Appendix

Appendix Table of Contents

[***Editing Note:*** *Page numbers from the reported opinion,* 2018 U.S. App. LEXIS 13310*, are indicated, e.g.,* ***[*2]***.]

[Filed: 05/22/2018]

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MONTANANS FOR COMMUNITY DEVELOPMENT, Plaintiff-Appellant, v. JEFFREY A. MANGAN,** in his official capacity as Commissioner of Political Practices; TIMOTHY C. FOX, in his official capacity as Attorney General of the State of Montana; LEO J. GALLAGHER, in his official capacity as Lewis and Clark County Attorney, Defendants-Appellees.	No. 16-35997 D.C. No. 6:14-cv-0055 DLC MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** Jeffrey A. Mangan is substituted for his predecessor, Jonathan Motl, as Commissioner of Political Practices, pursuant Fed. R. App. P. 43(c)(2).

Appeal from the United States District Court
for the District of Montana
Dana L. Christensen, Chief District Judge, Presiding

Argued and Submitted April 12, 2018
Seattle, Washington

Before: TASHIMA and GRABER, Circuit Judges, and MIHM,*** District Judge.

Plaintiff-Appellant Montanans for Community Development ("MCD") appeals from the district court's grant of summary judgment in favor of Defendants-Appellees on MCD's facial and as-applied First Amendment challenges to certain **[*2]** aspects of Montana's election law. We affirm.

MCD wanted to distribute what it deems pro-job growth mailers that mentioned candidates in upcoming Montana elections. It refrained from doing so because the group would have to comply with Montana's political committee reporting and disclosure requirements. MCD therefore brought these pre-enforcement First Amendment challenges against several political committee reporting and disclosure statutes and their implementing regulations.

1. As a threshold matter, MCD has standing to challenge most of the reporting statutes and regulations. *See Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2342 (2014) ("[A] plaintiff satisfies the injury-in-fact requirement where he alleges an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and

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*** The Honorable Michael M. Mihm, United States District Judge for the Central District of Illinois, sitting by designation.

there exists a credible threat of prosecution thereunder." (internal quotation marks omitted)). MCD may also challenge those regulations that did not go into effect until nine days after MCD filed the operative complaint. *See Blanchette v. Conn. Gen. Ins. Corps.*, 419 U.S. 102, 143-45 (1974) (holding that pre-implementation challenges are ripe where it is inevitable that the law will become effective).

However, MCD does not have standing to challenge MONT. CODE ANN. § 13-37-111(1) & (2), and MONT. ADMIN. R. 44.11.106(3) & (5), which grant the Commissioner **[*3]** of Political Practices ("Commissioner") authority to investigate violations of Montana's political committee and disclosure laws. That MCD will become the subject of an investigation and that the investigation will harm it via release of its confidential information is too speculative to establish standing. *See Laird v. Tatum*, 408 U.S. 1, 13-14 (1972). We thus dismiss the appeal of this claim for lack of standing.

Likewise, MCD cannot assert its discriminatory enforcement claims because they are moot. All of the allegations in the operative complaint relate to former Commissioner Jonathan Motl's discriminatory treatment of the group, but Jeffrey A. Mangan replaced Motl as the Commissioner in April 2017. MCD's bare assertion that Mangan will continue the allegedly discriminatory treatment is not sufficient to maintain the claim. *See Mayor of City of Phila. v. Educ. Equal. League*, 415 U.S. 605, 622-23 (1974). We dismiss the appeal of this claim for mootness.

2. All of MCD's justiciable claims fail on the merits. MCD's scattershot complaint and briefing seem to assert three categories of constitutional challenges to Montana's political committee reporting and disclosure

laws. MCD contends that the laws are (1) vague, (2) overbroad (i.e., they do not withstand scrutiny), and (3) unconstitutional as applied **[*4]** to MCD. In addressing MCD's claims, "[w]e review only issues which are argued specifically and distinctly in [its] opening brief." *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994).

3. All of MCD's vagueness challenges fail. MCD first asserts three arguments against language that appears in multiple statutes and regulations. MCD then attacks language specific to individual statutes and regulations.

As to the language that appears in multiple provisions of Montana's election law scheme, MCD challenges the statutes and regulations as vague on account of using (1) "circular" definitions, (2) the "appeal to vote test," or (3) the word "may."

First, MCD argues that various Montana statutes and regulations are unconstitutionally vague because their definitions are "circular" in that some of the defined terms use at least one of the other defined terms in their definitions. All of Plaintiff's "circular" definition arguments are unavailing because there is nothing inherently vague about definitions referring to one another. Further, in context, the definitions "provide a person of ordinary intelligence fair notice of what is prohibited" or required. *United States v. Williams*, 553 U.S. 285, 304 (2008).

Second, MCD also challenges the "appeal to vote test" and any statute or regulation that incorporates **[*5]** it. The Supreme Court has foreclosed this argument by using the appeal to vote test. *See Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 324-25 (2010).

Third, MCD challenges various laws for their use of

the word "may" in front of a list of factors. MCD argues that "may" means that the Commissioner has complete discretion to consider whatever he wants. MCD's interpretation is illogical and against the plain language of the statutes and regulations. "May" limits the Commissioner to considering only the listed factors.

As to the vagueness challenges to specific language in individual statutes and regulations, MCD's claims also fail. MCD contends that the "electioneering communication" statute and rule are vague because whether 100 recipients can receive a communication is "indeterminable," and because a person "that engages in electioneering communications must guess as to which reporting requirements they are subject to." A person of average intelligence can determine whether an advertisement may reach 100 people, and can read the statutes and regulations to determine which reporting rules apply.

Next, Plaintiff argues that MONT. ADMIN. R. 44.11.605(1) and MONT. ADMIN R. 44.11.605(4) are vague because they are inconsistent and because MONT. ADMIN. R. 44.11.605(4) impermissibly includes an "intent-based" test. While the regulations **[*6]** are not perfectly clear, "uncertainty at a statute's margins will not warrant facial invalidation if it is clear what the statute proscribes 'in the vast majority of its intended applications.'" *See Cal. Teachers Ass'n v. State Bd. of Educ.*, 271 F.3d 1141, 1151 (9th Cir. 2001) (quoting *Hill v. Colorado*, 530 U.S. 703, 733 (2000)).

4. We also reject MCD's challenges to the political committee disclosure laws and filing requirements as overbroad, or not "substantially related" to the state's interest. "[A] campaign finance disclosure requirement is constitutional if it survives exacting scrutiny, mean-

ing that it is substantially related to a sufficiently important governmental interest." *Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1005 (9th Cir. 2010). The Supreme Court has identified three "important" interests "in the context of reporting and disclosure requirements: providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions." *Yamada v. Snipes*, 786 F.3d 1182, 1197 (9th Cir. 2015) (internal quotation marks omitted).

First, the argument that disclosure laws are overbroad unless they apply only to groups whose major or primary purpose is political advocacy has been rejected multiple times in this circuit. *See Human Life of Wash.*, 624 F.3d at 1009-10; *see also Yamada*, 786 F.3d at 1198-99. Further, the disclosure requirements of filling out a short form **[*7]** and designating a treasurer and bank account are not overly burdensome. *See Human Life of Wash.*, 624 F.3d at 1012-14.

Second, the electronic and repeated reporting requirements survive exacting scrutiny. That the election disclosure and reporting laws might be constitutionally infirm based on a requirement that speakers electronically file reports is absurd, especially in light of the fact that the Commissioner can provide a waiver to those without access to electronic filing. *See* MONT. ADMIN. R. 44.11.302(2). Further, requiring political committees to repeatedly report contributions within two days of making them is substantially related to Montana's important informational interest. Otherwise a political committee could make a flurry of contributions just days before an election, when many people are finalizing their views, without having to report them until

after voting has occurred.

Third, the definition of "electioneering communication" and related reporting requirements are not duplicative of the political committee requirements. The definition of "electioneering communications" extends further. *See* MONT. CODE ANN. § 13-1-101(16); MONT. ADMIN R. 44.11.605. Even if electioneering communications only educate the public about a candidate, Montana still has a substantial interest in disclosing to the **[*8]** public who is doing the educating. *See Citizens United*, 558 U.S. at 369 ("Even if the ads only pertain to a commercial transaction, the public has an interest in knowing who is speaking about a candidate shortly before an election.").

Finally, MCD's challenge to the "paid-for" attribution requirement survives exacting scrutiny. *See id.* at 366-67 ("paid-for" attributions subject to exacting scrutiny rather than strict scrutiny). Montana's "paid-for" attribution requirement is narrower than the one struck down in *American Civil Liberties Union v. Heller*, 378 F.3d 979 (9th Cir. 2004), and is more similar to the requirement upheld in *Alaska Right to Life Committee v. Miles*, 441 F.3d 773 (9th Cir. 2006). **5.**

We reject MCD's as-applied challenges for the same reason that its overbreadth argument fails. Political committee reporting and disclosure laws can extend beyond groups whose major purpose is political advocacy. *See Human Life of Wash.*, 624 F.3d at 1011. Even if MCD's primary purpose is not electoral advocacy in Montana, the political committee reporting and disclosure laws survive exacting scrutiny as applied to the group.

. . .

The judgment of the district court is

AFFIRMED in part and DISMISSED in part.
Costs awarded to defendants-appellees.

[***Editing Note:*** *Page numbers from the reported opinion,* 216 F. Supp. 3d 1128*, are indicated, e.g.,* ***[*1133]***.]

[Filed: 10/31/2016]

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

MONTANANS FOR COMMUNITY DEVELOPMENT, Plaintiff, vs. 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; LEO GALLAGHER, in his official capacity as Lewis and Clark County Attorney, Defendants.	CV 14-55-H-DLC ORDER

[*1133] ORDER

Before the Court are the parties' cross-motions for summary judgment. For the reasons explained below, the Court grants Defendants' motion and denies Plaintiff's motion.

FACTUAL AND PROCEDURAL BACKGROUND

A. Montanans for Community Development

Plaintiff Montanans for Community Development ("MCD") is a self-identified tax exempt "social welfare

organization" under 26 U.S.C. 501(c)(4). This group asserts that it is a non-partisan organization that is not affiliated with any political candidate or political party. MCD's stated mission is "to promote and encourage policies that create jobs and grow local economies throughout Montana." (Doc. 100 at 17.) The organization seeks to accomplish this goal by "engag[ing] in grassroots advocacy and issues-oriented educational campaigns." (*Id.*)

MCD was organized at an initial meeting on October 2, 2013, and has only had one formal meeting since. MCD has no reported members, telephone number, email address, or website. Though MCD filed Articles of Incorporation with the Montana Secretary of State shortly after its initial meeting, its status as a Montana corporation was dissolved by the Secretary of State on December 1, 2015. MCD has neither applied for nor received recognition from the Internal Revenue Service regarding its purported tax exempt status.

MCD has stated an intention to engage in political speech through the circulation of issue advertisements, otherwise known as mailers. MCD asserts that it intended to circulate certain "issue advocacy" mailers as recently as September 2014, or roughly 60 days before the 2014 general election. (Doc. 100 at 17-18.) Although a template of these mailers was prepared by MCD, copies were not distributed out of concern that the organization would have been penalized by Montana's Commissioner of Political Practices (the "Commissioner") for failing to comply with Montana's campaign disclosure and reporting laws.

The template was attached to MCD's complaint and

consisted of two mailers.[1] The first mailer read: "Environmental extremists like the Sierra Club are working **[*1134]** every day to kill high-paying jobs through friv-

[1] In addition to the 2014 mailers, MCD also created four additional advertisements in 2013 that were provided to the Court, but never distributed. (*See* Doc. 100-6.) A review of the 2013 advertisements reveal that these mailers are similar to the 2014 mailers. However, three of the four 2013 mailers fail to name a candidate for office. Because these three mailers fail to name a candidate for office, the Court finds that they would not be an electioneering communication under the plain language of the statute and regulation. *See* Mont. Code Ann. § 13-1-101(15)(a); Admin. R. Mont. 44.11.605(1)(e) (requiring an electioneering communication to refer to a candidate or the candidate's "name, image, likeness, or voice"). Because these mailers are not electioneering communications under Montana law, any money spent in their production would not be an expenditure. *See* Mont. Code Ann. § 13-1-101(17)(a)(ii) (defining an "Expenditure" as "anything of value ... used or intended for use ... in producing electioneering communications"). Thus, because a political committee is only formed if it "makes an expenditure," the distribution of these three 2013 mailers would not require MCD to register as a political committee. *See* Mont. Code Ann. § 13-1-101(30)(a)(iii) (stating that a "Political committee" is a "a combination of two or more individuals ... who ... make[] an expenditure ... to prepare or disseminate an ... electioneering communication"). Thus, there is no basis for a constitutional challenge related to the 2013 mailers that did not name a candidate. Accordingly, the Court's analysis for the present motion will be limited to the 2014 advertisements and the lone 2013 mailer that did name a candidate. The Court notes that the lone 2013 mailer, which names John Quant, is almost identical to the mailer that names Joshua Sizemore. (*Compare* Doc. 100-6 at 3-4, *with* Doc. 100-7 at 2-3.)

olous lawsuits and burdensome regulations. It's time to understand how Montana's energy policy affects you. Check out www.energyxxi.org ." (Doc. 100-7 at 2.) On the back, the mailer further explained:

> Billings is a prime location to feel the economic benefits of the Bakken oil boom and development of the Otter Creek coal deposits. Fortunately, local industry leaders like Joshua Sizemore are promoting pro-growth policies that will develop resources and create jobs right here in Billings. Institute for 21st Century Energy's 5 Point Plan:
>
> 1. Maximize America's own energy resources
> 2. Make new and clean energy technologies more affordable
> 3. Eliminate regulatory barriers derailing energy projects
> 4. Do not put America's existing energy sources out of business
> 5. Encourage free and fair trade of energy resources and technologies globally
>
> But they can't do it alone. Learn more at www.energyxxi.org and join the fight. Paid for by Montanans for Community Development

(Doc. 100-7 at 3 (omitted punctuation marks in original).)[2]

The second mailer, similar to the first, discussed how:

> Over the past decade, modern horizontal drill-

[2] The text of the mailer was accompanied by pictures. On the front, the face of a clock. On the back, a dirt road leading to an oil and gas drilling rig and a photograph of a man, presumably Joshua Sizemore.

> ing technology has created an energy and jobs boom in Eastern Montana. In 2013, Montana's oil and gas industry contributed to over 15,600 jobs, which pay over 2/3 more than the state average.[3] Last year alone, Montana added an additional 4,900 jobs involved in selling goods and services to the oil and gas industry."

(Doc. 100-7 at 4.) The back of the second mailer ominously continued:

> However, environmentalists like Mary McNally are fighting this progress at every turn. They're proposing:
>
> - Putting a stop to the development of Montana's rich coal reserves
> - Shutting down modern natural resource development practices that bring jobs to rural communities
> - Locking up federal land in Eastern Montana so no resource development can take place
> - Blocked critical infrastructure projects that let Montana export its coal, oil, and natural gas.
>
> There is an alternative to this extremist rhetoric. Go to www.energyxxi.org and support the Institute for 21st Century Energy's Plan to maximize America's own energy resources.

