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**UNITED STATES DISTRICT COURT**
**DISTRICT OF MONTANA**
**MISSOULA DIVISION**

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| DOCTORS FOR A HEALTHY MONTANA, a Montana Independent Committee,<br><br>Plaintiff,<br>v.<br><br>TIMOTHY FOX, in his official capacity as Attorney General of Montana, JEFFREY MANGAN, in his official capacity as Montana Commissioner of Political Practices,<br><br>Defendants. | Case No. CV 20-0046-M-DWM<br><br>**BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**<br><br>****RELIEF REQUESTED ON OR BEFORE *MAY 15, 2020***** |

## PRELIMINARY STATEMENT

In *Pursuing America's Greatness v. Federal Election Comm.*, 831 F.3d 500 (D.C. Cir. 2016) (hereinafter, "*PAG*"), the court struck down a statute prohibiting federal political committees from including in their titles the name of a candidate. The three-judge panel, which included then-Judge Brett Kavanaugh, held that the statute violated the First Amendment because it was not narrowly tailored to achieve any compelling interest. Less restrictive means were available, such as

requiring political committees to include disclaimers stating that they were not the official website of the candidate. *Id.* at 510.

As problematic as the *federal* political-committee naming statute was, *Montana's* is even worse – much worse. So much so that Defendant Jeffrey Mangan, the Commissioner of Political Practices (COPP) and the person charged with enforcing the statute, testified before the Legislature in 2019 about the need to repeal the statute. As with the federal statute, technology has made Montana's statute obsolete:

> …I will tell you I think the fix is already here. The fix is the transparency that we currently have and how we direct people every day through our office is simply go to the web, pull up the committee, and walk through the contributors. And you'll find all the information you seek whether or not that committee has an economic interest or other issue…. I believe the fix is simply repeal [the statute] and allow folks to go in and search for themselves.

**Exhibit 1**.[1] Moreover, as Commissioner Mangan admitted, the statute does not serve its intended purpose of matching the names of political committees to the committees' supposed economic or "special" interests.

Alas, the Montana Legislature refused to repeal the statute and Defendant Mangan vigorously enforces it in spite of his testimony last year. Not surprisingly, the statute is being invoked by an unpopular incumbent Republican struggling in

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[1] **Exhibit 1** is a true and correct transcript of Commissioner Mangan's testimony before the Legislature on February 5, 2019. It is attached as an appendix to this Brief.

his re-election campaign as a result of a political committee's success in exposing his support for taxpayer-funded abortions. Rather than defend his record, the incumbent filed a complaint with Commissioner Mangan demanding that the political committee, Plaintiff Doctors For A Healthy Montana, change its name, cease publishing campaign material containing its name, and pay an exorbitant fine. The group's contributors consist of two (2) physicians and three (3) legislators, thereby allegedly violating the requirement that a political committee's name reflect the "economic" interest, or "special" interest (whatever that is), of a majority of its contributors. Mont. Code Ann. § 13-37-210.

Rather than dismiss the incumbent's complaint, Defendant Mangan sent a letter to Doctors For A Healthy Montana stating that the complaint conformed to the requirements of Montana law and threatened the group with an investigation. Thus, as is the case with many campaign complainants, the incumbent in this case has "time[d] his submission[ ] to achieve maximum disruption of [his] political opponents while calculating that an ultimate decision on the merits will be deferred until after the relevant election," with the opponent being "forced to divert significant time and resources to hire legal counsel and respond to discovery requests in the crucial days leading up to an election." *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2346 (2014).

Defendant Mangan, rather than exercise his discretion to dismiss complaints based upon a statute that he knows is deeply flawed and obsolete, has acquiesced to the power of his office being hijacked by a disgruntled incumbent. Because this misuse of state power is disrupting core First Amendment speech six weeks before an election, immediate injunctive relief from this Court is necessary.

## STATEMENT OF FACTS

### A. Background of Doctors For A Healthy Montana

Plaintiff Doctors For A Healthy Montana is an independent political committee formed in accordance with Mont. Code Ann. § 13-1-101(24) & (31)(a). Doc. 1 (Verified Complaint), ¶ 21. The group is dedicated to educating voters about supposed Republican legislators who have been reliable members of the MTGOP's "abortion caucus" – a group of Republicans that supports taxpayer-funded abortions. Doc. 1, ¶ 47.

