconstitutional).

107. Insofar as the Expenditure Regulatory Definition applies to issue ads consistent with the Expenditure Statutory Definition, it should be struck down as unconstitutional as applied to issue ads. *See id.*

Count XI
The Contribution Statutory Definition Is Facially Vague.

108. Plaintiff MCD realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

109. The Contribution Statutory Definition states that a "contribution" means "an advance, gift, loan, conveyance, deposit, payment, or distribution of

money or anything of value to influence an election; . . .” MCA § 13-1-101(7)(a)(i).

110. “A statute must be sufficiently clear so as to allow persons of ordinary intelligence a reasonable opportunity to know what is prohibited.” *Foti*, 146 F.3d at 638; *WRTL-III*, 751 F.3d at 835. “A statute is vague if men of common intelligence must necessarily guess at its meaning and differ as to its application.” *In re Doser*, 412 F.3d at 1062. “Statutes that are insufficiently clear are void for three reasons: (1) to avoid punishing people for behavior that they could not have known was illegal; (2) to avoid subjective enforcement of the laws based on “arbitrary and discriminatory enforcement” by government officers; and (3) to avoid any chilling effect on the exercise of First Amendment freedoms.” *Foti*, 146 F.3d at 638.

111. A Montana court has held that the Expenditure Statutory Definition is unconstitutionally vague on its face. *ATP,* No. BDV-2010-1120, slip op. at 18 (attached as Ex. 1). The Contribution Statutory Definition contains nearly identical language but has not been similarly construed. It is therefore unconstitutionally vague. *See also Nat’l Org. For Marriage v. McKee,* 649 F.3d 34, 65 (1st Cir. 2011).

112. Should this Court determine that the Contribution Statutory Definition is reasonably susceptible to an interpretation that mirrors the

interpretation adopted for the Expenditure Statutory Definition, it is vague because that interpretation is vague:

> [It] ultimately depend[s] . . . upon a judicial judgment (or is it—worse still—a jury judgment?) concerning "reasonable" or "plausible" import that is far from certain, that rests upon consideration of innumerable surrounding circumstances which the speaker may not even be aware of, and that lends itself to distortion by reason of the decisionmaker's subjective evaluation of the importance or unimportance of the challenged speech. In this critical area of political discourse, the speaker[s] cannot be compelled to risk felony [or other] prosecution with no more assurance of impunity than [their] prediction that what [t]he[y] say[] will be found susceptible of some "reasonable interpretation other than [to promote or oppose] a specific candidate." Under these circumstances, "many persons, rather than undertake the considerable burden (and sometimes risk) vindicating their rights through case-by-case litigation, will choose simply to abstain from protected speech—harming not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas." *Virginia v. Hicks*, 539 U.S. 113, 119 (2003) (citation omitted).

WRTL-II, 551 U.S. at 493-94 (Scalia, J., concurring in part and concurring in the judgment) (brackets in original omitted).

113. The Contribution Statutory Definition is facially vague in violation of the First and Fourteenth Amendments.

Count XII
The Contribution Statutory Definition Is Unconstitutionally Vague As Applied to Issue Ads.

114. Plaintiff MCD realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

115. The Contribution Statutory Definition states that a "contribution"

means "an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election; . . ." MCA § 13-1-101(7)(a)(i).

116. "A statute must be sufficiently clear so as to allow persons of ordinary intelligence a reasonable opportunity to know what is prohibited." *Foti*, 146 F.3d at 638; *WRTL-III*, 751 F.3d at 835. "A statute is vague if men of common intelligence must necessarily guess at its meaning and differ as to its application." *In re Doser*, 412 F.3d 1056, 1062 (9th Cir. 2005). "Statutes that are insufficiently clear are void for three reasons: (1) to avoid punishing people for behavior that they could not have known was illegal; (2) to avoid subjective enforcement of the laws based on "arbitrary and discriminatory enforcement" by government officers; and (3) to avoid any chilling effect on the exercise of First Amendment freedoms." *Foti*, 146 F.3d at 638.

117. A Montana court has held that the Expenditure Statutory Definition suffers vagueness problems because of the use of the word "influencing." *WTP,* No. BDV-2010-1120, slip op. at 18 (attached as Ex. 6). To remedy that vagueness, the court interpreted the vague phrase "influence an election" to "only include communications and activities that expressly advocate for or against a candidate or ballot issue or that clearly identify a candidate or ballot issue by apparent and unambiguous reference and are susceptible of no reasonable interpretation other

than to promote or oppose the candidate or ballot issue." *WTP,* No. BDV-2010-1120 at *18. The court then proceeded to conclude that "it could be . . . reasonable to intepret" the issue ad before it as an "appeal to vote," *id*. at 20, and as "advocat[ing] for the defeat" of that candidate, *id.* at 19, and subjected the ad to the reporting requirements of a political committee. *ATP*, No. BDV-2010-1120 at 6 (attached as Ex. 1). 20. *See also id.* at 3:5-6 (making the factual finding that "one could certainly make the reasonable argument that this document advocates the defeat of Hamlett in the upcoming election.").