(Doc. 100-7 at 5 (punctuation in original).)[4]

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[3] The mailer provided a footnote citation to: "'Articles & Reports - Montana Petroleum Association.' Articles & Reports - Montana Petroleum Association. N.p., n.d. Web. 12 Aug. 2014.1." (Doc. 100-7 at 4 (punctuation in original.)

[4] Like the first mailer, the second mailer also contains images in addition to text. On the front of the second mailer

[*1135] MCD asserts that it is an issue advocacy organization with a goal to educate the public and does not support any political candidates or parties. Despite this assertion, MCD sought to distribute these mailers during the sixty days preceding the 2014 election, an election where both of the named individuals in the mailers were running for office. Nonetheless, MCD steadfastly maintains that it will not speak, i.e., distribute these mailers, if it has to comply with Montana's political committee disclosure and reporting requirements. Accordingly, MCD contends that its speech has been chilled and filed this lawsuit challenging the constitutionality of Montana's political committee and disclosure laws.

B. Montana's Committee and Disclosure Laws

Under Montana law, a "Political committee" is defined as:

> a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:
> (i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination;
> (ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or
> (iii) to prepare or disseminate an election communication, an electioneering communication,

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is a picture of horizontal oil pumpjack next to a person wearing a cowboy hat. On the back is another image of a horizontal oil pumpjack next to a photograph of a woman, presumably Mary McNally.

or an independent expenditure.

Mont. Code Ann. § 13-1-101(30). This definition recognizes four types of political committees: (1) ballot issue committees; (2) incidental committees; (3) independent committees; and (4) and political party committees. *Id.* The statute clarifies that "[a] political committee is not formed when a combination of two or more individuals or a person other than an individual makes an election communication, an electioneering communication, or an independent expenditure of $250 or less." *Id.*

An "Incidental committee" is "a political committee that is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure." Mont. Code Ann. § 13-1-101(22)(a). Factors to consider in determining an organization's primary purpose are "allocation of budget, staff, or members' activity or the statement of purpose or goal of the person or individuals that form the committee." Mont. Code Ann. § 13-1-101(22)(b).

Incidental committees, like all political committees, must periodically submit reports concerning "contributions and expenditures made by or on the behalf of a candidate or political committee." Mont. Code Ann. § 13-37-225(1). Failure to do so may result in civil and criminal prosecution, and penalties "for an amount up to $500 or three times the amount of the unlawful contribution or expenditure, whichever is greater." Mont. Code Ann. § 13-37-228; Admin. R. Mont. 44.11.240. Defendants assert that MCD would most likely be classified as an incidental committee.

C. Commissioner of Political Practices

Under Montana law, "the [C]ommissioner is re-

sponsible for investigating all of the alleged violations of the election laws ... and in conjunction with the county attorneys is responsible for enforcing these election laws." Mont. Code. Ann. § 13-37-111(1). **[*1136]** Montana's current Commissioner is Defendant Jonathan Motl ("Motl").

MCD vilifies Motl and accuses him of engaging in political profiling by investigating and seeking litigation against "certain groups and individuals whose political ideology he disagrees with," specifically, "dark money"[5] groups and its supporters. (Doc. 100 at 22.) MCD provides that Motl unlawfully targets these individuals and groups, while simultaneously providing favorable treatment to groups and individuals whose political ideologies he supports.[6] Further, MCD states that the Commissioner's investigative practices expose individuals to false accusations and potential damage to reputation. Specifically, MCD states that it will not

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[5] Motl defines "dark money" as "money spent in Montana elections that is not reported or disclosed by the candidate or by the third party entity spending the money." (Doc. 122 at 2.) This definition largely corresponds with other attempts to define this term. *See* Danny Emmer, *Shedding Light on "Dark Money": The Heightened Risk of Foreign Influence Post-Citizens United,* 20 Sw. J. Int'l L. 381, 394 (2014) (describing "dark money" as money provided by "people who want to influence elections without identifying themselves").

[6] Specifically, MCD accuses Motl of using his investigatory powers to support Democrats and so-called "Responsible Republicans," i.e., Republican politicians who support the regulation of dark money, while simultaneously abusing his powers to investigate and prosecute politicians and their supporters that do not.

distribute its mailers out of fear that Motl will: (1) damage MCD's reputation; (2) issue substantial fines against MCD; (3) construe the mailers as coordinated, in-kind contributions and investigate and/or remove the individuals mentioned in the mailers from office; and (4) publish confidential information about MCD on the Commissioner's website. Accordingly, MCD challenges the Commissioner's investigatory powers as unconstitutional, contends that Motl engages in unlawful viewpoint discrimination, and accuses him of violating the Equal Protection Clause.

D. Procedural History

MCD filed its initial complaint on September 3, 2014, seeking declaratory and injunctive relief. This complaint numbered 46 pages and alleged 14 counts. MCD also moved for a preliminary injunction seeking to enjoin the Commissioner, as well as Defendants Montana Attorney General Timothy Fox and Lewis and Clark County Attorney Leo Gallagher (collectively "Defendants"), from enforcing Montana's election and disclosure laws on the eve of the 2014 general election. On October 22, 2014, the Court denied the motion after finding that none of the factors discussed in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008), supported an order preliminarily enjoining these laws. (Doc. 28.)

Following the denial, MCD filed an interlocutory appeal to the United States Court of Appeals for the Ninth Circuit and moved for an emergency injunction pending appeal. The Ninth Circuit denied the motion for an emergency injunction and MCD subsequently moved to voluntarily dismiss the appeal.

In June of 2015, MCD filed its first amended complaint. The amended complaint spanned 62 pages and

alleged 15 counts. A few months later, Defendants moved the Court to compel MCD to respond to certain interrogatories and requests for production put forth during discovery. The Court granted Defendants' motion in part and denied it in part after finding that some of the discovery requests were relevant and others were not. Ultimately, the Court found that the requests for information concerning MCD's communications **[*1137]** with outside groups were relevant while internal communications within MCD were not. MCD then filed an interlocutory appeal with the Ninth Circuit requesting a writ of mandamus. The Ninth Circuit denied this request after concluding that MCD had not established grounds warranting the Ninth Circuit's intervention.

Following this appeal, the Court issued a new scheduling order setting a bench trial for early May 2016. Shortly thereafter, on December 31, 2015, MCD filed its second amended complaint. This document expanded to 93 pages and brought several new causes of action, resulting in a total of 23 counts. In addition to several new counts challenging recently adopted political committee and disclosure regulations, MCD added the above-described claims alleging viewpoint discrimination and equal protection violations against Motl.

The parties filed cross-motions for summary judgment and the Court conducted a hearing on the motions. Shortly before the hearing, MCD moved to vacate the scheduled bench trial stating that it "strongly believes that this matter can be resolved based on the pending summary judgment motions." (Doc. 161 at 2.) Based upon this representation, and because Defendants did not oppose the motion, the Court vacated the

bench trial. (Doc. 162.)

As discussed, MCD asserts an unwavering unwillingness to comply with Montana's political committee reporting requirements and disclosure laws. MCD provides that it desired to distribute mailers during the sixty days preceding the 2014 general election that would have informed the public about "policies that create jobs and grow local economies throughout Montana," but did not do so because it would have been required to register as political committee. (Doc. 100 at 17-19.) MCD asserts that though these mailers would have contained the names of individuals who were candidates in the 2014 election and provided information that was arguably critical or supportive of the candidates, the intention of these mailers would have been to educate the general public, not to advocate for the election or defeat of the candidates.

Because MCD will not distribute its mailers if it is subject to Montana's political committee and disclosure requirements, it contends that its First Amendment right of free speech has been unconstitutionally chilled. As such, MCD challenges the constitutionality of Montana's political committee and disclosure laws and and [sic] moves for summary judgment on its claims.[7]

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[7] MCD has also provided notice of two cases recently decided in the District of Montana. (*See* Doc. 168.) Defendants move to strike this supplemental authority because it lodges new arguments and fails to follow this District Local Rules. *See* D. Mont. L.R. 7.4 (stating that a notice of supplemental authority "may not exceed two pages and must not present a new argument"). The Court will thus grant Defendants' motion because the notice of supplemental authority presents new arguments and exceeds the two-page limit. However, the Court will take judicial notice of

ANALYSIS

A party is entitled to summary judgment if it can demonstrate that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Summary judgment is warranted where the documentary evidence produced by the parties permits only one conclusion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251 (1986). A party opposing a properly supported motion for summary judgment "may not rest upon mere allegation or denials of his pleading, but must set forth **[*1138]** specific facts showing that there is a genuine issue for trial." *Id.* at 256. Only disputes over facts that might affect the outcome of the lawsuit will preclude entry of summary judgment; factual disputes that are irrelevant or unnecessary to the outcome are not considered. *Id.* at 248.

I. Preliminary Challenges to Standing

Defendants first dispute MCD's constitutional standing to challenge Montana's statutes and regulations.

A. Administrative Rules Effective January 9, 2016

As stated above, MCD's filed its second amended complaint on December 31, 2016. The second amended complaint raised several challenges to administrative regulations that did not become effective until January 9, 2016. MCD asserts that it has standing to challenge these regulations because although they were not effective until after the second amended complaint was filed, they were adopted November 24, 2015, more than

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these cases.

a month before the filing. Further, MCD contends that Motl testified on November 17, 2015, before the State Administration and Veterans' Affairs Committee, that the adoption date for the regulations was the date the regulations became the policy of the Commissioner. As such, MCD contends that these adopted regulations, though not yet effective, had the force of law.[8] Because they have the force of law, MCD argues, it has standing to challenge the administrative regulations that became effective after it filed its second amended complaint.

Article III of the United States Constitution mandates that courts must only "adjudicate live cases or controversies" and should refrain from issuing advisory opinions. *Thomas v. Anchorage Equal Rights Commn.*, 220 F.3d 1134, 1138 (9th Cir. 2000) (en banc) (citing to U.S. Const. art. III). As such, courts have the responsibility to ensure that litigants have standing under Article III to bring their claims. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 340 (2006). Further, a "plaintiff must demonstrate standing for each claim he or she seeks to press and for each form of relief sought." *Washington Envtl. Council v. Bellon*, 732 F.3d 1131, 1139 (9th Cir. 2013) (citing *DaimlerChrysler Corp.*, 547 U.S. at 352). The existence of standing is determined by "the facts as they exist when the complaint is filed." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 569 n. 4 (1992) (citation omitted).

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[8] At the hearing on the cross-motions for summary judgment, counsel for MCD stated that many courts have looked to the date when the statutes or regulations were adopted for standing purposes, not the date when the law became effective. Counsel for MCD, however, fails to provide the Court with any case names or citations for this authority.

In *Yamada v. Snipes*, the Ninth Circuit found that a corporation lacked standing to challenge a Hawaii statute because the statute was amended, i.e., it became effective, after the corporation filed its complaint. 786 F.3d 1182, 1204 (9th Cir. 2015) (*see also* Haw. Rev. Stat. Ann. § 11-341 (clarifying that the date the statute became effective was the same day the amendment occurred)). Here, the Court applies the same approach as the *Yamada* Court and finds that MCD lacks standing to challenge the regulations that came into effect after MCD filed its second amended complaint.

However, instead of dismissing these regulatory challenges outright, the Court could allow MCD leave to file another amended complaint. *See* Fed. R. Civ. P. 15(a)(2) (stating that a party may amend its complaint with leave of court, and leave of court should be freely given when justice **[*1139]** requires); *see also Theme Promotions, Inc. v. News America Marketing FSI*, 546 F.3d 991, 1010 (9th Cir. 2008) ("We apply [Rule 15's] policy liberally."). However, the Court is loath to invite the filing of a third amended complaint. This case has stretched on for a considerable time and the Court does not want to further delay its resolution. Many of the challenged campaign committee disclosure and reporting statutes, which rely on the regulations to determine their meaning and application, are unaffected by Defendants' challenge to these same regulations. As discussed below, because the Court denies MCD's challenges to the statutory counterparts to these regulations, the Court will address the regulations on the merits.

B. Investigatory Process

Defendants next assert that MCD lacks standing to challenge the Commissioner's investigative powers

as described in Count 21 (misidentified as Count XX) of the second amended complaint. As stated above, the Commissioner is responsible for investigating alleged violations of Montana's election laws. Mont. Code. Ann. § 13-37-111(1). In the exercise of his duties, MCD states that the Commissioner "routinely post complaints, notices of complaints (often with supporting documentation), as well as sufficiency findings disclosing associations and strategies on the Commission's website." (Doc. 100 at 78.)

MCD goes on to state that the Commissioner has, in the past, publically posted confidential materials accumulated through the complaint and investigatory process. MCD provides that it will refrain from distributing mailers because if they do, "any complaint filed against it will be publicly posted and could subject it to damaging publicity." (*Id.* at 81.) Further, "any confidential associations or strategies [MCD] provides or are discovered during an investigation can become public knowledge." (*Id.*) As such, MCD argues that the Commissioner's investigation powers chill its speech in violation of the First and Fourteenth Amendments.

As mentioned above, a party must satisfy standing requirements for each claim alleged. *Washington Envtl. Council*, 732 F.3d at 1139. MCD, as the party bringing this suit, bears the initial burden of establishing standing by showing "(1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a likelihood that the injury will be redressed by a favorable decision." *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014) (citation and internal quote marks omitted). Importantly, to satisfy Article III standing requirements, the injury in fact "must be concrete and particularized and

actual or imminent, not conjectural or hypothetical." *Id.* (citation and internal quote marks omitted).

In pre-enforcement cases, or cases where a party is arguably subject to threat of prosecution or other government action, "it is not necessary that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights." *Id.* at 2342 (quoting *Steffel v. Thompson*, 415 U.S. 452, 459 (1974). Instead, an injury in fact can be established by "demonstrating a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." *Lopez v. Candaele*, 630 F.3d 775, 785 (9th Cir. 2010) (quoting *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979)). To demonstrate this danger, a party must allege: (1) an intention to engage in conduct arguably influenced by a constitutional interest, but prohibited by statute; and (2) a credible threat of prosecution. *Id.* Typically, plaintiffs can establish a credible threat by: (1) showing "a reasonable likelihood **[*1140]** that the government will enforce the challenged law against them"; (2) "establish[ing], with some degree of concrete detail, that they intend to violate the challenged law"; and (3) showing that the law is applicable to plaintiffs. *Id.* at 786.

Here, the Court finds that MCD lacks standing under Count 21 for two independent reasons. First, MCD's intended course of conduct is not prohibited by the statute it challenges. Second, MCD fails to show that enforcement of the Commissioner's powers would cause actual and imminent injury.