Doctors For A Healthy Montana includes as members Dr. Annie Bukacek, a Kalispell physician who has practiced medicine for over 20 years. Doc. 1, ¶ 48. She has been active in the pro-life movement in Montana and has a stellar reputation among the state's pro-life voters. Doc. 1, ¶¶ 48-51. Dr. Bukacek is the largest contributor to the group, having contributed $2,100. Doc. 1, ¶ 52. Other

contributors to Doctors For a Healthy Montana include State Rep. Dan Bartel, State Sen. Keith Regier, and State Rep. Matt Regier. Doc. 1, ¶ 53.

Along with these contributors, Doctors For a Healthy Montana has one other contributor – another physician residing in Montana who contributed $30 to the group. Doc. 1, ¶ 54. Doctors For a Healthy Montana included this contribution in the campaign finance report it filed with COPP, but COPP has not identified the contributor because Montana law does not require identification of persons whose contributions are under $35. Doc. 1, ¶ 55.

Doctors For a Healthy Montana has focused particularly upon Rep. Joel Krautter, a Democrat who won election as a Republican in one of the most conservative legislative districts in Montana by concealing his pro-abortion views from voters. Doc. 1, ¶ 56. After being elected as a Republican in 2018, Rep. Krautter voted with Democrats in the Legislature on almost every important issue, including support for Medicaid Expansion and, with it, an increase in taxpayer-funded abortions. Doc. 1, ¶ 60. Doctors For A Healthy Montana has leased a large billboard in Rep. Krautter's district as well as purchased Facebook advertising targeted to voters in his district. Doc. 1, ¶ 60; see also Doc. 1-1.

**B. Krautter's COPP Complaint**

Rep. Krautter filed a COPP complaint against Doctors For A Healthy Montana on April 7, 2020. Doc. 1-5. He alleges in his complaint that Doctors For

a Healthy Montana violated Montana's Political Committee Naming and Labeling Act (Mont. Code Ann. § 13-37-210) because a majority of its contributors are politicians. *Id.*

Defendant Mangan responded to Rep. Krautter's complaint by issuing a letter to Doctors For A Healthy Montana threatening to open an investigation into the group. Doc. 1-6. The letter states that COPP accepted Rep. Krautter's complaint as "conforming to the requirements of 44.11.106 ARM, the administrative rule regarding campaign complaints." Doc. 1-6.

Doctors For A Healthy Montana intends to publish additional political speech to educate voters in Rep. Krautter's district regarding his support for taxpayer-funded abortions. Doc. 1, ¶ 66. It intends to publish this new round of political advertising in the last two weeks of May 2020, when voter attention on the primary election scheduled for June 2, 2020, is at its apex. Doc. 1, ¶ 67. Doctors For A Healthy Montana also intends to use its name in these advertisements. Doc. 1, ¶ 68. It will not publish this additional round of political advertising, however, while there remains a threat of additional exposure to civil penalties from Defendants' enforcement of Montana's unconstitutional Political Committee Naming & Labeling Statute. Doc. 1, ¶ 69.

**C. The Troubled History of Montana's Naming & Labeling Statute**

The Montana Legislature enacted the Political Committee Naming & Labeling Act in 1985. **Exhibit 1**. The statute requires the name of a political committee to include a word or phrase identifying the "economic" interest, "special" interest, or employer of a majority of the committee's contributors. Mont. Code Ann. § 13-37-210.[2]

On February 5, 2019, Commissioner Mangan testified before the House State Administration & Veterans Affairs Committee on the need to repeal the statute. **Exhibit 1**. It was enacted when "a group of like-minded individuals, pooled their money, initiated a committee, made a couple of expenditures through, back then, newspaper and/or a TV ad or two and there were very few political committees at the time." **Exhibit 1**.

