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NANCY SWEENEY
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**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

STEVE BULLOCK and JOHN WALSH, Plaintiffs, vs. RICK HILL, A LOT OF FOLKS FOR RICK HILL, a Registered Political Campaign Committee; and LORNA KUNEY, in her capacity as Treasurer of A Lot of Folks for Rick Hill, Defendants.	Cause No. <u>CDV-2012-904</u> Hon. <u>NANCY SWEENEY</u> Presiding Judge <u>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</u>
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This is an action for a declaratory judgment and injunctive relief concerning violations of Montana's Election Laws as set forth in Title 13 of the Montana Code Annotated. For their claim for immediate and permanent relief, Plaintiffs Steve Bullock and John Walsh, state and allege as follows:

1. Plaintiff Steve Bullock is Montana's Attorney General and is the Democratic candidate in the 2012 general election for the office of Montana's Governor.

2. Plaintiff John Walsh is Steve Bullock's running mate as the Democratic candidate for Lt. Governor in the 2012 general election.

3. Defendant Rick Hill was formerly a United States Congressman from Montana and is the Republican candidate in the 2012 general election for the office of Montana's Governor.

4. Defendant A Lot of Folks for Rick Hill ("the Hill Committee") is a duly registered political committee pursuant to § 13-37-201, MCA. The Hill Committee maintains a post office box and its principle place of business in the City of Helena, Lewis and Clark County.

5. Defendant Lorna Kuney is a duly appointed and certified campaign treasurer of the Hill Committee.

6. As more specifically alleged below, Defendants have violated, and continue to violate the campaign contribution limits set forth in § 13-37-216(1)(a)(i), MCA, § 13-37-216(3), MCA, and § 13-37-216(5), MCA.

7. Venue and jurisdiction properly lie with this Court to enjoin the prohibited acts at issue, and to require Defendants to immediately perform the acts necessary to comply with Montana's election laws, pursuant to § 13-35-108, MCA.

8. Immediate injunctive relief is necessary in order to correct the irreparable harm that has occurred and continues to occur as a result of the violations of Montana's campaign finance laws. That harm is flowing not only to Plaintiffs, but also to the State of Montana and its citizens, as expressly recognized by the United States Court of Appeals for the Ninth Circuit in

Lair v. Bullock, No. 12-35809 (9th Cir. Oct. 16, 2012)(Slip Op. (Published), pp. 34-35)(emphasis added):

Since 1994, a clear framework has been in place allowing candidates to plan for campaigns. In 2003, we held this statute constitutional, in the face of a virtually indistinguishable attack [as that at issue in this case]. This has created a background upon which the candidates in the current election have formed their campaign strategies and expectations. Absentee voting has already begun in Montana and the general election is imminent. . . . In a state that has operated with some of the most restrictive campaign limits in the country, there would suddenly be no limits whatsoever. . . . In light of the fact that the State of Montana has made a substantial case for relief on the merits, *this calls into question the fairness and integrity of elections in Montana*. . . . [B]ecause of the likely disruption to the election and the untold, irreversible consequences that might result, the State of Montana has satisfied its burden of showing that irreparable harm will occur.

9. Montana’s Control of Campaign Practices Act regulates the amount that individuals, political committees and political parties can contribute to candidates for state office. *Section 13-37-216, MCA, as adjusted by ARM § 44.10.338*. The current limit on aggregate contributions from individuals and political committees to candidates for the office of Governor is \$630 per contested election and the limits on total combined contributions for political party committees to candidates for the office of Governor is \$22,600 per contested election. *Id.*

10. On October 3, 2012, Senior United States District Court Judge Charles Lovell issued an order in the case of *Lair v. Murry*, Cause No. CV 12-12-H-CCL, which concluded that the campaign contribution limits contained in Section 13-37-216, MCA are unconstitutional under the First Amendment and permanently enjoined the State of Montana from enforcing those limits. (“the Lovell Order”). The District Court did not issue an opinion, stating instead that findings of fact and conclusions of law supporting the order would be filed separately later.

Exhibit 1.

11. On October 4, 2012, the defendants in *Lair v. Murry* filed a motion for stay pending appeal with the federal district court and an emergency request for a stay of the district court's injunction with the Ninth Circuit Court of Appeals.

12. On October 9, 2012, the court of appeals, in *Lair v. Bullock*, Cause No. 12-35809, stayed the district court's injunction temporarily. *Exhibit 2*.

13. On October 5, 2012, the Montana Commissioner of Political Practices, James Murry, issued a notice to all campaigns in Montana, stating in relevant part:

[U]ntil the motions for stay are ruled on, the office of the Commissioner of Political practices strongly recommends that candidates, political committees, and contributors abide by the contribution limitations that are provided in the statute.

(Bold emphasis in original.)*Exhibit 3*.