Importantly, MCD states that it will not comply with Montana's political committee reporting and disclosure requirements. This conduct would violate

Montana's statutes that require reporting and disclosure. In Count 21, MCD is challenging the Commissioner's investigation procedures, specifically the power to investigate under Montana Code Annotated ("MCA") § 13-37-111(1). Here, although the organization has "alleged an intention to engage in a course of conduct arguably affected with a constitutional interest" by distributing its mailers, this conduct is not "arguably ... proscribed by [the] statute" MCD challenges. *Babbitt*, 442 U.S. at 298. Put another way, distributing mailers does not violate MCA § 13-37-111(1).

However, even if MCD's intended speech would not have violated MCA § 13-37-111(1), the exercise of this statute could, arguably, "deter[] the exercise of [MCD's] constitutional rights." *Susan B. Anthony List*, 134 S. Ct. at 2342. Nonetheless, in order for MCD to satisfy its burden for standing, it must show that enforcement of this provision would lead to imminent injury. MCD fails to make this showing.

For one, if MCD had distributed these mailers and declined to report it, a complaint would first have to be filed with the Commissioner. The Court, as discussed below, finds this scenario to be possible. However, a complaint being filed against MCD is not a cognizable injury. Indeed, the specific harm MCD alleges is harm to its reputation as a result of the complaint. The Court finds that possible damage to one's reputation is too speculative to support an injury in fact. *See Nampa Classical Acad. v. Goesling*, 2009 U.S. Dist. LEXIS 82456, 2009 WL 2923069, at *3 (D. Idaho Sept. 10, 2009) (Plaintiffs' claim of damage to reputation did not constitute injury for standing purposes). Similarly, the possibility that the Commissioner would publish MCD's confidential "associations or strategies" (Doc.

100 at 81) is also too conjectural to support Article III standing. MCD therefore lacks standing to challenge the Commissioner's investigatory powers and summary judgment is granted to Defendants on Count 21 (mis-numbered as Count XX).

C. Discrimination and Equal Protection Challenges

As discussed, MCD also claims that Motl engages in viewpoint discrimination against dark money groups. As a result, MCD alleges, Motl treats similarly situated persons and groups differently based upon their perceived support or opposition to dark money. (Doc. 100 at 84-86 (citing various alleged examples of Motl's unconstitutional viewpoint discrimination).) MCD thus contends that Motl has violated the Equal Protection rights of these groups. Notwithstanding these arguments, the Court declines to reach address these issues as it finds that MCD lacks standing to bring Counts 22 and 23 (mis-identified as Counts XXI and XXII).

Like MCD's previous counts, the organization must "satisfy standing requirements for each claim alleged." *Washington Envtl. Council*, 732 F.3d at 1139. In terms of standing, it is well settled that a party "cannot rest [its] claim to relief on **[*1141]** the legal rights or interests of third parties." *Voigt v. Savell*, 70 F.3d 1552, 1564 (9th Cir. 1995). Indeed, the injury relied upon for standing purposes must be "direct and personal to the particular plaintiff." *Catholic League for Relig. and Civ. Rights v. City and County of San Francisco*, 624 F.3d 1043, 1066 (9th Cir. 2010); *see also Lujan*, 504 U.S. at 561 n. 1 ("[T]he injury must affect the plaintiff in a personal and individual way.").

Here, however, the discriminatory harms allegedly

perpetrated by Motl, Plaintiff concedes (*see* Doc. 100 at 83-86), have been against groups other than MCD.[9] MCD fails to allege any personal and direct injury to the organization caused by Motl's past actions. If Motl has indeed discriminated against these groups, let them come forward. MCD simply is not the proper plaintiff to allege these claims. The Court grants summary judgment to Defendants on Counts 22 and 23.[10]

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[9] The Court notes that MCD does claim that Motl refused to issue advisory opinions requested by the organization while issuing opinions for groups he supports (Doc. 100 at 83 (citing Docs. 100-21, 100-22, 100-23, 100-24).) The Court has reviewed these documents and finds MCD's claim that they are evidence of Motl's discrimination completely without merit.

[10] Arguably, however, Counts 22 and 23 of MCD's second amended complaint could be read to support an argument that Motl's alleged discriminatory actions also chilled MCD's speech because it did not distribute its mailers out of fear that Motl would punish the group for its views on dark money. However, the Court finds this possible injury to be too speculative to support a claim for standing. For one, if Motl did pursue complaints against dark money groups, MCD could not prove that this pursuance was due to an improper motive. *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 970 (9th Cir. 2009) (to establish a viewpoint discrimination claim, plaintiff must show that the government official's alleged discriminatory action was "because of not merely in spite of" plaintiff's message). Second, according to MCD, its message is directed towards "promot[ing] and encourag[ing] policies that create jobs and grow local economies throughout Montana." (Doc. 100 at 17.) MCD's stated viewpoint thus has nothing to do with promoting dark money.

D. Count XVII

Defendants next contest MCD's standing to bring Count XVII. This Count challenges Administrative Rule of Montana ("ARM") 44.11.504.[11] Defendants contend that MCD has not alleged facts which would result in a violation of this regulation. In its response brief to Defendants' motion for summary judgment, MCD concedes that it "did not allege facts in its complaint establishing a harm arising from that regulation" and "withdraws its challenge to ARM 44.11. 504." (Doc. 157 at 12.) The Court thus grants summary judgment to Defendants on Count XVII.

II. Challenges to Political Committee and Disclosure Laws

Before the Court addresses MCD's challenges to Montana's political committee and reporting laws, the Court must first address MCD's standing to bring these claims.

A. Standing

As previously mentioned, standing for pre-enforcement litigants can be established by alleging an injury in fact. *Lopez*, 630 F.3d at 785. MCD can establish an injury in fact by "demonstrating a realistic danger of sustaining a direct injury as a **[*1142]** result of the [challenged] statute's operation or enforcement." *Id.* To

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[11] This regulation provides that "[i]f a candidate or political committee, or member thereof, advises, counsels, or otherwise knowingly encourages any person to make an expenditure for the purpose of avoiding direct contributions, or for any other reason, the expenditure shall be considered a contribution by that person to the candidate or political committee encouraging the expenditure." Admin. R. Mont. 44.11.504.

demonstrate a realistic danger, MCD must allege an intention to engage in conduct arguably impacted by a constitutional interest, but prohibited by statute, and a credible threat of prosecution. *Id.*

Here, MCD has alleged an intention to engage in First Amendment related conduct. In its second amended complaint, the organization states an intention to engage in speech through the distribution of issue advocacy mailers. MCD has provided copies of these mailers and the Court readily concludes that these mailers constitute protected speech under the First Amendment.

Next, to establish standing, MCD must show that its intended speech is prohibited under Montana law and the organization faces a credible threat of prosecution as a result of its speech. *Id.* As described above, in order to satisfy its burden, MCD must show: (1) a reasonable likelihood that the challenged laws will be enforced against it; and (2) allegations "with some degree of concrete detail, that [it] intend[s] to violate the challenged law." *Id.* at 786.

In analyzing the first factor, courts must determine if there is a credible threat of enforcement. *Id.* This can include specific warnings or threats to initiate proceedings under the challenged regulations, or a history of past enforcement under the challenged regulations against similarly situated parties. *Id.* Applying the second factor, MCD's intent to violate the law must be demonstrated by a concrete plan detailing its future speech. *Id.* Demonstrated plans to distribute flyers regarding a specific ballot initiative or mail postcards criticizing a candidate's position on an issue have been sufficient to satisfy the intent to violate factor. *Am. Civ. Liberties Union of Nev. v. Heller*, 378 F3d 979, 984

(9th Cir. 2004).

Here, the Court finds that MCD has satisfied both prongs and has standing to challenge Montana's campaign committee reporting and disclosure laws. First, it is well documented that the Commissioner has enforced Montana's disclosure and reporting requirements against similarly situated parties in the past. (Doc. 28 at 8 (describing the fines imposed by the Commissioner against the political committee American Tradition Partnership for failing to report expenses).) MCD satisfies the first prong.

Next, to qualify as an incidental political committee, an organization need only spend $250 on electioneering communications distributed 60 days before an election. Mont. Code Ann. §§ 13-1-101(15)(a), 17(a)(ii), 22(a), (30)(a)(iii). As mentioned above, failure to adhere to Montana's committee reporting requirements subjects an organization to civil and criminal prosecution,[12] including monetary fines. Mont. Code Ann. § 13-37-228.

In this case, MCD has established that it intended to spend over $250 on mailers in September of 2014. MCD also states that it would like to send similar mailers in the future. At the hearing on the underlying motions and in its briefing, Defendants asserted that MCD would most likely be classified as an incidental committee. Finally, the parties agree that the individuals named in the September 2014 mailers were candi-

[12] The Court highly doubts that failure to report an electioneering communication would have subjected MCD to criminal prosecution. Indeed, at most, MCD would have been issued a civil fine.

dates in the upcoming November election.[13]

[*1143] Under these facts, the Court concludes that MCD's 2014 mailers, at a minimum, would have been considered electioneering communications if distributed before the 2014 election. This distribution would have required MCD to register as a political committee. Failure to do so would most likely have subjected MCD to civil penalties. As discussed, the Commissioner has a history of past enforcement of these laws. Accordingly, the Court concludes that MCD has standing to bring its vagueness challenges to Montana's political committee and disclosures laws.

B. Vagueness Challenges on the Merits

MCD first challenges several of Montana's disclosure and reporting laws as facially unconstitutional. A facial challenge, in contrast to an as-applied challenge, argues a law is unconstitutional on its face. A law "may be facially unconstitutional in one of two ways: either it is unconstitutional in every conceivable application, or it seeks to prohibit such a broad range of protected conduct that it is unconstitutionally overbroad."[14] *Foti v. City of Menlo Park*, 146 F.3d 629, 635 (9th Cir. 1998) (punctuation marks omitted) (quoting *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 796 (1984)). Under a vagueness challenge, the first type of facial challenge, "the plaintiff argues that the ordinance could never be applied in a valid manner because it is unconstitutionally vague or it impermissibly restricts a protected activity." *Foti*, 146

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[13] The Court presumes that any future mailers would also contain images and names of current political candidates.

[14] MCD's overbreadth arguments are addressed *supra*.

F.3d at 635 (citing *N.A.A.C.P. v. City of Richmond*, 743 F.2d 1346, 1352 (9th Cir. 1984).

"A law is unconstitutionally vague if it fails to provide a reasonable opportunity to know what conduct is prohibited, or is so indefinite as to allow arbitrary and discriminatory enforcement." *Tucson Woman's Clinic v. Eden*, 379 F.3d 531, 555 (9th Cir. 2004) (citations omitted). However, "perfect clarity is not required even when a law regulates protected speech." *Cal. Teachers Ass'n v. State Bd. of Educ.*, 271 F.3d 1141, 1150 (9th Cir. 2001); *see also Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972) ("Condemned to the use of words, we can never expect mathematical certainty from our language."). Consequently, "even when a law implicates First Amendment rights, the constitution must tolerate a certain amount of vagueness." *California Teachers Ass'n*, 271 F.3d at 1151.

Additionally, a law is impermissibly vague if its "deterrent effect on legitimate expression is ... both real and substantial." *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 60 (1976) (quotation marks omitted) "Whether a statute's chilling effect on legitimate speech is substantial should be judged in relation to what the statute clearly proscribes." *California Teachers Ass'n*, 271 F.3d at 1151. However, "uncertainty at a statute's margins will not warrant facial invalidation if it is clear what the statute proscribes 'in the vast majority of its intended applications.'" *Id.* (quoting *Hill v. Colorado*, 530 U.S. 703, 733 (2000) (quotation marks omitted)). Further, the Court "must accept a narrowing construction to uphold the constitutionality of an ordinance if its language is 'readily susceptible' to it." *Nunez by Nunez v. City of San Diego*, 114 F.3d 935, 942 (9th Cir. 1997) (quoting *Virginia v. American Booksell-*

ers Ass'n, 484 U.S. 383, 397 (1988)).

[*1144] Lastly, when construing state statutes and regulations, this Court must follow Montana's rules of statutory interpretation. *Assn. des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 945 (9th Cir. 2013) ("In interpreting a state statute, we apply the state's rules of statutory construction."). In Montana, "the rules of statutory construction require the language of a statute to be construed according to its plain meaning." *Clarke v. Massey*, 271 Mont. 412, 897 P.2d 1085, 1088 (Mont. 1995).

1. Challenges to Statutory Definitions

MCD initially argues that the statutory definitions of contribution, expenditure, and political committee are unconstitutionally vague. MCD relies on two arguments for this contention. First, MCD asserts that the definitions of these terms are vague because they rely on one another for their meaning. Because their definitions are circular, MCD reasons, the Court must strike them down as vague. Second, MCD contends that the above terms are vague because they rely on the phrase "support or oppose." (Doc. 129 at 12.) This phrase, MCD suggests, has been interpreted by courts to be the functional equivalent of the "appeal-to-vote test," which, according to MCD, the United States Supreme Court views unfavorably. (*Id.* (citing *Fed. Election Comm'n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007).) The Court will address each of these argument in turn.

i. Circular Definitions

As discussed, MCD suggests that the statutory definitions of contribution, expenditure, and political committee are unconstitutionally vague because they

are based on circular definitions. Under Montana law, a "Contribution" is defined as:

> (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 or oppose a candidate or a ballot issue;
>
> (ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;
>
> (iii) the receipt by a political committee of funds transferred from another political committee; or
>
> (iv) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

Mont. Code. Ann. § 13-1-101(9)(a). Further, an "Expenditure" is defined as:

> a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:
>
> (i) made by a candidate or political committee to support or oppose a candidate or a ballot issue; or
>
> (ii) used or intended for use in making independent expenditures or in producing electioneering communications.[15]

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[15] This statute further claries that an "'Expenditure' does not mean: (i) services, food, or lodging provided in a

[*1145] Mont. Code Ann. § 13-1-101(17)(b). Lastly, as discussed above, a "Political committee" is:

> a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:
> (i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination;
> (ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or
> (iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.

Mont. Code Ann. § 13-1-101(30)(a).

MCD suggests that because the scope of contribution and expenditure are defined by political committee, and political committee relies on contribution and expenditure for its definition, these terms are circular and must be facially struck down. The Court disagrees.

Reading these terms in their context, the Court finds that their reliance on one another does not make them vague. Instead, this reliance facilitates clarity as

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manner that they are not contributions under subsection (9); (ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family; (iii) the cost of any bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or (iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees." Mont. Code Ann. § 13-1-101(17)(b).

to which groups are covered by Montana's campaign finance laws, i.e., candidates and political committees. Applying these terms as a whole, it is clear that a political committee is a "combination of two or more individuals or a person other than an individual," that either (1) receives "an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support or oppose a candidate or a ballot issue" (i.e., a "contribution"); or (2) makes a "purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value" (i.e, an "expenditure") to support or oppose a candidate or ballot issue. *See* Mont. Code Ann. §§ 13-1-101(3), (9), (17). Thus, the Court finds that these terms are not so vague that they fail "to provide a reasonable opportunity to know what conduct is prohibited." *Tucson Woman's Clinic*, 379 F.3d at 555. The Court thus rejects MCD's first vagueness argument.

ii. Appeal to Vote Language

Next, MCD contends that because the statutory definitions of contribution, expenditure, political committee, and electioneering communication contain the terms "support or oppose," they are unconstitutionally vague. MCD maintains that these terms are express advocacy or its functional equivalent—the appeal to vote test. According to MCD, the appeal to vote test is vague under *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007) ("*WRTL II*"). Again, the Court disagrees and finds that these terms are not vague.