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[2] Section 13-37-310 states as follows:
**Naming and labeling of political committees.** (1) Any political committee filing a certification and organizational statement pursuant to 13-37-201 shall:
(a) name and identify itself in its organizational statement using a name or phrase:
(i) that clearly identifies the economic or other special interest, if identifiable, of a majority of its contributors; and
(ii) if a majority of its contributors share a common employer, that identifies the employer; and
(b) label any media advertisement or other paid public statement it makes or causes to be made in support of or opposition to any candidate or ballot issue by printing or broadcasting its name, as provided under subsection (1)(a), and position in support of or opposition to the candidate or ballot issue as a part of the media advertisement or other paid public statement.
(2) The naming and labeling requirements in subsection (1) are reporting requirements for purposes of enforcement under **13-37-128.**

Commissioner Mangan admitted that this information is now available to voters on CERS, which is accessible on COPP's website:

> All that information is on CERS. You can go in at any time and find out contributors, who employs them, what their occupations are, how much money they gave, the location of that contributor, both whether it be an incidental committee and a business, or individuals like your neighbors, other Montanans, or other folks.

**Exhibit 1.**

Moreover, because the statute "counts heads, not dollars," Commissioner Mangan admitted the statute is ineffectual because it is easily manipulated:

> I'm going to use a hypothetical example: computer levy for Windy Chill, Montana school….They had three contributors, two Windy Chill teachers, who gave $35 dollars each, and the Acme Computer Company, who gave $10,000 for that committee. The statute says that committee would have to be named "Windy Chill Teachers for Computer Levy." I'm not sure if that addresses the underlying economic interest of the committee….

**Exhibit 1**. The statute is also ineffectual, Mangan admitted, because the interest of a committee's majority often shifts throughout the election cycle:

> [I]f you have a majority of your contributors happen to be a specific occupation or from a same specific employer, that has to be in the name. Most folks don't know that when they want to form a committee. The most common reply to that is "We don't know who our contributors are going to be." That could change in ten days, that could change in thirty days. It could change by the end of the election cycle. And quite often it does.

**Exhibit 1**.

The Montana Legislature declined to repeal Mont. Code Ann. § 13-37-210. And despite the many problems with the statute that Commissioner Mangan identified, he vigorously enforces it. Doc. 1, ¶ 30.

## ARGUMENT

### I. Montana's Naming & Labeling Statute is a Content-Based Restriction on Protected Speech

The campaign speech of Doctors For A Healthy Montana, including the name it chooses for itself, is entitled to the greatest degree of protection by the United States Constitution. *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982) ("expression on public issues has always rested on the highest rung of the hierarchy of First Amendment values."). Its speech enjoys this high level of protection because "[i]f the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizen, for simply engaging in political speech." *Citizens United v. FEC*, 130 S. Ct. 876, 904 (2010); *Roe v. City of San Diego*, 356 F.3d 1108 (9th Cir. 2004) (speech involving public policy "occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection").

A statute like Mont. Code Ann. § 13-37-210 in which the government restricts speech purportedly to aid voters evaluate information amounts to paternalism. *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer*

*Council, Inc.,* 425 U.S. 748, 770 (1976) (rejecting the "highly paternalistic approach of statutes . . . which restrict what the people may hear."); *First Natl' Bank of Boston v. Bellotti,* 435 U.S. 765, 791 (1978) ("[T]he people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments" and "the source and credibility of the advocate.").

Such laws are also content-based and therefore subject to strict scrutiny. A statute is content-based if it "applies to particular speech because of the topic discussed or the idea or message expressed," *Tschida v. Motl*, 924 F.3d 1297, 1303 (9th Cir. 2019), quoting *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015), or if it "requires authorities to examine the contents of the message to see if a violation has occurred." *Id.*, citing *McCullen v. Coakley*, 573 U.S. 464, 479-80 (2014); see also *PAG*, 831 F.3d at 508-509 (federal political-committee naming statute was content-based).

Like the federal political-committee naming statute at issue in *PAG*, Montana's Political Committee Naming and Labeling Statute is a content-based statute. Enforcing the statute requires the Commissioner to examine the name of a political committee to determine whether it contains the "right" words or phrases, and penalize the committee if it does not. A political committee's title is a key part of its message. *PAG*, 831 F.3d at 510. ("The title is a critical way for committees

to attract support and spread their message…."). This is particularly true in the age of the internet when voters often rely upon snippets from a search on Google or other search engine in deciding whether further research of a committee is merited. The decision on how a committee names itself is one that belongs to the *committee*, not the State.

