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December 20, 2006

Jeff S. Jordan, Esq.  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 5869

Dear Mr. Jordan:

The undersigned represents the Montana Democratic Party, and Brenda Schye, as Treasurer ("MDP") in the above mentioned matter. This matter was generated by a complaint filed by Trevis Butcher, Executive Director for Montanans in Action and a Republican activist that bankrolls right wing ballot initiatives nationwide.<sup>1</sup> In its complaint, Mr. Butcher alleges that the MDP apparently coordinated certain activities in connection with a ballot initiative with the Jon Tester for Senate campaign and the Montana Education Association-Montana Federation of Teachers ("MEA-MFT"). Ultimately, the complaint must be dismissed because it does not allege any facts that could lead to a violation of the Federal Election Campaign Act. 11 C.F.R. § 111.4(d).

The meandering complaint appears to allege some vast conspiracy to use two ballot initiatives that were on the 2006 general election ballot in Montana to somehow utilize "soft money" to influence federal elections. To that end, the complaint refers to two ballot initiatives on the 2006 ballot, I-151 and I-153. I-151 was an initiative to raise the state minimum wage and I-153 regarded certain changes to the ethics rules for state legislators and persons in the executive branch of the state of Montana. Neither one of these initiatives were related to federal elections or officeholders. Although the MDP, as well as others, criticized Conrad Burns for his positions on the federal minimum wage, other than the limited role described below, the MDP played no role in initiating or

<sup>1</sup> For information regarding Mr. Butcher, his agenda, and criticism of his secret funding of ballot initiatives, see <http://www.dailykos.com/story/2006/7/10/122238/418> and [http://www.takingsinitiatives.org/index.php?option=com\\_content&task=view&id=173&Itemid=51](http://www.takingsinitiatives.org/index.php?option=com_content&task=view&id=173&Itemid=51).

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otherwise getting out the vote for I-151. To be sure, the only activities alleged by the complaint involving the minimum wage included petition drives by the MDP to get I-151 on the ballot and a blog entry regarding the minimum wage. First, the MDP acknowledges that it believes that one of its canvassers carried, for a short period of time, copies of a petition to get I-151 on the ballot during the ballot qualification period in the Spring of 2006. However, such activity is not prohibited in any way by federal law, and the canvasser's salary was paid exclusively with federal dollars. Second, complainant alleges that a blog entry was timed to attack Conrad Burns on the minimum wage at the same time that North Carolina Senator John Edwards traveled to Montana. What the complaint fails to note is that the blog entry appeared on the website of the Democratic National Committee and not the website of the MDP.<sup>2</sup> There are no other specific allegations regarding the MDP and any efforts to influence federal elections with respect to I-151. Furthermore, even if taken as true, Mr. Butcher's assertion that these ballot initiatives were placed on the ballot to assist in turning out pro-Tester voters, such an assertion does not lead to any legal conclusion that a violation of any federal or state law has occurred. In any event, the MDP did not play any role in the creation or placement of I-151 on the ballot, and denies that the placement of I-153 on the ballot was designed to turn out Democratic voters but rather, part of Governor Schweitzer's reform package to clean up corruption in Montana. Generally, such ethics issues do not drive out voters, and the ethics issue would not be designed to benefit a candidate for United States Senator or any other federal candidate.

Thus, notwithstanding the conclusory assertions of the complainant, the MDP did not make any public communications promoting or attacking I-151. Furthermore, MDP did not coordinate with either the Tester campaign or the MEA-MFT with regards to any public communications or any other activities that they may have undertaken in connection with I-151 by either entity.

The MDP did use its paid staff to assist in the circulation of petitions for I-153. I-153 was a ballot initiative relating to state ethics reform and in no way involved the minimum wage issue, and, to the best of the MDP's knowledge was not championed by either the MEA-MFT or the Tester campaign. The MDP's involvement in I-153 was based upon the desire to support Montana's Democratic Governor, Brian Schweitzer's agenda to reform ethics rules relating to state legislators and members of the executive branch of Montana Government. Although the MDP may have done some communications to support this initiative, all communications would have been paid for in full compliance with the Federal Election Campaign Act if such communications, in

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<sup>2</sup> It should be noted that the lawsuit referred to in this complaint alleging "potential illegalities" in the gathering of signatures for I-153 was filed by the complainant, Mr. Butcher, who was responsible for placing an eminent domain ballot initiative, I-154 on the ballot which was decertified for rampant fraudulent activity. See <http://fnweb.isd.doe.state.mt.us/idmws/docContent.dll?Library=CISDOC&SVR01^doaisd510&ID=003763385> and <http://www.montanaforum.com/modules.php?op=modload&name=News&file=article&sid=6119&mode=tbread&order=0&thold=0>

any way, constituted either an expenditure or federal election activity under federal election statutes or regulations. Based upon information and belief, it is the understanding of the MDP that neither the Tester campaign nor MEA-MFT undertook any activity in support of or opposition to I-153.

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The complaint alleges that disclosure by the MDP of its staff that worked on petition drives were reported as "federal election activity". According to the complaint, this demonstrates that staff of the MDP spent their time working on initiative activities that were designed to influence federal elections. This allegation is completely false and demonstrates the complainant's lack of knowledge of federal election law and regulations. In fact, the salaries of these individuals were required to be disclosed as "federal election activities" because the individual employees spent more than 25% of their time in any given month on federal election activities on behalf of federal candidates in Montana. 11 C.F.R. § 106.7(d)(1)(ii). Thus, even if those employees spent 70% of their time in a given month on non-federal activities, payments for salaries and benefits would be required to be disclosed as a "federal election activity" by the MDP. Of course, any petition drive activity undertaken by these individuals would have been incidental to their work on behalf of candidates in Montana. Ultimately, the use of federal funds to pay for such expenditures are appropriate and in full compliance with federal laws and regulations.

With respect to unsubstantiated allegations that get-out-the-vote activities were coordinated with MEA-MFT or the Tester campaign in connection with I-151 and I-153, the MDP strongly denies such assertions and did not coordinate any get-out-the-vote activities with either the Tester campaign or MEA-MFT in connection with either ballot initiative.

Since the complaint does not allege a single fact, even if assumed to be true, that would constitute a violation of federal law or regulations, the Commission should dismiss this matter and close the file. If you have any questions or concerns, please call me at (202) 479-1111.

Sincerely,



Neil Reiff  
Counsel to the Montana Democratic  
Party and Brenda Schye, as  
Treasurer