In *Yamada v. Snipes*, a Ninth Circuit decision cited above, the Court examined a vagueness challenge to the term "influencing" under Hawaii's campaign finance laws and rejected the challenge. *Yamada*, 786

F.3d at 1188-1191. There, the Court found that the term was not vague because it was significantly narrowed by the state's interpretation of the statute. *Id.* at 1188-1189 (stating that the state's interpretation of "influence" did not create vagueness problems because the interpretation of the term "refers only to communications or activities that constitute express advocacy or its functional equivalent"). Further, the Ninth Circuit rejected the argument, similar to MCD's, that terms that regulate express advocacy or appeal to vote language are per se vague. *See Id.* at 1191 ("We therefore join the First, Fourth and Tenth Circuits in holding that the 'appeal to vote' language is not unconstitutionally vague.").

[*1146] Here, like the law at issue in *Yamada*, the definition of "support or oppose" has been given a significantly narrowed definition which disarms, it not negates, any vagueness arguments applied to it. Indeed, the terms "support or oppose," are defined under Montana law to mean:

> (a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to voters in an election; or
>
> (b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election, or defeat of the candidate in an election,

> the election or defeat of the political party, or the passage or defeat of the ballot issue or other question submitted to the voters in an election.

Mont. Code Ann. § 13-1-101(49). The Court finds that this narrowing definition, and in particular subsection (b), eliminates any vagueness arguments put forward by MCD because it seeks only to regulate express advocacy. *See WRTL II*, 551 U.S. 449, 469-470 (2007) ("[A] court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."). Because limited regulation of materials that constitute express advocacy is permissible under the Constitution, *see id.* at 465, the Court finds that MCD's second statutory vagueness argument is without merit.[16]

2. Challenges to Regulatory Definitions

MCD next challenges the regulatory definitions of contribution, expenditure, reportable election activity, and coordinated expenditure. The Court first notes that many of MCD's arguments rely on terms that were included in the draft versions of these rules, but not included in the rules that became effective on Jan-

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[16] The Court notes that MCD cites previous applications of these statutes by Motl in various Commissioner cases as evidence that they are vague. Contrary to MCD's argument, under a vagueness challenge a plaintiff "cannot complain of the vagueness of the law as applied to the conduct of others." *Hunt v. City of Los Angeles*, 638 F.3d 703, 709-710 (9th Cir. 2011) (quoting *Holder v. Humanitarian L. Project*, 561 U.S. 1, 18-19 (2010). Thus, a vagueness challenge which asks the Court to consider application of the law to others is not appropriate.

uary 9, 2016. *See* Admin. R. Mont. 44.11.401(1), 44.11.501(1) (lacking the phrase "not limited to" in the definitions of "expenditure" and "contribution"); 44.11.603 (lacking the phrase "on a case-by-case basis" and "other factors and circumstances the commissioner determines are relevant" in the definition "de minimis act" which serves to define "political committee"). To the extent that MCD's arguments rely on these non-adopted terms, the Court rejects these arguments as moot.

i. Political Committee Reporting Requirements

MCD first challenges the regulations constituting Montana's political committee reporting requirements under ARM 44.11.202(6) and 44.11.202(7), and the rule governing the filing of statements and reports under ARM 44.11.302. MCD contends that these statutes are vague because they contain or rely on terms that are defined by the words "may," "appeal," and "not limited to" in the definition of "reportable election activity." These terms, MCD stresses, invite mischief by the Commissioner **[*1147]** in that they allow for arbitrary and discriminatory enforcement.

Examining these terms as a whole, the Court finds that MCD's arguments attempt to read vagueness into the rules where none existed before. First, the regulations define an incidental committee as:

> a political committee that does not have the *primary purpose* of supporting or opposing candidates or ballot issues. Incidental committee *reportable election activity*[17] may consist of:

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[17] The rules define "Reportable Election Activity" as "includ[ing,] but is *not limited to* accepting a contribution,

> (a) making one or more expenditures;
> (b) accepting one or more designated contributions; or
> (c) accepting one or more contributions in response to an *appeal*.

Admin. R. Mont. 44.11.202(6) (emphasis added). Similarly, an independent committee is defined as:

> a political committee that has the *primary purpose* of supporting or opposing candidates or ballot issues but is neither a ballot issue nor a political party political committee. Independent committee *reportable election activity may* consist of:
> (a) making one or more expenditures;
> (b) accepting one or more contributions.

Admin. R. Mont. 44.11.202(7) (emphasis added). Lastly, the rules stipulate that reports concerning election activities must be filed electronically, however, "the commissioner *may* provide a waiver." Admin. R. Mont. 44.11.302.

Here, the use of the word *may* does not permit the possible mischief alleged by MCD. Instead, it is clear that the use of *may* tells the Commissioner that any activities following the term would constitute a reportable election activity. *See* Admin. R. Mont. 44.11.202(6) ("Incidental committee reportable election activity *may* consist of"); Admin. R. Mont. 44.11.202(7) ("Independ-

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a contribution in response to an appeal, or a designated contribution, or making an expenditure, a contribution, a coordinated expenditure, an independent expenditure, or an in-kind contribution or expenditure, or making an election communication or electioneering communication." Admin. R. Mont. 44.11.103(31) (emphasis added).

ent committee reportable election activity *may* consist of"). The Court finds that use of this term is not vague under the plain language of the regulation. Instead, the term is clearly limited by the factors following it.[18]

Likewise, *may* under ARM 44.11.302 is permissible because it gives the Commissioner discretion to allow candidates and committees to opt-out of electronic reporting. This provision is clearly intended to allow an alternative for mandatory electronic election reporting due to the possibility that the reporter may not have access to the internet. The Court finds this discretion appropriate and not likely to lead to abuse.

Next, the use of the word *appeal* in ARM 44.11.202(6) does not make the regulation vague. Defendants provide a limiting interpretation of appeal to mean "request." (Doc. 120 at 29 (citing *The American Heritage Dictionary* 85 (5th ed., Houghton Mifflin Harcourt 2011) (defining appeal as "[a]n earnest or urgent request").) This limiting interpretation provides clarity to **[*1148]** the rule and does not lead to impermissible vagueness.

Lastly, the Court agrees with Defendants that MCD is in no danger of arbitrary or discriminatory enforcement due to the phrase *not limited to* in the definition of "reportable election activity." Admin. R. Mont. 44.11.103(31). As discussed, Defendants state

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[18] For this reason, MCD's argument that the phrase "primary purpose" is vague must also fail. MCD argues that this phrase gives the Commissioner too much discretion and allows for arbitrary enforcement. The Court disagrees and finds that the factors following this phrase limit the Commissioner's discretion. *See* Admin. R. Mont. 44.11.202(6), (7); *see also* 44.11.203 (defining *primary purpose* and limiting the definition based on identified factors).

that MCD's 2014 mailers would most likely qualify as "electioneering communications," which is a reportable election activity. Regardless, even if this was not the case, "uncertainty at a statute's margins will not warrant facial invalidation if it is clear what the statute proscribes in the vast majority of its intended applications." *California Teachers Ass'n*, 271 F.3d at 1151 (quotation marks omitted). Here, the regulation describes numerous examples of activities that constitute reportable election activities following the phrase *not limited to*. *See* Admin. R. Mont. 44.11.103(31). Applicability of the law is thus clear in the majority of situations.

ii. Derivative Challenges

Similar to its challenges aimed at the statutory definitions of "political committee," "expenditure," and "contribution," MCD also challenges the regulatory definition of "political committee," which relies on the statutory definitions of these terms for its meaning. *See* Admin. R. Mont. 44.11.202(1), (3); 44.11.401(1); 44.11.501(1) (citing to Mont. Code Ann. § 13-1-101). MCD contends that because these regulatory definitions cite to statutory definitions that are vague, the regulations are also vague. The Court disagrees and finds that these regulatory definitions are not vague for the reasons decided in section II.B.1 of this Order.

3. Vagueness Challenge to "Electioneering Communication"

MCD's final vagueness challenge is aimed at the statutory and regulatory definitions of "electioneering communication." This term is defined to mean:

> a paid communication that is publicly distributed by radio, television, cable, satellite,

> internet website, newspaper, periodical, billboard, mail, or any other distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the district voting on the candidate or ballot issue, and that:
> (i) refers to one or more clearly identified candidates in that election;
> (ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election; or
> (iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

Mont. Code Ann. § 13-1-101(15)(a). The regulatory definition is almost identical to the statutory definition. *See* Admin. R. Mont. 44.11.605.

MCD makes at least two arguments in support of its contention that this definition is vague. First, MCD contends that the definition is vague because the question of whether an electioneering communication "can be received by more than 100 recipients" is an indeterminable standard. The Court disagrees and finds that in the vast majority of cases it would not be challenging to determine if 100 people could receive a communication.

Here, for example, MCD states that it desired to distribute the aforementioned mailers in fall of 2014. It would thus be simple for MCD to determine if its mailers could be received by 100 people because the organization itself would know how many mailers, i.e., electioneering communications, were sent. Further,

issues of newspaper or televison communications would also be easily ascertainable. The sender would merely inquire with the distributor concerning the number of people **[*1149]** in the publication or viewing audience. MCD also argues that internet distribution is particularly problematic because it would be much harder to determine if 100 individuals received the communication. The Court agrees that there may be instances where it is not initially clear whether 100 people in a particular voting district would receive a communication if it was distributed over the internet. However, this does not render the statute facially vague. *California Teachers Ass'n*, 271 F.3d at 1151 (stating that "constitution must tolerate a certain amount of vagueness").

Second, MCD argues that ARM 44.11.605(1)(c) is vague because it leaves people guessing as to their reporting requirements. Again, MCD reads vagueness into the statute. The Court agrees with Defendants that the reporting required of an entity depends on its committee classification. Here, MCD desires to distribute mailers that Defendants identify as electioneering communications. Admin. R. Mont. 44.11.605(1)(c); Mont. Code Ann. § 13-1-101(15)(a). This type of communication is an expenditure. Mont. Code Ann. § 13-1-101(17)(a)(ii). Entities that make an expenditure, but do not support or oppose a candidate, must register and report as an incidental committee. Mont. Code Ann. § 13-1-101(22)(a). Therefore, application of this regulation to MCD is not vague and Defendants' motion for summary judgment on Count 18 (misidentified as Count XVII) is granted.

Thus, ultimately, because MCD's vagueness arguments fail, the Court grants summary judgment to De-

fendants on Counts III, IV, V, VIII, IX, XI, XII, XIII, XIV, XV, and XVI of MCD's second amended complaint.

C. Exacting Scrutiny

Next, MCD challenges Montana's political committee definitions and disclosure requirements as failing scrutiny review. MCD also challenges these statutes and regulations as facially overbroad.

"[A] campaign finance disclosure requirement is constitutional if it survives exacting scrutiny, meaning that it is substantially related to a sufficiently important governmental interest." *Human Life of Washington Inc. v. Brumsickle*, 624 F.3d 990, 1005 (9th Cir. 2010). Disclosure requirements are constitutional because though they "may burden the ability to speak . . . [they] do not prevent anyone from speaking." *Citizens United v. Fed. Election Commn.*, 558 U.S. 310, 366 (2010) (citations omitted).

1. Governmental Interest

First, the Court is satisfied that Montana's disclosure laws serve "a sufficiently important governmental interest." *Brumsickle*, 624 F.3d at 1005. As discussed in this Court's opinion in *National Association for Gun Rights, Inc., v. Murry*, "disclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek . . . office." 969 F. Supp. 2d 1262, 1267 (D. Mont. 2013) (quoting *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976); *see also Brumsickle*, 624 F.3d at 1005 ("[D]isclosure laws help ensure that voters have the facts they need to evaluate the various messages competing for their attention.").

Further, "[p]roviding information to the electorate is vital to the efficient functioning of the marketplace of ideas, and thus to advancing the democratic objectives underlying the First Amendment." *Brumsickle*, 624 F.3d at 1005. Also, in addition to providing voters with information, disclosure laws also serve to deter actual corruption and avoid the appearance thereof, **[*1150]** and aid in "gathering the data necessary to enforce more substantive electioneering restrictions." *Alaska Right To Life Comm. v. Miles*, 441 F.3d 773, 793 (9th Cir. 2006) (citation omitted).

As discussed, the Court finds that Montana's disclosure laws serve a important, if not compelling, government interest. Due the dramatic rise in election spending in the last few decades, Montana's voters are inundated with political televison advertisements and mailers. These communication seek to inform (or misinform) the voters and sway their opinions. Providing Montana voters with information about individuals and groups competing for their attention serve important government interests.

2. Substantial Relationship

As discussed, in order to satisfy exacting scrutiny, a disclosure law must be "substantially related" to the government interest. *Brumsickle*, 624 F.3d at 1005. MCD contends that multiple committee definitions and disclosure requirements are not substantially related and thus fail to meet exacting scrutiny. The Court will address each argument in turn.

MCD initially argues that Montana's reporting requirements are so burdensome, that no government interest could satisfy their requirements. The Court disagrees. As stated, if MCD would have distributed its mailers, the organization would have been required to

register as a political committee. This would have required MCD to complete a form called the Statement of Organization (Form C-2). (Doc. 122-1.) Motl states that the C-2 form would take about 10 minutes to complete and would require the committee to list a "treasurer/contact for the group, a brief description of the committee type and purpose, a list of the names of candidates identified by expenditure and the name and address of the bank used by the political committee." (Doc. 122 at 3.)

If the group qualified as an incidental committee, it would then be required to complete a C-4 form (Doc. 122-2) within five days of making an expenditure. This is a three page form that can be completed at the same time as the filing of the C-2 form. The C-4 form requires some basic information about the committee and a brief description of the expenditure. Committees that continue to make expenditures would need to file additional C-4 forms for each expenditure. The Court has reviewed these forms and deems them less complicated than federal or state personal income tax forms.

However, MCD alleges that ARM 44.11.402(5) and 44.11.302 impose substantial burdens on political committees. These regulations require that a contribution, as described in MCA § 13-1-101(9)(a), be reported within two days of its receipt. Admin. R. Mont. 44.11.402(5). Additionally, this report must be filed electronically with the Commissioner. Admin. R. Mont. 44.11.302. MCD charges that, first, these requirements require undue excessive reporting, and second, electronic reporting is burdensome due to Montana's rural nature. The Court disagrees.