Montana's Political Committee Naming and Labeling Act is a content-based statute restricting core First Amendment speech. It is therefore subject to strict scrutiny and must be struck down unless it serves a compelling interest and is narrowly tailored. The Act flunks both of these tests.

## II. The State Lacks A Compelling State Interest in Forcing Political Committees To Use Names the State Deems Proper

It is difficult to ascertain what, exactly, is Montana's interest in forcing committees to adopt names reflecting the "interests" of a majority of its contributors. As the statute's chief enforcer admitted last year, "The bill from 1985 – or the statute from 1985 – does not work as intended." **Exhibit 1**. Moreover, "[t]he statute is difficult to enforce." *Id.*

It is even more difficult to ascertain how any State interest associated with Mont. Code Ann. § 13-37-210 could be deemed to be a "compelling" one. The statute should therefore be struck down for this reason alone.

## III. The Naming & Labeling Statue is Not Narrowly Tailored Because Less Restrictive Alternatives Exist

When online access provides the kind of information to voters to enable them to make informed decisions, a speech-restricting statute having that same purpose is unnecessary and, therefore, not narrowly tailored. *United States v. Alvarez*, 132 S. Ct. 2537, 2551 (2012) (plurality opinion) ("Stolen Valor" statute punishing false claims of military awards was unnecessary because an online database could enable the public to independently verify such claims). This Court has previously noted the effectiveness of the COPP's online database. *National Association For Gun Rights v. Motl*, 188 F.3d 1020, 1035 (D. Mont. 2016). Political committee naming statutes are particularly useless where the information the statutes supposedly provide can be placed online. *PAG*, 831 F.3d at 510-11.

Commissioner Mangan has testified that the information supposedly provided by Mont. Code Ann. § 13-37-210 is already accessible on COPP's website:

> All that information is on CERS. You can go in at any time and find out contributors, who employs them, what their occupations are, how much money they gave, the location of that contributor, both whether it be an incidental committee and a business, or individuals like your neighbors, other Montanans, or other folks.

**Exhibit 1**. There is no reason for the Commissioner to force political committees to rename themselves in a manner that alerts voters to the identities of committee's contributors – that information is already just a mouse click away. Indeed, the statute epitomizes government paternalism:

> I believe the fix is simply repeal and allow folks to go in and search for themselves. It hasn't been an issue, I believe, in campaigns because folks can figure out stuff for themselves and journalists do a good job if there is a potential economic interest – somebody spending a heck of a lot more money than others for example, we all know about it.

**Exhibit 1**. The availability of less restrictive alternatives, standing alone, requires the invalidation of Mont. Code Ann. § 13-37-210.

## IV. The Naming & Labeling Statue is Not Narrowly Tailored Because It is Severely Underinclusive

A statute that is too weak to serve any state interest and is severely underinclusive is unconstitutional. *Tschida*, 924 F.3d at 1305 (citations omitted). As Commissioner Mangan has explained, Mont. Code Ann. § 13-37-210 suffers from this fatal flaw:

> I'm going to use a hypothetical example: computer levy for Windy Chill, Montana school....They had three contributors, two Windy Chill teachers, who gave $35 dollars each, and the Acme Computer Company, who gave $10,000 for that committee. The statute says that committee would have to be named "Windy Chill Teachers for Computer Levy. I'm not sure if that addresses the underlying economic interest of the committee....

**Exhibit 1**. Moreover:

> [I]f you have a majority of your contributors happen to be a specific occupation or from a same specific employer, that has to be in the name. Most folks don't know that when they want to form a committee. The most common reply to that is "We don't know who our contributors are going to be." That could change in ten days, that could change in thirty days. It could change by the end of the election cycle. And quite often it does.

**Exhibit 1**.

In short, Mont. Code Ann. § 13-37-210 is severely underinclusive because numerous committees can be purposely manipulated by adding several small contributors to form a "majority" that reflects whatever "interest" the committee's organizers desire to display. It is also severely underinclusive because contributor majorities shift as the election cycle advances. The statute should therefore be struck down for this reason, too.