118. If the Contribution Statutory Definition is reasonably susceptible to the Expenditure Statutory Definition's interpretation, it is also susceptible to the Expenditure Statutory Definition's application.

119. This application renders the Contribution Statutory Definition vague as applied to issue ads. It is unclear whether the standard is "no other reasonable interpretation" or "a reasonable interpretation" and whether and when an issue ad will be construed as a in-kind contribution promoting or opposing a candidate or ballot issue. *See WRTL II,* 551 U.S. at 493 (Scalia, J., concurring) ("There is not the slightest doubt that these ads had an issue-advocacy component. . . . The question before us is whether something about them caused them to be the "functional equivalent" of express advocacy. . . . Do[es this test] answer this question with the degree of clarity necessary to avoid the chilling of fundamental

political discourse? I think not.").

120. The Contribution Statutory Definition is unconstitutionally vague as applied to issue ads in violation of the First and Fourteenth Amendments.

Count XIII
The Contribution Regulatory Definition Is Unconstitutional.

121. Plaintiff MCD realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

122. The Contribution Regulatory Definition interprets the Contribution Statutory Definition, stating that "the term 'contribution' as defined in MCA § 13-1-101, includes, but is not limited to" a list of various purchases, payments, candidate self-funding, and in-kind contributions. ARM 44.10.321.

123. The Commissioner of Political Practices does not have the independent authority to make law but rather is authorized only to "adopt rules to carry out the provisions of chapter 35 of this title and this chapter in conformance with the Montana Administrative Procedure Act." MCA § 13-37-114.

124. Because the Contribution Regulatory Definition is designed to help carry out and enforce the facially vague Contribution Statutory Definition, the Contribution Regulatory Definition should be struck down in its entirety as unconstitutional. *See Davis,* 554 U.S. at 744 (striking down as unconstitutional disclosure requirements "designed to implement [] asymmetrical contribution

limits" because the limits were unconstitutional).

125. Insofar as the Contribution Regulatory Definition applies to issue ads consistent with the Contribution Statutory Definition, it should be struck down as unconstitutional as applied to issue ads. *See id.*

Count XIV
The Investigatory Procedures Provision and the Publication Provisions Unconstitutionally Burden And Chill Protected Speech and Association.

126. Plaintiff MCD realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

127. Montana law states that "the commissioner is responsible for investigating all of the alleged violations of the election laws," MCA § 13-37-111(1), and authorizes the commissioner, during an investigation, to:

> (a) investigate all statements filed pursuant to the provisions of chapter 35 of this title or this chapter and shall investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of chapter 35 of this title or this chapter. Upon the submission of a written complaint by any individual, the commissioner shall investigate any other alleged violation of the provisions of chapter 35 of this title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter.
>
> (b) inspect any records, accounts, or books that must be kept pursuant to the provisions of chapter 35 of this title or this chapter that are held by any political committee or candidate, as long as the inspection is made during reasonable office hours; and
>
> (c) administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements of a

> political committee or candidate, or other records that are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapter 35 of this title or this chapter.

MCA § 13-37-111(2) (collectively "the Investigatory Procedures Provision"). Then, "[t]he commissioner, upon completion of the investigation, shall prepare a written summary of facts and statement of findings, which shall be sent to the complainant and the alleged violator," ARM 44.10.307(3), and make "[a] filed complaint and the summary of facts and statement of findings . . . public record," ARM 44.10.307(4) (collectively "the Publication Provisions").

128. Commissioners routinely post complaints, notices of complaints (often with supporting documentation), as well as sufficiency findings disclosing associations and strategies on the Commission's website. *See Commissioner of Political Practices Status of Official Complaint Docket*, http://politicalpractices.mt.gov/2recentdecisions/docket.mcpx (last visited September 3, 2014); *Campaign Finance and Practices Decision Page,* http://politicalpractices.mt.gov/2recentdecisions/campaignfinance.mcpx (September 3, 2014).

129. The First Amendment protects the right to associate with others. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958) ("*NAACP*"). This right is "fundamental." *San Francisco County Democratic Cent. Comm. v. Eu*, 826 F.2d 814, 827 (9th Cir. 1987). Once disclosure occurs, it cannot be undone. *Perry v. Schwarzenegger*, 591 F.3d 1147, 1158 (9th Cir. 2010). Consequently, disclosure

of an association's private, internal data, political affiliations, or activities imposes a substantial burden on First Amendment rights, *Buckley v. Valeo*, 424 U.S. 1, 64-68 (1976); *NAACP*, 357 U.S. at 462-63 (1958); *Perry*, 591 F.3d at 1159-60 (9th Cir. 2010).