First, repeated reporting reflects the reality of election expenditures and contributions. Political comm-

ittees are constantly making new expenditures and receiving contributions. It is common sense that in order to inform the electorate about a committee's spending or receipt of funds before an election, these events must be reported on a continual and timely basis. Second, the Court strenuously disagrees with MCD that electronic reporting is burdensome. Electronic reporting allows for timely reporting and furthers the State's interest in transparency. Further, the United States Supreme Court has recognized the benefits of electronic reporting. *See Citizens United*, 558 U.S. at 370 **[*1151]** (discussing how "modern technology makes disclosures rapid and informative"). Finally, as discussed above, ARM 44.11.302 allows committees to opt-out of electronic reporting. Thus, the above-discussed regulations satisfy exacting scrutiny.

Next, MCD alleges that Montana's requirement that election communications, electioneering communications, and independent expenditures include a "paid for by" attribution does not meet exacting scrutiny. Mont. Code. Ann. § 13-35-225; Admin. R. Mont. 44.11.601. MCD contends that these are content based restrictions that are "not narrowly tailored to serve an overriding state interest[,] they compel information already disclosed to the Commissioner[,] and are underinclusive because they require insufficient information." (Doc. 129 at 31 (citing *Am. Civ. Liberties Union of Nev.*, 378 F3d at 998).) MCD is incorrect.

First, the Court disagrees with MCD's characterization of these provisions as not narrowly tailored. In *American Civil Liberties Union of Nevada v. Heller*, the Ninth Circuit held unconstitutional a state statute that required disclosure of the names and addresses of the persons who either paid for or were "responsible for

paying for the publication of any material or information relating to an election, candidate or any question on a ballot to identify their names and addresses on any published printed or written matter or any photograph." 378 F.3d at 981, 1002 (quotation and punctuation marks omitted). There, the Court found the statute impermissibly overbroad because it was not narrowly tailored to serve an overriding state interest. *Id.* at 993-1001. This conclusion was based in large part by the wide-ranging application of the statue which applied to "any material or information relating to an election." *Id.* at 986.

However, after finding that the statute was not narrowly tailored, the Court clarified that its holding in no way proscribed another more finely tuned statute which required disclosure on the publication. *See id.* at 1000 ("Our conclusion that the Nevada statute at issue here is not narrowly tailored to assist the state in enforcing other campaign finance laws should not in any way suggest that an on-publication identification requirement could never be narrowly tailored to achieve this goal.").

Indeed, in *Yamada*, the Ninth Circuit upheld a statute that required on-publication disclosure due, in large part, because the burdens imposed were minimal. *Yamada*, 786 F.3d at 1202 (describing the statute as imposing "only a modest burden on First Amendment rights"). Here, like the statute at issue in *Yamada*, the disclosure required under Montana's so-called "anonymous speech ban" only requires the "name and address of the person who made or financed the expenditure for the communication." Mont. Code. Ann. § 13-35-225. Thus, to be in compliance with this statute, the vast majority of communications would only be required to

add a sentence or two at most. Also, unlike the statute in *Heller*, which applied to "any material or information relating to an election," Montana's statute only applies to a handful of specifically designated communications. *See* Mont. Code. Ann. § 13-35-225(1). Montana's statute is thus easily distinguishable from the one at issue in *Heller*. The Court finds that the First Amendment burdens imposed by this statute are outweighed by the benefits of disclosure to the electorate.

Additionally, the Court notes that MCD's mailers would qualify as an electioneering communication. The disclosure requirement for this communication only goes into effect if it is made sixty days before an election. *See* Mont. Code. Ann. § 13-1-101(15)(a). **[*1152]** Here, the Court finds that Montana's requirement that electioneering communications include a "paid for by" attribution is narrowly tailored because the disclosure requirements only go into effect within the two months leading up to an election. *Yamada*, 786 F.3d at 1203 n.14 ("*Citizens United*'s post-*McIntyre*, post-*Heller* discussion makes clear that disclaimer laws ... may be imposed on political advertisements that discuss a candidate shortly before an election.").

Accordingly, the Court concludes that Montana's political committee disclosure requirements and definitions are "substantially related to a sufficiently important governmental interest," and satisfy scrutiny review because the disclosure required under them "increases as a political committee more actively engages in campaign spending and as an election nears." *Brumsickle*, 624 F.3d 990 at 1013.[19] The Court grants

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[19] MCD also argues that the Commissioner's investigatory powers are also unconstitutional under scrutiny re-

summary judgment to Defendants on Counts X, 19 (misidentified as XVIII) and 20 (misidentified as XIX).

D. Overbreadth Challenges

Closely related to MCD's challenges under exacting scrutiny, the organization also challenges Montana's political committee statutory and regulatory definitions as unconstitutionally overbroad. Specifically, MCD contends that Montana's law and regulations pertaining to political committees are overboard. However, because the Court has determined that Montana's political committee laws satisfy exacting scrutiny, the Court need not address MCD's overbreadth arguments because MCD is incapable of showing that the alleged overbreadth of these provisions "is both real and substantial." *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973). Thus, the Court rejects MCD's overbreadth arguments as they pertain to MCA § 13-1-101(30) ("Political committee" statutory definition) and ARM 44.11.202(2) ("Political committee" regulatory definition). However, in the interest of thoroughness, the Court will briefly address a few of MCD's arguments pertaining to overbreadth.

MCD argues that Montana's political committee definitions are overly broad because they are not limited to groups with the "major purpose" of nominating or electing candidates. However, as discussed in the Court's Order denying the motion for preliminary injunction, the Ninth Circuit has rejected any bright-line

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view. *See* Mont. Code. Ann. § 13-37-111; Admin. R. Mont. 44.11.106. However, as discussed in section I.B. of this Order, MCD fails to allege a viable injury in fact due to the enforcement of these powers. Thus, MCD lacks standing to challenge these provisions under scrutiny review.

"major purpose test." *See Yamada*, 786 F.3d at 1200-1201 ("[Plaintiff's] argument that regulations should reach only organizations with a primary purpose of political advocacy also ignores the 'fundamental organizational reality that most organizations do not have just one major purpose.'") (quoting *Brumsickle*, 624 F.3d at 1011[)]. MCD's "major purpose" argument is thus without support.

Next, similar to its vagueness arguments, MCD also apparently challenges MCA § 13-1-101(15) and ARM 44.11.605 as overbroad, which discuss the definition of electioneering communications. In its brief in support of summary judgment, MCD states that the "vast sweep [of these regulations] (which could include filings in this lawsuit) bears no substantial relation to Montana's information interest." (Doc. 129 at 30.) The Court disagrees and rejects MCD's argument for the reasons discussed **[*1153]** in section II.C.2. The Court grants summary judgment to Defendants on Counts I and VI.

E. As-Applied Challenge

Finally, MCD contends that Montana's political committee definitions, specifically MCA § 13-1-101(30) and ARM 44.11.202(2), are unconstitutional as-applied to the organization. MCD states that it has no interest in engaging in political activities and merely seeks to "promote the social welfare" by "engaging in grassroots advocacy and issues-oriented educational campaigns." (Doc. 126 at 21.) MCD asserts that it only intends to engage in issue advocacy and thus Montana's political committee and disclosure laws are not tailored to any cognizable interest as applied to the organization. Again, the Court disagrees.

"An as-applied challenge contends that the law is

unconstitutional as applied to the litigant's particular speech activity, even though the law may be capable of valid application to others." *Foti v. City of Menlo Park*, 146 F.3d 629, 635 (9th Cir. 1998) (citations omitted). Further, "[a] successful as-applied challenge does not render the law itself invalid but only the particular application of the law." *Id.*

As discussed, the State of Montana has an important, if not compelling, interest in the regulation of political speech during the time immediately preceding an election. *Alaska Right To Life Comm.*, 441 F.3d at 793 ("[T]here is a compelling state interest in informing voters who or what entity is trying to persuade them to vote in a certain way."). Here, MCD desired to send "issue advocacy" mailers in the sixty days preceding the 2014 election. Further, these mailers would cost in excess of $250 and name candidates for political office, in addition to including their images. MCD states that it desires to engage in political speech, though it argues that it does not support or oppose a particular political candidate.[20] (Doc. 126 at 21.) Despite this assertion, these mailers would qualify as electioneering communications and would require MCD to register as a incidental com-mittee and report its expenditures. As described, the burdens associated with incidental committee reporting are minimal and narrowly tailored to the State's interest in disclosure.

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[20] MCD also argues that the Commissioner's investigatory powers are also unconstitutional under scrutiny review. *See* Mont. Code. Ann. § 13-37-111; Admin. R. Mont. 44.11.106. However, as discussed in section I.B. of this Order, MCD fails to allege a viable injury in fact due to the enforcement of these powers. Thus, MCD lacks standing to challenge these provisions under scrutiny review.

Further, as discussed, MCD's incidental committee reporting requirements satisfy exacting scrutiny.

Despite this finding, MCD argues that Montana cannot regulate its speech because it does not have a "major purpose, a primary purpose, or even a priority of the nomination or election of a candidate or candidates in Montana." (Doc. 129 at 28 (internal quotation marks omitted).) These arguments have been rejected by the Ninth Circuit. *Yamada*, 786 F.3d at 1200; *Brumsickle*, 624 F.3d at 1011; *see also Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 489 (7th Cir. 2012) ("[L]imiting disclosure requirements to groups with the major purpose of influencing elections would allow even those very groups to circumvent the law with ease."). Also, even if the Court takes MCD at its word that it intends to pursue only issue advocacy, regulation of issue advocacy is permitted if justified by a compelling state interest. *Alaska Right To Life Comm.*, 441 F.3d at 793.

Here, regulation of MCD's electioneering communications, which seek to "educate" the electorate about candidates for office in the time preceding an election, is warranted because it provides "the voting public with the information with which to **[*1154]** assess the various messages vying for their attention in the marketplace of ideas." *Brumsickle*, 624 F.3d at 1008. Further, and most importantly, MCD provides no explanation why the organization is incapable of complying with Montana's disclosure requirements. *Id.* at 1022 (rejecting an as-applied challenge brought by an organization because it was unable to show why it could not comply with the state's disclosure laws). Consequently, requiring MCD to disclose that it is distributing these mailers is constitutionally sound. The Court

thus finds that these regulations are constitutional as-applied to MCD. The Court grants summary judgment to Defendants on Counts II and VII.

Accordingly,

IT IS ORDERED that Defendants' Motion for Summary Judgment (Doc 119) is GRANTED.

IT IS FURTHERED ORDERED that Plaintiff's Motion for Summary Judgment (Doc. 125) is DENIED.

IT IS FURTHERED ORDERED that Defendants' Motion to Strike (Doc. 169) is GRANTED.

The Clerk of Court is directed to enter judgment in favor of Defendants and against Plaintiff.

This case is CLOSED.

DATED this 31st day of October, 2016

/s/ Dana L. Christensen
Dana L. Christensen, Chief District Judge
United States District Court

[***Editing Note:*** *Page numbers from the reported opinion,* 54 F. Supp. 3d 1153*, are indicated, e.g.,* ***[*1155]***.]

[Filed: 10/22/2014]

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

MONTANANS FOR COMMUNITY DEVELOPMENT, Plaintiff, vs. 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; LEO GALLAGHER, in his official capacity as Lewis and Clark County Attorney, Defendants.	CV 14-55-H-DLC ORDER

[*1155]

I. Introduction

Plaintiff Montanans for Community Development ("MCD") seeks a preliminary injunction enjoining Defendants Jonathan Motl, Timothy Fox, and Leo Gallagher from enforcing laws that rely on MCA § 13-1-101(22), ARM 44.10.327, MCA § 13-1-101(11)(a), ARM 44.10.323, MCA § 13-1-101(7)(a)(i), ARM 44.10.321, MCA § 13-37-111, and ARM 44.10.307(3) and (4) (collectively referred to as "Montana's election

disclosure laws"). If the Court grants the injunctive relief MCD requests, and finds Montana election disclosure laws unconstitutional, MCD intends to mail two flyers featuring Montana House of Representative candidates from the Billings area between now and the November 4, 2014 midterm election.

The relief requested by MCD is breathtaking in its scope, and if the Court was to grant this relief, on the eve of the midterm election, it would leave the Montana Commissioner of Political Practices ("COPP") with essentially no laws to enforce, and no powers of enforcement. As explained below, the Court declines to do so.

MCD's motion for preliminary injunction is denied. Montana's political committee definitions and disclosure requirements are constitutional on their face and as applied to MCD. In Montana, the public's right to know who is financing political campaigns vastly outweighs the minimal burden imposed by the political committee disclosure requirements. None of the preliminary injunction factors weigh in favor of MCD, and therefore, its motion must be denied.

II. Background

A. Procedural History

On September 3, 2014, MCD filed a verified complaint for declaratory and injunctive relief followed by a motion for a preliminary injunction, and a motion to expedite. (Doc. 1; doc. 3; doc. 5.) After a hearing date was set by United States Magistrate Judge Jeremiah C. Lynch, MCD filed a motion requesting that the undersigned conduct the preliminary injunction hearing in order to avoid any delay associated with Local Rule 72.3. (Doc. 14.) The Court accommodated MCD's requests and a preliminary injunction hearing was held

before the undersigned on October 1, 2012.[1] **[*1156]**

B. Montanans for Community Development

MCD is a 501(c)(4) tax-exempt non-profit corporation incorporated in Montana with its principal place of business in Helena, Montana. MCD's avowed mission is "to promote and encourage policies that create jobs and grow local economies throughout Montana." (Doc. 1 at 9.) MCD has a board of directors comprised of three individuals, only two of which have been disclosed and are known to the Court.

On August 28, 2014, MCD's board of directors held a meeting where they decided to circulate two flyers that mention Montana House of Representatives candidates. One flyer includes a photo of Joshua Sizemore, who is a candidate for House District 47. The second flyer includes a photo of Mary McNally, a candidate up for re-election in House District 49. Both flyers express support for the agenda of the Institute for 21st Century Energy and criticize "environmentalists." (Doc. 1, exhibit 6.)[2] MCD does not intend to report its spending on

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[1] The Court notes that the Verified Complaint for Declaratory and Injunctive Relief and Plaintiff's Motion for Preliminary Injunction and supporting memorandum were not filed until September 3, 2014. Briefing on the preliminary injunction motion was not completed until September 29, 2014. The hearing was held two days later, which was just over one month before the November 4, 2014 midterm election. The Court can think of no reason why the complaint and injunction motion could not have been filed by MCD months ago, thus obviating the need for this last minute urgency.

[2] Neither individual is expressly described as a legislative candidate in the two flyers. Joshua Sizemore is favorably described as a "local leader ... promoting pro-growth

these flyers to the Commissioner. (Doc. 1 at 10.) MCD will not mail these flyers if it is required to comply with Montana's election disclosure laws. (Doc. 1 at 14.)

C. Montana Political Committee Laws

> In Montana, a political committee is defined as: 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.