## V. The Naming & Labeling Statue is Not Narrowly Tailored Because It is Hopelessly Vague

Speech restricting statutes that are materially vague are unconstitutional. *Foti v. City of Menlo Park,* 146 F.3d 629, 638 (9th Cir. 1998). Section 13-37-210 is unconstitutionally vague in several respects.

First, the statute does not define the "economic" interests that a majority of contributors might have in common. An economic interest could involve anything

from real estate holdings to stocks and bonds to intangible properties to occupations. With regard to the last category, the statute gives no guidance on classifying contributors that have multiple occupations, or contributors who are retired and have no occupation – or perhaps retirement is, itself, an economic interest that must be accounted for under the statute.

Even worse is the statute's inclusion of "special interest." The context of the statute makes clear that the term is broader than "economic interest." Mont. Code Ann. § 13-37-210 (requiring naming that "identifies the economic or *other special interest*....") (emphasis added). This requirement piles on additional confusing and unnecessary demands upon contributors. The contributors for Doctors For A Healthy Montana are a perfect example. Like many pro-life advocates, the group's contributors share numerous commonalities that could reasonably be classified as "special" interests. They are all conservative Christians, strong supporters of the Second Amendment, and champions of lower taxation and government regulation. The statute offers no guidance on which of these categories needs to be reflected in the group's title. Perhaps all of them do.

No group should have to sort through such vagueness – and risk governmental penalties if they guess wrong – in order to simply exercise its core First Amendment rights. The statute should be invalidated for this reason as well.

## VI. Doctors For A Healthy Montana Satisfies All Four *Winter* Factors

To obtain injunctive relief, a plaintiff must show (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm if injunctive relief is not granted, (3) the balance of equities tips in his or her favor, and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 374 (2008). As shown below, Plaintiff can satisfy each of these requirements.

### *A. Doctors For A Healthy Montana is Likely to Succeed on the Merits*

Doctors For A Healthy Montana has demonstrated that Mont. Code Ann. § 13-37-210 is patently unconstitutional. It is therefore likely to succeed on the merits.

At the very least, Doctors For A Healthy Montana has satisfied the alternate "sliding scale" approach applied by the Ninth Circuit to preliminary injunction motions. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). Under this rule, Doctors For A Healthy Montana is entitled to injunctive relief because it has raised "serious questions going to the merits" along with showing (as described below) that the balance of the hardships tips sharply in its favor and that the other two *Winter* factors favor the group. *Id.* at 1135.

*B. Plaintiff is Suffering Irreparable Harm*

Ongoing or future constitutional violations by a defendant satisfy the irreparable harm requirement because "unlike monetary injuries, constitutional violations cannot be adequately remedied through damages." *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1138 (9th Cir. 2009); *Monterey Mechanical Co v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997) ("an alleged constitutional infringement will often alone constitute irreparable harm"). Moreover, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976). Such "harm is particularly irreparable where, as here, a plaintiff seeks to engage in political speech, as timing is of the essence in politics and [a] delay of even a day or two may be intolerable." *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1128 (9th Cir. 2011).

Montana's primary election is six weeks away. The threat of enforcement of Mont. Code Ann. § 13-37-210 is chilling core First Amendment speech that Doctors For A Healthy Montana desires to make. Doc. 1, ¶ 69. This irreparable harm warrants immediate injunctive relief.

*C. The Balance of Equities Tips Sharply in Plaintiff's Favor*

In the Ninth Circuit, "the fact that a case raises serious First Amendment questions compels a finding that . . . the balance of hardships tips sharply in [the

plaintiffs' favor." *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 973 (9th Cir. 2002). If Doctors For A Healthy Montana is denied injunctive relief, its First Amendment rights will continue being violated. On the other hand, there is no detriment to the State if an unconstitutional law is enjoined. *Sanders County Republican Cent. Comm. v. Bullock*, 698 F.3d 741, 749 (9th Cir. 2012). This factor sharply tips in its favor.