14. Plaintiffs have at all times abided by the campaign contribution limitations under Montana law.

15. On October 10, 2012, Judge Lovell issued an Opinion and Order in *Lair v. Murry*, which contained the district court's findings of fact and conclusions of law ("the Findings and Conclusions"). *Exhibit 4*. Significantly, at no point in the Findings and Conclusions did Judge Lovell conclude that the contribution limits for gubernatorial races are too low. To the contrary, he expressly acknowledged that "[Plaintiffs] have not so seriously challenged, for instance, the contribution limits for gubernatorial candidates." Findings and Conclusions, p. 36.

16. On October 16, 2012, the Ninth Circuit Court of Appeals issued a published Opinion and Order staying the district court's injunction pending resolution of the appeal of the district court's final judgment in *Lair v. Murry* ("the Ninth Circuit Opinion").*Exhibit 5*.

17. The Ninth Circuit Opinion is published and therefore constitutes binding and citable precedent. In the Opinion, the Ninth Circuit rejected virtually all analyses and conclusions in the district court's Findings and Conclusions. The Ninth Circuit concluded that the State of Montana (1) is likely to succeed in the appeal of the district court order, (2) irreparable harm will occur if the injunction issued by the district court is not stayed; (3) no interested party will be harmed by keeping in force the contribution limits statute that has been in place since 1994, and which was specifically held constitutional by the Ninth Circuit in 2003; and (4) that "[g]iven the deep public interest in honest and fair elections" a stay of the district court's injunction was necessary. *Lair*, Slip Op. at p. 37.

18. Section 13-37-216(1), MCA provides that "aggregate contributions for each election in a campaign by a political committee or by an individual . . . are limited" to certain stated amounts that vary depending on the office for which the candidate is running. Section 13-37-216(3), MCA provides that political party organizations may lawfully establish political committees "that are subject to the following aggregate limitations" that vary depending on the office for which the candidate is running.

19. On or about October 5, 2012, Defendants Rick Hill and the Hill Committee received a contribution from the Montana Republican Party, which is a political party organization as defined in Section 13-37-216(3), MCA, in the amount of \$500,000, which is an amount that is more than 20 times the limits provided for in Section 13-37-216(3), MCA.

20. Defendants Hill and the Hill Committee have also received contributions in excess of that allowed by law for individuals, in amounts that are not yet known.

21. Pursuant to the Ninth Circuit Court of Appeals' October 10 and 16, 2012 orders, Section 13-37-216, MCA is, at the time of the filing of this action, valid and enforceable by the appropriate authorities of the State of Montana.

22. At the present time, Defendants are in violation of Section 13-37-216, MCA because the Hill campaign for Governor has received aggregate contributions from the Montana Republican Party that are far in excess of the limits provided for in Section 13-37-216(3), MCA, and contributions from individuals that are in excess of the limits provided for in Section 13-37-216(1).

23. A complaint alleging that Rick Hill is in violation of Section 13-37-216, MCA because his campaign for governor has received aggregate contribution from the Montana Republican Party that are far in excess of the limits provided for in Montana law was filed with the Commissioner of Political Practices on October 17, 2012.

24. The Commissioner of Political Practices' authority and jurisdiction to enforce Montana's campaign finance laws is not exclusive in situations such as that presented by this action. Plaintiffs have standing to seek relief pursuant to § 13-35-108, MCA.

25. The procedures followed by the Commissioner of Political Practices are not adequate to provide meaningful and timely relief to Plaintiffs and to the citizens of the State of Montana before the conclusion of the current general election on November 6. Plaintiffs therefore do not have a plain, speedy or adequate remedy at law to address the harm caused by the actions and conduct of Defendants.

26. Plaintiffs and the citizens of Montana will suffer irreparable injury if this Court does not enjoin the prohibited acts and conduct of Defendants, and to require Defendants to immediately perform the acts necessary to comply with Montana's election laws.

WHEREFORE, Plaintiff prays for judgment as follows:

1. For declaratory judgment determining that Defendants Rick Hill and the Hill Committee are in violation of Section 13-31-216, MCA in that they have received aggregate contributions from the Montana Republic Party that are far in excess of the limits provided for in Montana law, and contributions from individuals that are also in excess of the allowable amounts under Montana law;
2. For orders providing temporary, preliminary and permanent injunctive relief to enjoin Defendants from acting in violation of Montana's election laws, and to require Defendants to immediately perform the acts necessary to comply with Montana's election laws;
3. For any and all other equitable relief that may be necessary to correct the harms caused by the acts and conduct of Defendants;
4. For attorney fees and costs; and
5. For such further and additional relief this Court deems just and proper.

DATED this 18th day of October, 2012.

KARL J. ENGLUND, P.C.
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BY: 
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