Mont. Code Ann. § 13-1-101(22)(2013). A "person means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals." MCA § 13-1-101(20). Under the political committee umbrella in Montana there are three specific committee types: principal campaign committees, independent committees, and incidental committees. Admin. R. Mont 44.10.327(1). An expenditure is defined as "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 §

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policies that will develop resources and create jobs right here in Billings." In the second flyer, Mary McNally is derogatorily described as an environmental extremist fighting "progress at every turn." MCD contends that it is mere coincidence that these two individuals also happen to be legislative candidates.

13-1-101(11)(a). Expenditure includes, but is not limited to, various expenses, payments, and other types of expenditures. ARM 44.10.323. A contribution is defined, in part, as "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). Contribution includes, but is not limited to, various purchases, payments, candidate self-funding, **[*1157]** and in-kind contributions. ARM 44.10.321. MCD alleges that both the statutory and regulatory definitions of political committee, expenditure, and contribution are overbroad, vague, and unconstitutional.

D. Montana Commissioner of Political Practices Laws

In Montana, the COPP is "responsible for investigating all of the alleged violations of the election laws," MCA § 13-37-111(1). Upon completion of such investigation, the Commissioner "shall prepare a written summary of facts and statement of findings, which shall be sent to the complainant and the alleged violator," ARM 44.1.307(3), and "a filed complaint and the summary of the facts and statement of findings shall be public record," ARM 44.10.307(4). MCD alleges that the investigatory procedures and publication provisions are unconstitutional.

III. Discussion

A. Standing and Ripeness

MCD bears the initial burden of establishing standing to proceed in this case by showing: (1) it has suffered an injury in fact, (2) that was caused by Defendants, and (3) the likelihood that the injury can be redressed by a favorable ruling. *Lopez v. Candaele*, 630

F.3d 775, 785 (9th Cir. 2010). The ripeness inquiry regarding whether a case or controversy exists requires the same analysis as the injury-in-fact prong of the standing analysis. *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000). Consistent with the majority of courts, this Court will analyze First Amendment case or controversy issues on the basis of standing.

MCD can establish an injury in fact when challenging a law prior to enforcement by "demonstrating a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." *Lopez*, 630 F.3d at 785, quoting *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979). To demonstrate a realistic danger, plaintiff must allege an intention to engage in conduct arguably impacted by a constitutional interest, but prohibited by statute, and a credible threat of prosecution. *Id*.

To determine if a plaintiff has established a credible threat of injury, courts will consider: (1) whether a pre-enforcement plaintiff has failed to show a reasonable likelihood that the government will enforce the challenged law against it; (2) whether plaintiff has established its intent to violate the challenged law in some detail; and (3) whether the challenged law is inapplicable to plaintiff by its terms or as interpreted by the government. *Id*. at 786. Credible threats of enforcement can include past enforcement against the plaintiff, specific warnings or threats to initiate proceedings under the challenged regulations, or a history of past enforcement under the challenged regulations against similarly situated parties. *Id*. Plaintiff's intent to violate the law must be demonstrated by a concrete plan detailing its future speech. *Id*. Demonstrated plans to

distribute flyers regarding a specific ballot initiative or mail postcards criticizing a candidate's position on an issue have been sufficient to satisfy the intent to violate factor. *ACLU v. Heller*, 378 F3d 979, 984 (9th Cir. 2004); *National Ass'n for Gun Rights, Inc., v. Murry*, 969 F.Supp.2d 1262 (D. Mont. 2013) ("*NAGR*").

MCD has standing in the instant case as a pre-enforcement litigant. Defendants allege that MCD suffers from organizational defects under Montana corporate laws which preclude it from pursuing this case. To the extent that MCD may have **[*1158]** had some procedural abnormalities in its formation, the Court finds that at the time the instant suit was filed MCD was a corporation duly organized under Montana law and that its board of directors authorized the proposed speech and commencement of this suit.

The Court must then determine if MCD has shown a reasonable likelihood that Defendants will enforce the challenged law against it. MCD points to the fine leveled against another entity, American Tradition Partnership ("ATP"), in 2013 for failing to report expenses associated with its issue ad. (Doc. 1 at ¶ 31.) MCD also alleges that COPP's subsequent investigations and civil actions taken against candidates who allegedly benefitted from ATP's issue ads, and letters from COPP to other issue advocacy groups warning about such spending, shows a reasonable likelihood that Defendants will enforce the challenged law. (Doc. 1 at ¶¶ 33, 34.)

While the Court does not intend to issue an advisory opinion in this case, close calls regarding pre-enforcement First Amendment cases tilt dramatically toward a finding of standing. Thus, the Court finds that the MCD's intended speech falls within the reach

of Montana's political committee laws such that MCD has a well-founded fear that the challenged law will be enforced against it.

MCD has likewise met the remaining two credible threat of injury factors. MCD has alleged adequate details of its planned speech, including its intent to send flyers to people in the Billings area between now and the 2014 midterm election. Lastly, the parties agreed at the hearing that MCD likely falls within the reach of the challenged laws by their terms or by application.

B. Facial Constitutionality

MCD alleges that the laws underlying Montana campaign finance regulations are facially unconstitutional based on both overbreadth and vagueness grounds. MCD asserts that Montana's definition of political committees is both overbroad and vague and therefore should not be applied. MCD further asserts that Montana's definitions of expenditure and contribution are vague and should likewise not be applied. These are broad allegations implicating a substantial portion of Montana's long-standing election laws.

1. Degree of Scrutiny

"[A] campaign finance disclosure requirement is constitutional if it survives exacting scrutiny, meaning that it is substantially related to a sufficiently important governmental interest." *NAGR*, 969 F.Supp.2d at 1267; quoting *Human Life of Washington v. Brumsickle*, 624 F.3d 990, 1005 (9th Cir. 2010). The parties agreed at the hearing that exacting scrutiny applies to most of this case; however as to the COPP investigatory procedures and publication provisions, MCD asserts strict scrutiny should apply. The challenged

COPP laws are necessary for Defendants to regulate the compliance of groups and candidates with Montana's election laws. "Defendants' interest in enforcing Montana's political committee disclosure and reporting laws is sufficiently important to meet the exacting scrutiny standard." *NAGR*, 969 F. Supp. 2d at 1267. Similar to disclosure requirements, the COPP investigatory and publication laws only burden speech, they do not prevent it; therefore strict scrutiny is not required. See *Brumsickle*, 624 F.3d at 1005.

2. Governmental Interest

The public's interest in disclosure by political groups is at least sufficiently important under exacting scrutiny, if not compelling under strict scrutiny. *Alaska Right to Life Comm. v. Miles*, 441 F.3d 773, 793 **[*1159]** (9th Cir. 2006). The government's interest in disclosure requirements includes providing voters with information, deterring actual corruption or the appearance thereof, and gathering data necessary to enforce election restrictions. *Id*. Courts have held that the government's interest in disclosure requirements satisfies exacting scrutiny, noting "the increased 'transparency' engendered by disclosure laws enables the electorate to make informed decisions and give proper weight to different speakers and messages." *Brumsickle*, 624 F.3d at 1008 (quoting *Citizens United v. Federal Election Commission*, 558 U.S. 310, 371 (2010); *NAGR*, 969 F.Supp.2d at 1270-71; *Canyon Ferry Baptist Church of East Helena v. Unsworth*, 556 F.3d 1021 (9th Cir. 2009).

Defendants' interest in enforcing Montana's political election disclosure laws and COPP's investigatory and publication laws is sufficiently important to meet the exacting scrutiny standard. The Commissioner's

office receives many inquiries each election season from a variety of interested citizens, candidates, reporters, and others regarding spending in Montana elections. It is clear that Montanans are keenly interested in who is underwriting political candidate and issue campaigns. The increased transparency created by enforcement of public disclosure is sufficiently important to meet exacting scrutiny.

3. Substantial Relationship

The exacting scrutiny inquiry then turns to whether Montana's political committee disclosure laws and COPP's investigatory and publication laws bear a substantial relationship to the important interests of the Defendants. MCD alleges that the political committee definition is overbroad in that it is applied to groups opposing or promoting a candidate or ballot issue and is not limited to groups having a major or primary purpose of political advocacy. Defendants assert that the definition meets exacting scrutiny, that this Court has already upheld the challenged law against an overbreadth argument in *NAGR*, and that any overbreadth is not substantial. MCD also alleges that the political committee laws, including the definitions of expenditure and contribution, are unconstitutionally vague, specifically pointing to the alleged vagueness of the phrase "influencing an election." Defendants assert that the Court must consider any limiting instruction from a state court or enforcement agency to avoid a vague construction, and that the courts and the COPP both use the same definition of "influencing an election," being "those expressly advocating a candidate or ballot issue, and those that clearly identify a candidate or ballot issue and have no reasonable interpretation other than promoting or op-

posing the same." (Doc. 23 at 19.)

a. Political Committees

Facial invalidation is strong medicine to be used hesitatingly and as a last resort. *New York v. Ferber*, 458 U.S. 747, 769 (1982). In a First Amendment overbreadth challenge, the overbreadth must be substantial and the statute must pose a realistic danger of infringing First Amendment speech of parties not before the Court to permit invalidation. *Board of Airport Comm'rs v. Jews for Jesus, Inc.*., 482 U.S. 569, 574 (1987). This Court has upheld MCA § 13-1-101(22) and ARM 44.10.327 as facially valid for three reasons: (1) the Ninth Circuit Court of Appeals did not find these laws overbroad or vague when challenged in *Canyon Ferry*, (2) Montana's incidental political **[*1160]** committee definition is not overbroad, and (3) Montana's political committee disclosure laws do not substantially and unnecessarily chill plaintiff's speech. *NAGR*, 969 F.Supp. 2d at 1262.

Montana law defines political committee as an association making a contribution or expenditure to support or oppose a candidate and/or ballot issue. MCA § 13-1-101(22). The Supreme Court has upheld a statute using the words "opposes" and "support" as sufficiently clear so as to avoid vagueness. *McConnell v. FEC*, 540 U.S. 93, 184 (2003). Under *Brumsickle*, the Ninth Circuit does not require that an entity have the major purpose of political advocacy to be a political committee. Further, *Brumsickle* found that the word "primary" or its equivalent is not constitutionally necessary under exacting scrutiny. In *NAGR*, this Court held that Montana's definition of incidental committee was not substantially overbroad. Given that the incidental committee definition is the broadest of the political com-

mittee definitions, MCD's argument that the political committee laws as a whole are overbroad and vague is without merit.

The political committee disclosure and reporting requirements are substantially related to Defendants' important interests. Like the disclosure requirements in *Brumsickle*, the disclosure obligation increases commensurate with the amount of political involvement by the committee. MCD argues that its potential disclosure requirements would be onerous. However, MCD also concedes that it would be considered an incidental political committee. Incidental committees are only required to include basic information on forms that take a few minutes to complete. The interest of Montana voters in transparent political funding outweighs the minimal burden imposed by the disclosure requirements.

b. Expenditure and Contribution

"A law is unconstitutionally vague if it fails to provide a reasonable opportunity to know what conduct is prohibited, or is so indefinite as to allow arbitrary and discriminatory enforcement." *Tucson Woman's Clinic v. Eden*, 379 F.3d 531, 555 (9th Cir. 2004) (citations omitted). "Nevertheless, perfect clarity is not required even when a law regulates protected speech." *Cal. Teachers Ass'n v. State Bd. of Educ.*, 271 F.3d 1141, 1150 (9th Cir. 2001). To avoid a vague construction the Court must consider both state court or enforcement agency limiting instructions. *Hoffman Estates v. Flipside*, 455 U.S. 489, 494, n. 5 (1982). Plaintiff argues that the term "influence," as used in the statutory and regulatory definitions of expenditure and contribution, is vague.

The COPP has interpreted "influence" over the last

18 years using the express advocacy of a candidate or ballot issue standard. The express advocacy standard arose in *Buckley v. Valeo*, 424 U.S. 1 (1976) wherein the Court construed the statutory definition of "expenditure" to apply "only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office." *Id*. at 44. The Ninth Circuit later rejected the requirement of specific "magic words" to find express advocacy under *Buckley*. *Federal Election Comm'n v. Furgatch*, 807 F.2d 857 (9th Cir. 1987). Instead, the Court concluded that speech could be express advocacy if, when read as a whole, it was susceptible to no other reasonable interpretation but as an exhortation to vote for or against a specific candidate. *Id*. at 864. The Supreme Court upheld this functional equivalent of an express advocacy standard in *McConnell v. Federal Election* **[*1161]** *Comm'n*, 540 U.S. 93 (2003). Then, in *Federal Election Comm'n v. Wis. Right to Life, Inc.* ("*WRTL*"), the Court held that "a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *WRTL*, 551 U.S. 449, 469-470 (2007).

Accordingly, this functional equivalent of express advocacy is the test COPP has applied to the content of challenged communications in determining whether they are express advocacy. This consistent application from the enforcing agency serves to avoid a vague construction. This Court therefore finds the statutes and regulations to be constitutional. Requiring disclosure and reporting for expenditures and contributions based upon the functional equivalent of an express advocacy

test for "influencing an election" is substantially related to the government's important interests.

c. Commissioner of Political Practices Laws

MCD also challenges Montana's COPP's investigative procedures and publication provisions. These laws serve as the enforcement mechanism to the disclosure requirements. The 1972 Montana Constitution contains a strong "right to know" provision which states "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure." Mont. Const. Art. II, § 9. Thus, in Montana, disclosure of COPP records, when appropriate, serves both an important governmental interest and a constitutional mandate.

The COPP operates pursuant to a confidentiality policy, which provides that investigative documents, files, and information are not generally disclosed to the public unless they fall under an exception set forth in the confidentiality policy. The policy also provides for a process by which to resolve disclosure disputes. Without an investigative procedure and publication provision, the COPP would be unable to carry out its mandated duty to enforce Montana's election laws. Thus, the challenged COPP laws are substantially related to the important governmental interest in enforcing Montana's election disclosure laws.

C. As-Applied Constitutionality

MCD may prevail on an as-applied challenge if it can demonstrate a reasonable probability that disclo-

sure of contributor names will expose them to threats, harassment, or reprisal from either Government officials or private parties. *Citizens United*, 558 U.S. 310. MCD can also prevail on an as-applied challenge by showing it cannot comply with disclosure law requirements. *Brumsickle*, 624 F.3d at 1022.

However, MCD has not provided any evidence to suggest that it could not readily comply with Montana's disclosure and reporting requirements if it chooses to do so. Additionally, MCD does not allege that disclosure of its contributor names will expose them to any threats, harassment, or reprisal. Instead, MCD argues that because its flyers reference individuals who also happen to be legislative candidates, it can be unconstitutionally considered a political committee by virtue of the "support or oppose a candidate" language. As previously discussed, the "support or oppose" language is not unconstitutionally overbroad or vague in the context of Montana's political committee laws; it is not **[*1162]** unconstitutional as-applied to MCD's proposed political activity.