*D. Enjoining Enforcement of Montana's Absurd Naming Statute is in the Public Interest*

The First Amendment rights of Doctors For A Healthy Montana are ones that, if protected, will unquestionably advance the public interest. *Thalheimer*, 645 F.3d at 1129 ("Courts considering requests for preliminary injunctions have consistently recognized the significant public interest in upholding First Amendment principles."); *Joelner v. Washington Park*, 378 F.3d 613, 620 (7th Cir. 2004) ("it is always in the public interest to protect First Amendment liberties"). This factor therefore favors granting injunctive relief as well.

## CONCLUSION

For all of the foregoing reasons, Plaintiff Doctors For A Healthy Montana respectfully requests that this Court grant its motion for a preliminary injunction prohibiting the State from enforcing Mont. Code Ann. § 13-37-210.

DATED: April 15, 2020

Respectfully submitted,

/s/ Matthew G. Monforton
Matthew G. Monforton
Attorney for Plaintiff

**CERTIFICATE OF COMPLIANCE PURSUANT TO L. R. 7.1(d)(2)(E)**

I hereby certify that this document, excluding caption, tables and certificate of compliance, contains 3920 words, as determined by the word processing software used to prepare this document, specifically Microsoft Word 2007.

DATED: April 15, 2020

Respectfully submitted,

/s/ Matthew G. Monforton
Matthew G. Monforton
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY this 15th day of April, 2020, that a copy of the foregoing will be delivered this day to the following via electronic mail:

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DATED: April 15, 2020

Respectfully submitted,

/s/ Matthew G. Monforton
Matthew G. Monforton
Attorney for Plaintiff

**DECLARATION OF COUNSEL IN SUPPORT OF PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

I, Matthew G. Monforton, declare under oath as follows:

1. I am the attorney of record for Plaintiff in the instant matter. I am licensed to practice before the courts of Montana as well as the U.S. District Court for Montana. I have personal and firsthand knowledge of the facts stated in this declaration and could testify to them as a witness at a trial or hearing.

2. Attached to this Declaration is a true and correct transcript of testimony given by Commissioner Jeffrey Mangan to the House State Administration & Veterans Affairs Committee on February 5, 2019, regarding HB 308, a bill to repeal Mont. Code Ann. § 13-37-210.

3. The transcript was produced from an audio recording of the testimony store on the Legislature's online archive at:

http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/35762?agendaId=132795

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed in Bozeman, Montana on April 15, 2020

Matthew G. Monforton
Declarant

**Testimony of Jeff Mangan, Commissioner of Political Practices**
**House State Administration and Veterans Committee**
**February 5, 2019**

As always, it's a pleasure to be in front of the SAVA committee. First of all, thanks to Rep. Bachmeier for agreeing to carry the bill on our behalf. I certainly appreciate it. I'm calling this our kind of our "Back to the Future" bill because I'm going to be talking a little bit about 1985 and today. In 1985 the Legislature enacted a bill entitled "Naming and Labeling of Political Committees." And I'll just read it to you because I don't think you have it in front of you – the bill is just simply a repeal bill. It's 13-37-210: Naming and Labeling of Political Committees:

> Any political committee filing a certification of organizational statement pursuant of 13-37-210 shall name and identify itself in its organizational statement using a name or phrase that clearly identifies the economic or other special interest if identifiable of a majority of its contributors. And if a majority of its contributors share a common employer, it identifies that employer.

This bill will repeal that statute. Take you back to 1985 and the 1980's, committees don't organize today as they did in the Eighties. Back then, they assembled a group of like-minded individuals, pooled their money, initiated a committee, made a couple of expenditures through, back then, newspaper and/or a TV ad or two and there were very few political committees at the time. As a matter of fact, in the law in 1985, you had two types of political committees: those that supported or opposed a candidate, and those that supported or opposed a ballot issue. At that time, there was no transparency – everything was done on paper. If you wanted to know about a ballot issue, a committee – whether its supporters, the folks giving it money – whether they give money where they lived, et cetera, you had to either travel to the Political Practices office in Helena or request a copy of it be mailed to you. Or rely on the journalist… at that time, folks like Charles Johnson liked to tell the story about how they would go and sit in the Commissioner of Political Practice's office for days on end going through pages and pages of paper looking to report on certain things.