130. The "public disclosure of an association's confidential internal materials . . . intrudes on the 'privacy of association and belief guaranteed by the First Amendment,' *Buckley,* 424 U.S. at 64, 96 S.Ct. at 656, as well as seriously interferes with internal group operations and effectiveness." *AFL-CIO v. FEC*, 333 F.3d 168, 177-78 (D.C. Cir. 2003). "Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." *Sweezy v. New Hampshire*, 354 U.S. 234, 250-51 (1957). "Merely to summon a witness and compel him, against his will, to disclose the nature of his past expressions and associations is a measure of governmental interference in these matters." *Id.* at 250.

131. Those haled before investigative bodies have a "strong confidentiality interest" analogous to those haled before a grand jury in a criminal proceeding. *In re Sealed Case*, 237 F.3d 657, 667 (D.C. Cir. 2001). Compelled disclosure is especially inappropriate in such contexts because "secrecy is needed to protect an innocent accused from damaging publicity." *Id*. at 177.

132. The Investigatory Procedures Provision and the Publication

Provisions provide no safeguards preventing the public disclosure of **1)** confidential materials in and attached to complaints filed with the commissioner and the commissioner's complaint notices, or **2)** confidential materials discovered during an investigation discussed in the commissioner's sufficiency findings, whether acquired by subpoena or voluntarily furnished by the alleged violator or political opponents. The Investigatory Procedures Provision and the Publication Provisions thus fail to ensure "secrecy . . . to protect an innocent from damaging publicity." *Id.* at 177.

133. Because of the Investigatory Procedures Provision and the Publication Provisions, MCD's speech is chilled. MCD will refrain from running its issue ads because any complaint filed against it will be publicly posted and could subject it to damaging publicity. And any confidential associations or strategies it provides or are discovered during an investigation can become public knowledge in any sufficiency decisions issued by a commissioner. *See, e.g., Bognogofsky v. Kennedy,* slip op. at 24-27 (attached as Ex. 17) (discussing in a publicly-posted, unadjudicated document **1)** ATP's alleged strategies derived from materials furnished by political opponents and **2)** alleged associations between ATP and other individuals and organizations).

134. MCD also bears the substantial burden of defending its constitutional rights throughout any investigation and risks liability if it is unable to adequately

defend those rights.

135. The Investigatory Procedures Provision and the Publication Provisions are not narrowly tailored to served a compelling state interest. *Brown v. Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U.S. 87, 99 (1982); *NAACP v. Alabama*, 357 U.S. 449, 462 (1958).

136. The Investigatory Procedures Provision and the Publication Provisions are unconstitutional under the First and Fourteenth Amendment.

Prayer for Relief

Wherefore, Plaintiff requests the following relief:

1. Declare MCA Section 13-1-101(22) unconstitutionally overbroad and vague in violation of the First and Fourteenth Amendments;

2. Declare ARM 44.10.327 unconstitutionally overbroad and vague in violation of the First and Fourteenth Amendments;

3. Declare MCA Section 13-1-101(11)(a) unconstitutionally vague in violation of the First and Fourteenth Amendments;

4. Declare ARM 44.10.323 unconstitutional and in violation of the First and Fourteenth Amendments;

5. Declare MCA Section 13-1-101(7)(a)(i) unconstitutionally vague in violation of the First and Fourteenth Amendments;

6. Declare ARM 44.10.321 unconstitutionally and in violation of the

First and Fourteenth Amendments;

7. Declare MCA Section 13-37-111 unconstitutional and in violation of the First and Fourteenth Amendments;

8. Declare ARM 44.10.307(3) & (4) unconstitutional and in violation of the First and Fourteenth Amendments;

9. Enjoin Defendants, their agents, successors, and assigns, from enforcing MCA Section 13-1-101(22);

10. Enjoin Defendants, their agents, successors, and assigns, from enforcing ARM 44.10.327;

11. Enjoin Defendants, their agents, successors, and assigns, from enforcing MCA Section 13-1-101(11)(a);

12. Enjoin Defendants, their agents, successors, and assigns, from enforcing ARM 44.10.323;

13. Enjoin Defendants, their agents, successors, and assigns, from enforcing MCA Section 13-1-101(7)(a)(i);

14. Enjoin Defendants, their agents, successors, and assigns, from enforcing ARM 44.10.321;

15. Enjoin the Commissioner, his agents, successors, and assigns, from acting pursuant to MCA Section 13-37-111;

16. Enjoin Commissioner, his agents, successors, and assigns, from

acting pursuant to ARM 44.10.307(3) & (4);

17. Grant Plaintiff its costs and attorneys fees under 42 U.S.C. Section 1988 and any other applicable authority; and

18. Grant any and all other relief this Court deems just and equitable.

Dated: September 3, 2014

Respectfully submitted,

/s/ Anita Y. Milanovich

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*Pro hac vice application to be made when case number is assigned.