IV. Preliminary Injunction Factors

MCD, as the party seeking a preliminary injunction, must establish: (1) that it is likely to succeed on the merits, (2) that it is likely to suffer irreparable harm absent preliminary relief, (3) that the balance of equities tips in its favor, and (4) that an injunction is in the public interest. *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). A preliminary injunction is an extra-ordinary remedy not awarded as a matter of right. *Id.* at 22. It serves not as a preliminary adjudication on the merits, but as a tool to preserve the status quo and prevent irreparable loss of rights before judgment. *Textile Unlimited, Inc. v. A.. BMH and Co., Inc.*, 240 F.3d

781, 786 (9th Cir. 2001). Even in a First Amendment case, petitioner must make a showing as to all four factors. *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1128 (9th Cir. 2011).

A. Likelihood of Success

MCD is not likely to succeed on the merits of its facial or as-applied challenges to Montana's disclosure laws or its challenge to COPP's investigatory and publication procedure laws. Montana's definitions of political committees, contributions, and expenditures are not unconstitutional on their face under *Brumsickle*, or as applied to MCD's intent to distribute political flyers. COPP's investigatory and publication procedure laws meet the exacting scrutiny standard and are thus constitutional. This factor weighs against an injunction.

B. Irreparable Harm

MCD can show irreparable injury by establishing the existence of a colorable First Amendment claim. *Sammartano v. First Judicial District Court*, 303 F.3d 959, 973 (9th Cir. 2002) (citations omitted). Although, if MCD is unlikely to succeed on the merits, a preliminary injunction is not warranted even if irreparable harm is possible. *Paramount Land v. California Pistachio Comm'n*, 491 F.3d 1003, 1012 (9th Cir. 2007).

MCD presents similar issues in the instant case to those presented in*NAGR*. Similar to the plaintiff in *NAGR*, MCD's intended speech here is not prohibited by Montana's election disclosure laws. MCD conceded at the hearing that if it were to be classified as a political committee in Montana it would be an incidental committee. Therefore, MCD is presented with a choice. It may register as an incidental political committee prior to sending out the flyers; it may send the flyers

without registering and face possible repercussions from the COPP; or it can abstain from sending out the flyers. If MCD chooses to comply with Montana's election disclosure laws before sending the flyers, it is unlikely to be the subject of a COPP complaint and investigation. Even if MCD is subject to a complaint and investigation, the current COPP confidentiality policy serves to protect entities such as MCD while balancing the government's interest in investigating and enforcing Montana's election disclosure and reporting laws and Montana's constitutional "right to know" mandate. Balancing the modest burden of disclosure against the public's interest in transparent campaign spending, this factor also weighs against an injunction.

C. Balance of Equities

In cases where serious First Amendment questions are raised, the balance of hardships tips sharply in favor of the plaintiff. *Sammartano*, 303 F.3d at 973. If the irreparable harm seriously infringes on First Amendment rights, a lesser likelihood **[*1163]** of success can still warrant a preliminary injunction. *Id*. at 974.

The first two factors, likelihood of success and the possibility of irreparable harm, both weigh against an injunction in this case. Based upon the merits of MCD's request, the balance of equities here favors the rights of Montana voters over the potential disclosure burdens facing MCD.

D. Public Interest

A preliminary injunction serves as a tool to preserve the status quo and prevent irreparable loss of rights before judgment. *Textile Unlimited, Inc*, 240 F.3d at 786. The Ninth Circuit has recognized that the public has a substantial interest in a stable electoral

system in the final weeks leading to an election. *Lair v. Bullock*, 697 F.3d 1200, 1202 (9th Cir. 2012).

Enjoining Defendants from implementing political committee disclosure laws as well as enjoining them from investigating or publishing any potential violation of election laws would dramatically alter the status quo. The breadth of what MCD is asking, on the eve of the midterm election, is staggering. The public interest is clearly best served by denying a preliminary injunction in this case.

V. Conclusion

Because Plaintiff has not made an adequate showing on all four preliminary injunction factors, it is not entitled to a preliminary injunction. Therefore, IT IS ORDERED that Plaintiff's Motion for Preliminary Injunction (doc. 3) is DENIED.

Dated this 22nd day of October, 2014.

/s/ Dana L. Christensen
Dana L. Christensen, Chief Judge
United States District Court

[Filed: 06/29/2018]

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MONTANANS FOR COMMUNITY DEVELOPMENT, Plaintiff-Appellant, v. JEFFREY A. MANGAN, in his official capacity as Commissioner of Political Practices; TIMOTHY C. FOX, in his official capacity as Attorney General of the State of Montana; LEO J. GALLAGHER, in his official capacity as Lewis and Clark County Attorney, Defendants-Appellees.	No. 16-35997 DC No. CV-14-0055 **ORDER**

Before: TASHIMA and GRABER, Circuit Judges, and MIHM,* District Judge.

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* The Honorable Michael M. Mihm, United States District Judge for the Central District of Illinois, sitting by designation.

Judge Graber votes to deny the petition for rehearing en banc and Judges Tashima and Mihm so recommend. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on en banc rehearing. *See* Fed. R. App. P. 35(f). Plaintiff-Appellant's petition for rehearing en banc is denied.

Plaintiff-Appellant's request for publication of the memorandum disposition is denied.

U.S. Const., amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const., art. III, § 1

The judicial power of the United States, shall be vested in one Supreme Court[.]

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52 U.S.C. 30104(c)
Reporting Requirements

(c) Statements by other than political committees; filing; contents; indices of expenditures.

(1) Every person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of $250 during a calendar year shall file a statement containing the information required under subsection (b)(3)(A) for all contributions received by such person.

(2) Statements required to be filed by this subsection shall be filed in accordance with subsection (a)(2), and shall include–

(A) the information required by subsection (b)(6)(B)(iii), indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved;

(B) under penalty of perjury, a certification whether or not such independent expenditure is made in cooperation, consultation, or

concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and

(C) the identification of each person who made a contribution in excess of $200 to the person filing such statement which was made for the purpose of furthering an independent expenditure.

(3) The Commission shall be responsible for expeditiously preparing indices which set forth, on a candidate-by-candidate basis, all independent expenditures separately, including those reported under subsection (b)(6)(B)(iii), made by or for each candidate, as reported under this subsection, and for periodically publishing such indices on a timely pre-election basis.

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52 U.S.C. 30104(f)
Reporting Requirements

(f) Disclosure of electioneering communications.

(1) Statement required. Every person who makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of $10,000 during any calendar year shall, within 24 hours of each disclosure date, file with the Commission a statement containing the information described in paragraph (2).

(2) Contents of statement. Each statement required to be filed under this subsection shall be made under penalty of perjury and shall contain the following information:

(A) The identification of the person making the

disbursement, of any person sharing or exercising direction or control over the activities of such person, and of the custodian of the books and accounts of the person making the disbursement.

(B) The principal place of business of the person making the disbursement, if not an individual.

(C) The amount of each disbursement of more than $200 during the period covered by the statement and the identification of the person to whom the disbursement was made.

(D) The elections to which the electioneering communications pertain and the names (if known) of the candidates identified or to be identified.

(E) If the disbursements were paid out of a segregated bank account which consists of funds contributed solely by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))) directly to this account for electioneering communications, the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to that account during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. Nothing in this subparagraph is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.

(F) If the disbursements were paid out of funds not described in subparagraph (E), the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to the person making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.

(3) Electioneering communication. For purposes of this subsection–

(A) In general.

(i) The term "electioneering communication" means any broadcast, cable, or satellite communication which–

(I) refers to a clearly identified candidate for Federal office;

(II) is made within–

(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or

(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and

(III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

(ii) If clause (i) is held to be constitutionally insufficient by final judicial decision to support the regulation provided herein, then the term "electioneering communication" means any broadcast, cable, or sat-

ellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate. Nothing in this subparagraph shall be construed to affect the interpretation or application of section 100.22(b) of title 11, Code of Federal Regulations.

(B) Exceptions. The term "electioneering communication" does not include–

(i) a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(ii) a communication which constitutes an expenditure or an independent expenditure under this Act;

(iii) a communication which constitutes a candidate debate or forum conducted pursuant to regulations adopted by the Commission, or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

(iv) any other communication exempted under such regulations as the Commission may promulgate (consistent with the re-

quirements of this paragraph) to ensure the appropriate implementation of this paragraph, except that under any such regulation a communication may not be exempted if it meets the requirements of this paragraph and is described in section 301(20)(A)(iii) [52 USCS § 30101(20)(A)(iii)].

(C) Targeting to relevant electorate. For purposes of this paragraph, a communication which refers to a clearly identified candidate for Federal office is "targeted to the relevant electorate" if the communication can be received by 50,000 or more persons–

(i) in the district the candidate seeks to represent, in the case of a candidate for Representative in, or Delegate or Resident Commissioner to, the Congress; or

(ii) in the State the candidate seeks to represent, in the case of a candidate for Senator.

(4) Disclosure date. For purposes of this subsection, the term "disclosure date" means–

(A) the first date during any calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000; and

(B) any other date during such calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000 since the most recent disclosure date for such calendar year.

(5) Contracts to disburse. For purposes of this subsection, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

(6) Coordination with other requirements. Any requirement to report under this subsection shall be in addition to any other reporting requirement under this Act.

(7) Coordination with Internal Revenue Code. Nothing in this subsection may be construed to establish, modify, or otherwise affect the definition of political activities or electioneering activities (including the definition of participating in, intervening in, or influencing or attempting to influence a political campaign on behalf of or in opposition to any candidate for public office) for purposes of the Internal Revenue Code of 1986 [26 USCS §§ 1 et seq.].

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52 U.S.C. 30104(g)
Reporting Requirements

(g) Time for reporting certain expenditures.

(1) Expenditures aggregating $1,000.

(A) Initial report. A person (including a political committee) that makes or contracts to make independent expenditures aggregating $1,000 or more after the 20th day, but more than 24 hours, before the date of an election shall file a report describing the expenditures within 24 hours.

(B) Additional reports. After a person files a report under subparagraph (A), the person shall file an additional report within 24

hours after each time the person makes or contracts to make independent expenditures aggregating an additional $1,000 with respect to the same election as that to which the initial report relates.

(2) Expenditures aggregating $10,000.

(A) Initial report. A person (including a political committee) that makes or contracts to make independent expenditures aggregating $10,000 or more at any time up to and including the 20th day before the date of an election shall file a report describing the expenditures within 48 hours.

(B) Additional reports. After a person files a report under subparagraph (A), the person shall file an additional report within 48 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $10,000 with respect to the same election as that to which the initial report relates.

(3) Place of filing; contents. A report under this subsection–

(A) shall be filed with the Commission; and

(B) shall contain the information required by subsection (b)(6)(B)(iii), including the name of each candidate whom an expenditure is intended to support or oppose.

(4) Time of filing for expenditures aggregating $1,000. Notwithstanding subsection (a)(5), the time at which the statement under paragraph (1) is received by the Commission or any other recipient to whom the notification is required to be sent shall be considered the time of filing

of the statement with the recipient.

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52 U.S.C. 30116(a)
Limitations on Contributions and Expenditures(a) Dollar Limits on Contributions

(1) Except as provided in subsection (i) and section 315A [52 USCS § 30117], no person shall make contributions–

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $2,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed $25,000, or, in the case of contributions made to any of the accounts described in paragraph (9), exceed 300 percent of the amount otherwise applicable under this subparagraph with respect to such calendar year;

(C) to any other political committee (other than a committee described in subparagraph (D)) in any calendar year which, in the aggregate, exceed $5,000; or

(D) to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed $10,000.

(2) No multicandidate political committee shall make contributions–

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $5,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed $15,000, or, in the case of contributions made to any of the accounts described in paragraph (9), exceed 300 percent of the amount otherwise applicable under this subparagraph with respect to such calendar year; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

(3) During the period which begins on January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year, no individual may make contributions aggregating more than–

(A) $37,500, in the case of contributions to candidates and the authorized committees of candidates;

(B) $57,500, in the case of any other contributions, of which not more than $37,500 may be attributable to contributions to political committees which are not political committees of national political parties.

(4) The limitations on contributions contained in paragraphs (1) and (2) do not apply to transfers between and among political committees which

are national, State, district, or local committees (including any subordinate committee thereof) of the same political party. For purposes of paragraph (2), the term "multicandidate political committee" means a political committee which has been registered under section 303 [52 USCS § 30103] for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.

(5) For purposes of the limitations provided by paragraph (1) and paragraph (2), all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be considered to have been made by a single political committee, except that (A) nothing in this sentence shall limit transfers between political committees of funds raised through joint fund raising efforts; (B) for purposes of the limitations provided by paragraph (1) and paragraph (2) all contributions made by a single political committee established or financed or maintained or controlled by a national committee of a political party and by a single political committee established or financed or maintained or controlled by the State committee of a political party shall not

be considered to have been made by a single political committee; and (C) nothing in this section shall limit the transfer of funds between the principal campaign committee of a candidate seeking nomination or election to a Federal office and the principal campaign committee of that candidate for nomination or election to another Federal office if (i) such transfer is not made when the candidate is actively seeking nomination or election to both such offices; (ii) the limitations contained in this Act on contributions by persons are not exceeded by such transfer; and (iii) the candidate has not elected to receive any funds under chapter 95 or chapter 96 of the Internal Revenue Code of 1954 [1986] [26 USCS §§ 9001 et seq. or 9031 et seq.]. In any case in which a corporation and any of its subsidiaries, branches, divisions, departments, or local units, or a labor organization and any of its subsidiaries, branches, divisions, departments, or local units establish or finance or maintain or control more than one separate segregated fund, all such separate segregated funds shall be treated as a single separate segregated fund for purposes of the limitations provided by paragraph (1) and paragraph (2).

(6) The limitations on contributions to a candidate imposed by paragraphs (1) and (2) of this subsection shall apply separately with respect to each election, except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one elec-

tion.

(7) For purposes of this subsection–

(A) contributions to a named candidate made to any political committee authorized by such candidate to accept contributions on his behalf shall be considered to be contributions made to such candidate;

(B) (i) expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate;

(ii) expenditures made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert with, or at the request or suggestion of, a national, State, or local committee of a political party, shall be considered to be contributions made to such party committee; and

(iii) the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure for purposes of this paragraph; [and]

(C) if–

(i) any person makes, or contracts to make, any disbursement for any electioneering communication (within the meaning of

section 304(f)(3) [52 USCS § 30104(f)(3)]); and

(ii) such disbursement is coordinated with a candidate or an authorized committee of such candidate, a Federal, State, or local political party or committee thereof, or an agent or official of any such candidate, party, or committee;

such disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party; and

(D) contributions made to or for the benefit of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be contributions made to or for the benefit of the candidate of such party for election to the office of President of the United States.