Today, people form a committee first – basically around an issue or a candidate … it's an issue or candidate-oriented committee, then they go out and raise money. So, "I am against this. I am for this. I am going to find a bunch of people, we are going to raising money and make a big show." They can do that through social media for free and paid, have fundraisers – tons of committees as you all probably

well know, local committees. You have committees in your own legislative races, you have your own local committees in your municipality. Again, I'll bring up urban chickens. You have those kinds of ballot issues happening. You have four types of political committees today. You have political party committees, independent committees, ballot issue committees, incidental committees. And the big difference today is you have transparency.

All that information is on CERS. You can go in at any time and find out contributors, who employs them, what their occupations are, how much money they gave, the location of that contributor, both whether it be an incidental committee and a business, or individuals like your neighbors, other Montanans, or other folks.

The bill from 1985 – or the statute from 1985 – does not work as intended. It counts heads not dollars. So…the only… we often provide guidance…folks will call up and want to form a political committee – "I don't understand the Naming Statute." All we can simply say is – the Naming Statute counts heads, not dollars. So, if you have a majority of your contributors happen to be a specific occupation or from a same specific employer, that has to be in the name. Most folks don't know that when they want to form a committee. The most common reply to that is "We don't know who our contributors are going to be." That could change in ten days, that could change in thirty days. It could change by the end of the election cycle. And quite often it does.

The statute is difficult to enforce, because of those reasons I just gave you. The enforcement and the bill do not today – again in today's time – do not today address the underlying issue or the underlying reason for the bill in 1985; that is the economic interest of the committee. I'll give you an example. I'm going to use a hypothetical example: computer levy for Windy Chill, Montana school – since it's so nice and chilly outside. They had three contributors, two Windy Chill teachers, who gave $35 dollars each, and the Acme Computer Company, who gave $10,000 for that committee. The statute says that committee would have to be named "Windy Chill Teachers for Computer Levy." I'm not sure if that addresses the underlying economic interest of the committee and statute as was presented in 1985. The other side of that, you could have 3 or 4 citizens of Windy Chill, Montana against that computer levy and the National Abacus Company decides to put $20,000 into opposition for that levy. They can simply name themselves "Windy Chill Citizens Against the Computer Levy." Again, this doesn't address the underlying issue of the economics that the 1985 statute envisioned. And we, as

a Commissioner, could not enforce those last 2 examples to try get to the bottom because that is not how the statute is written.

Did I think about trying to fix the statute? Yes, I did. How could I fix the statute? Could we apply a monetary limit to it or suggest to the Legislature that you consider a monetary limit versus head count, those types of things? I think you're going to run into some of the same issues that you run into today. We can put a timeline on it: it has to be those numbers, 30 days after the time you file or 60 days. Some of the exact same issues, however, with the way the cycles start, and how folks get out in front of the cycle and information is exchanged so freely today on the internet and otherwise on social media.

And I guess my biggest thing is I will tell you I think the fix is already here. The fix is the transparency that we currently have and how we direct people every day through our office is simply go to the web, pull up the committee, and walk through the contributors. And you'll find all the information you seek whether or not that committee has an economic interest or other issue. Of the complaints that I have received of this statute in the last couple of years, two of them have done exactly what the law allows them to do. When the complaint came in, there was a naming issue based on the statute that there was a business interest based on the occupation of the contributors. By the time we got to the decision, there was not an issue because there were more contributors that didn't have that common interest and it changed after the decision where they fixed it – they got more contributors and they went back to the original name.

I guess my point is that the 1985 statute as written does not work for the purpose it was intended. I believe the fix is simply repeal and allow folks to go in and search for themselves. It hasn't been an issue, I believe, in campaigns because folks can figure out stuff for themselves and journalists do a good job if there is a potential economic interest – somebody spending a heck of a lot more money than others for example, we all know about it. But it is not because of the Naming Statute. So with that, I'm going to sit down. I'll be glad to answer any questions and thank you for your due consideration of the bill.

Thank you, Mr. Chair.