(8) For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

(9) An account described in this paragraph is any of the following accounts:

(A) A separate, segregated account of a national committee of a political party (other than a national congressional campaign committee of a political party) which is used solely to defray expenses incurred with respect to a presidential nominating convention (including the payment of deposits) or to repay loans the proceeds of which were used to defray such expenses, or otherwise to restore funds used to defray such expenses, except that the aggregate amount of expenditures the national committee of a political party may make from such account may not exceed $20,000,000 with respect to any single convention.

(B) A separate, segregated account of a national committee of a political party (including a national congressional campaign committee of a political party) which is used solely to defray expenses incurred with respect to the construction, purchase, renovation, operation, and furnishing of one or more headquarters buildings of the party or to repay loans the proceeds of which were used to defray such expenses, or otherwise to restore funds used to defray such expenses (including expenses for obligations incurred during the 2-year period which ends on the date of the enactment of this paragraph).

(C) A separate, segregated account of a national committee of a political party (including a national congressional campaign committee

of a political party) which is used to defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings.

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52 U.S.C. 30118(a)
Contributions or Expenditures by National Banks, Corporations, or Labor Organizations

(a) In general. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section.

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52 U.S.C. 30118(b)(4)(c)
Contributions or Expenditures by National Banks, Corporations, or Labor Organizations

(4) (C) This paragraph shall not prevent a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, from soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock.

Mont. Code. Ann. 13-1-101(16)(a)
Definitions

(16) (a) "Electioneering communication" means a paid communication that is publicly distributed by radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the district voting on the candidate or ballot issue, and that:

(i) refers to one or more clearly identified candidates in that election;

(ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election; or

(iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

Mont. Code. Ann. 13-1-101(18)(a)
Definitions

(18) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

(i) made by a candidate or political committee to support or oppose a candidate or a ballot issue; or

(ii) used or intended for use in making independent expenditures or in producing electioneering communications.

Mont. Code. Ann. 13-1-101(23)(a)
Definitions

(23) (a) "Incidental committee" means a political committee that is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure.

Mont. Code. Ann. 13-1-101(25)
Definitions

(25) "Independent expenditure" means an expenditure for an election communication to support or oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue committee.

Mont. Code. Ann. 13-1-101(31)(b)
Definitions

(31) (b) Political committees include ballot issue committees, incidental committees, independent committees, and political party committees.

Mont. Code. Ann. 13-37-226(1)
Time for filing reports.

(1) Candidates for a state office filled by a statewide vote of all the electors of Montana, statewide ballot issue committees, and political committees that receive a contribution or make an expenditure supporting or opposing a candidate for statewide office or a statewide ballot issue shall file reports electronically as follows:

(a) quarterly, due on the 5th day following a calendar quarter, beginning with the calendar quarter in which:
  (i) funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot; or
  (ii) an issue becomes a ballot issue, as defined in 13-1-101(6)(b);

(b) on the 1st day of each month from March through November during a year in which an election is held;

(c) on the 15th day preceding the date on which an election is held;

(d) within 2 business days after receiving a contribution of $200 or more if received between the 20th day before the election and the day of the election;

(e) not more than 20 days after the date of the general election; and

(f) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

Mont. Code. Ann. 13-37-226(5)
Time for filing reports.

(5) An incidental committee not required to report under subsection (1) or (2) shall file a report:

(a) on the 90th, 35th, and 12th days preceding the date of an election in which it participates by making an expenditure;

(b) within 2 business days of receiving a contribution as provided in 13-37-232(1) of $500 or more if received between the 17th day before an election and the day of the election;

(c) within 2 business days of making an expenditure of $500 or more for an electioneering communication if the expenditure is made between the 17th day before the election and the day of the election;

(d) not more than 20 days after the date of the election in which it participated; and

(e) on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

Mont. Code. Ann. 13-37-228
Time periods covered by reports.

Reports filed under 13-37-225 and 13-37-226 must be filed to cover the following time periods even though no contributions or expenditures may have been received

or made during the period:

(1) The initial report must cover all contributions received or expenditures made by a candidate or political committee prior to the time that a person became a candidate or a political committee, as defined in 13-1-101, until the 5th day before the date of filing of the appropriate initial report pursuant to 13-37-226(1) through (5). Reports filed by political committees organized to support or oppose a statewide ballot issue must disclose all contributions received and expenditures made prior to the time an issue becomes a ballot issue by transmission of the petition to the proponent of the ballot issue or referral by the secretary of state even if the issue subsequently fails to garner sufficient signatures to qualify for the ballot.

(2) Subsequent periodic reports must cover the period of time from the closing of the previous report to 5 days before the date of filing of a report pursuant to 13-37-226(1) through (5). For the purposes of this subsection, the reports required under 13-37-226(1)(d), (2)(b), (4)(b), (4)(c), (5)(b), and (5)(c) are not periodic reports and must be filed as required by 13-37-226(1)(d), (2)(b), (4)(b), (4)(c), (5)(b), and (5)(c), as applicable.

(3) Closing reports must cover the period of time from the last periodic report to the final closing of the books of the candidate or political committee. A candidate or political committee shall file a closing report following an election in which the candidate or political committee participates whenever all debts and obligations are satisfied and further contributions or expenditures will not be received or made that relate to the campaign unless the election is a primary election and the candidate or political committee will participate in the gen-

eral election.

Mont. Code. Ann. 13-37-232
Disclosure Requirements For Incidental Committees.

(1) The reports required under 13-37-225 through 13-37-227 from incidental committees must disclose the following information concerning contributions to the committee that are designated by the contributor for a specified candidate, ballot issue, or petition for nomination or that are made by the contributor in response to an appeal by the incidental committee for contributions to support incidental committee election activity, including in-kind expenditures, independent expenditures, election communications, or electioneering communications:

(a) the full name, mailing address, occupation, and employer, if any, of each person who has made aggregate contributions during the reporting period for a specified candidate, ballot issue, or petition for nomination of $35 or more;

(b) for each person identified under subsection (1)(a), the aggregate amount of contributions made by that person for all reporting periods;

(c) each loan received from any person during the reporting period for a specified candidate, ballot issue, or petition for nomination, together with the full names, mailing addresses, occupations, and employers, if any, of the lender and endorsers, if any, and the date and amount of each loan;

(d) the amount and nature of debts and obligations owed to an incidental committee for a

specified candidate, ballot issue, or petition for nomination in the form prescribed by the commissioner;

(e) an account of proceeds that total less than $35 per person from mass collections made at fundraising events sponsored by the incidental committee for a specified candidate, ballot issue, or petition for nomination; and

(f) the total sum of all contributions received by or designated for the incidental committee for a specified candidate, ballot issue, or petition for nomination during the reporting period.

(2) The reports required under 13-37-225 through 13-37-227 from incidental committees must disclose the following information concerning expenditures made:

(a) the full name, mailing address, occupation, and principal place of business, if any, of each person to whom expenditures have been made during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person;

(b) the full name, mailing address, occupation, and principal place of business, if any, of each person to whom an expenditure for personal services, salaries, and reimbursed expenses has been made during the reporting period, including the amount, date, and purpose of that expenditure and the total amount of expenditures made to each person;

(c) the total sum of expenditures made during the reporting period;

(d) the name and address of each political commit-

tee or candidate to which the reporting committee made any transfer of funds together with the amount and dates of all transfers;

(e) the name of any person to whom a loan was made during the reporting period, including the full name, mailing address, occupation, and principal place of business, if any, of that person, and the full names, mailing addresses, occupations, and principal places of business, if any, of the endorsers, if any, and the date and amount of each loan;

(f) the amount and nature of debts and obligations owed by a political committee in the form prescribed by the commissioner; and

(g) other information that may be required by the commissioner to fully disclose the disposition of funds used to make expenditures.

(3) Reports of expenditures made to a consultant, advertising agency, polling firm, or other person that performs services for or on behalf of an incidental committee must be itemized and described in sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was made.

(4) An incidental committee that does not receive contributions for a specified candidate, ballot issue, or petition for nomination and that does not solicit contributions for incidental committee election activity, including in-kind expenditures, independent expenditures, election communications, or electioneering communications, is required to report only its expenditures.

Mont. Admin. R. 44.11.306
COMMITTEE SEMIANNUAL AND CLOSING REPORTS

(1) Except as provided in (2), independent, incidental, ballot issue, and political party committees that are not required to file semiannual reports in March and September shall file a year-end closing report pursuant to 13-37-226, MCA. The closing date of books for the report is December 31 and the report shall be filed with the commissioner no later than January 31.

(a) The report shall cover all contributions received and expenditures made since the closing date of books for the most recently filed report.

(b) The closing date of books for the report shall mark the cutoff date for the purpose of computing aggregate contributions and expenditures, and future reports shall use that date as a beginning point for the purpose of aggregation.

(2) No committee shall be required to file the report required by (1) if the committee was required to file a post-election report pursuant to 13-37-226, MCA, during the second half of a calendar year and no further contributions have been received or expenditures have been made by it between the closing date of books for the post-election report and December 31. The post-election report shall be considered as its closing report and the closing date of books for that report shall be used as the cutoff date for the purpose of aggregating contributions and expenditures for future reports.

(3) A committee that will not participate in future elections and that wishes to end its status as a committee may file a statement of termination

with its closing report. Any further activity by a terminated committee will require a new statement of organization.

(4) A committee may file its closing report at any time prior to the date prescribed by statute once it has finished making contributions and expenditures during an election cycle.

Ninth Circuit Rule 36-3.
CITATION OF UNPUBLISHED DISPOSITIONS OR ORDERS

(a) Not Precedent. Unpublished dispositions and orders of this Court are not precedent, except when relevant under the doctrine of law of the case or rules of claim preclusion or issue preclusion.

(b) Citation of Unpublished Dispositions and Orders Issued on or after January 1, 2007. Unpublished dispositions and orders of this Court issued on or after January 1, 2007 may be cited to the courts of this circuit in accordance with FRAP 32.1.

(c) Citation of Unpublished Dispositions and Orders Issued before January 1, 2007. Unpublished dispositions and orders of this Court issued before January 1, 2007 may not be cited to the courts of this circuit, except in the following circumstances.

(i) They may be cited to this Court or to or by any other court in this circuit when relevant under the doctrine of law of the case or rules of claim preclusion or issue preclusion.

(ii) They may be cited to this Court or by any other courts in this circuit for factual purposes, such as to show double jeopardy, sanctionable conduct, notice, entitlement to attorneys' fees, or

the existence of a related case.

(iii) They may be cited to this Court in a request to publish a disposition or order made pursuant to Circuit Rule 36-4, or in a petition for panel rehearing or rehearing en banc, in order to demonstrate the existence of a conflict among opinions, dispositions, or orders.

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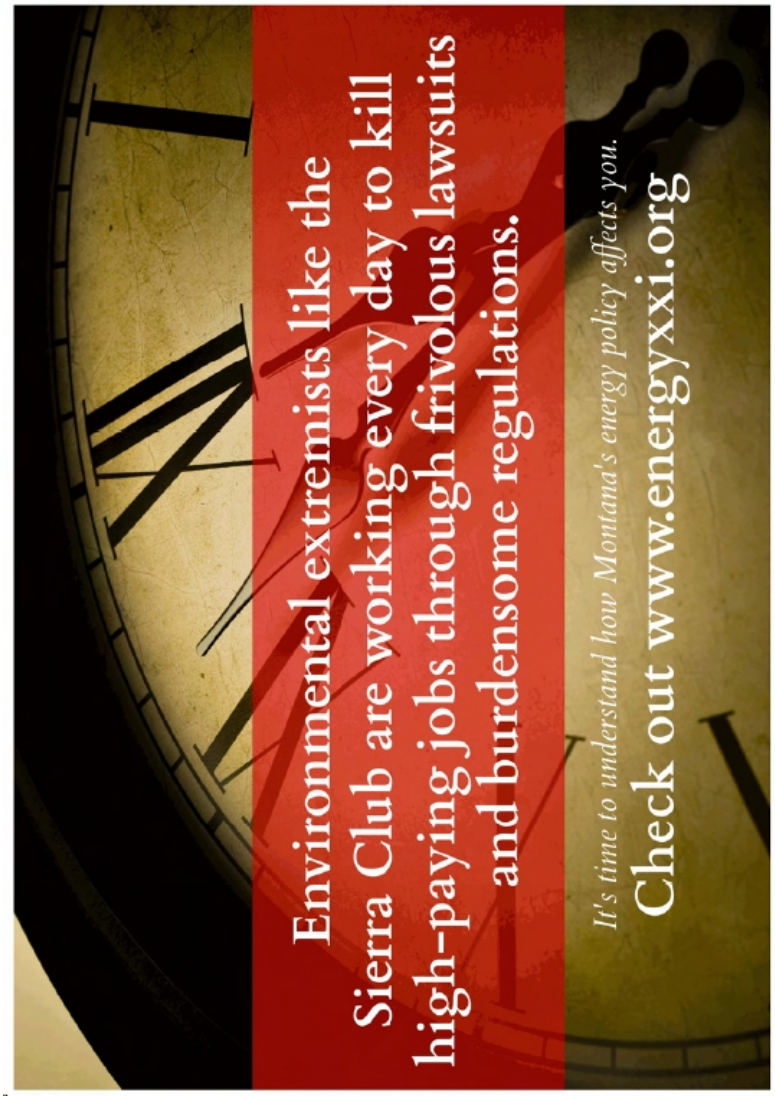

(Front)


Billings is a prime location to feel the economic benefits of the Bakken oil boom and development of Otter Creek coal deposits.
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Fortunately, local industry leaders like Joshua Sizemore are promoting pro-growth policies that will develop resources and create jobs right here in Billings.
Institute for 21st Century Energy's 5 Point Plan:
1. Maximize America's own energy resources
2. Make new and clean energy technologies more affordable
3. Eliminate regulatory barriers derailing energy projects
4. Do not put America's existing energy sources out of business
5. Encourage free and fair trade of energy resources and technologies globally
But they can't do it alone.
Learn more at www.energyxxi.org and join the fight.

(Back)


Over the past decade, modern horizontal drilling technology has created an energy and jobs boom in Eastern Montana
In 2013, Montana's oil and gas industry contributed to over 15,600 jobs, which pay over 2/3 more than the state average. 1
Last year alone, Montana added an additional 4,900 jobs involved in selling goods and services to the oil and gas industry. 1
1. "Articles & Reports - Montana Petroleum Association." Articles & Reports - Montana Petroleum Association. N.p., n.d. Web. 12 Aug. 2014.

(Front)

However, environmentalists like Mary McNally are fighting this progress at every turn.
They're proposing:
- Putting a stop to the development of Montana's rich coal reserves
- Shutting down modern natural resource development practices that bring jobs to rural communities
- Locking up federal land in Eastern Montana so no resource development can take place
- Blocking critical infrastructure projects that let Montana export its coal, oil, and natural gas
There is an alternative to this extremist rhetoric.
Go to www.energyxxi.org and support the Institute for 21st Century Energy's Plan to maximize America's own energy resources.

(Back)