

Matthew G. Monforton (Montana Bar # 5245)  
Monforton Law Offices, PLLC  
32 Kelly Court  
Bozeman, Montana 59718  
Telephone: (406) 570-2949  
Facsimile: (406) 551-6919  
E-mail: matthewmonforton@yahoo.com

Attorney for Plaintiff

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

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NATIONAL ASSOCIATION FOR )  
GUN RIGHTS, INC., )

Plaintiff, )

v. )

JAMES MURRY, in his official capacity )  
as the Commissioner of Political )  
Practices for the State of Montana; )  
STEVEN BULLOCK, in his official )  
capacity as Attorney General for the )  
State of Montana; LEO GALLAGHER, )  
in his official capacity as County )  
Attorney for the County of Lewis & )  
Clark, )

Defendants. )

Case No. \_\_\_\_\_

**VERIFIED COMPLAINT FOR  
INJUNCTIVE RELIEF,  
DECLARATORY RELIEF, AND  
NOMINAL DAMAGES**

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**PRELIMINARY STATEMENT**

1. This is a civil rights action for injunctive relief, declaratory relief and nominal damages arising under the First and Fourteenth Amendments to the Constitution of the United States.

2. Plaintiff National Association For Gun Rights, Inc., (hereinafter, “Plaintiff” or the “Association”) challenges the constitutionality of Montana’s laws requiring every entity that engages in even a *de minimus* amount of protected political speech to register as a “political committee” and meet the onerous burdens imposed upon such committees.

3. Specifically, Plaintiff challenges § 13-1-101(22), MCA, of the Montana Code Annotated (MCA), as well as Rule 44.10.327(2)(c) of the Administrative Rules of Montana (ARM), as unconstitutional, both facially and as-applied to Plaintiff because they are unconstitutionally vague and overbroad, thereby violating Plaintiff’s rights of free speech and association under the First and Fourteenth Amendments to the United States Constitution.

4. Preliminary relief is required because the State has prosecuted, *and is currently prosecuting*, other similarly situated non-profit corporations for engaging in speech that is materially indistinguishable from the political speech the Association intends to make. These corporations are being prosecuted simply because they failed to register under Montana’s unconstitutional “political committee” laws.

5. Plaintiff requires declaratory and injunctive relief from this Court so that it can engage in its intended activities without suffering the

burdens imposed by Montana's unconstitutional laws and without fear of prosecution.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this case arising under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the Constitution of the United States. 28 U.S.C. §§ 1331, 1343(a). This Court also has jurisdiction under the Declaratory Judgment Act. See *id.*, §§ 2201, 2202.

7. Venue is proper because the Defendants reside in this District. 28 U.S.C. § 1391(b).

### **PARTIES**

8. Plaintiff National Association For Gun Rights, Inc., is a non-stock, non-profit corporation incorporated under the laws of the Commonwealth of Virginia and has its principal place of business in Fredericksburg, Virginia.

9. Defendant James Murry is the Commissioner of Political Practices for Montana and is sued in his official capacity only. Murry has authority to investigate violations of, enforce the provisions of, and hire attorneys to prosecute violations of Montana's campaign finance laws.

Defendant James Murry resides in Lewis & Clark County in the State of Montana.

10. As Montana Attorney General, Defendant Steve Bullock has power to investigate and prosecute violations of Chapters 35 of the Montana Code Annotated by and through the county attorneys under his supervision. The Attorney General acts under color of law and is sued in his official capacity. Defendant Bullock resides in Lewis & Clark County in the State of Montana.

11. As Lewis & Clark County Attorney, Defendant Leo Gallagher has power to investigate and prosecute violations of Chapters 35 of the Montana Code Annotated. The County Attorney acts under color of law and is sued in his official capacity. Defendant Gallagher resides in Lewis & Clark County in the State of Montana.

#### **STATEMENT OF FACTS**

12. Plaintiff is a non-stock, non-profit organization incorporated under the laws of the Commonwealth of Virginia in 2000.

13. The Association is a grassroots organization whose mission is to defend the right to keep and bear arms from all of its enemies, and advance that God-given right by educating the American people and urging

them to action in the public policy process.

14. The Association has a number of purposes it seeks to fulfill, including the following:

- To underwrite, develop, sponsor and support scholarship regarding the Constitution of the United States of America the history of the Constitutional Convention of 1787 and the debates which preceded the Constitutional Convention, with particular reference to the concerns of the Founding Fathers to establish justice and deprive no person of life or liberty without due process of law nor deny to any person within the jurisdiction at the United States or any State the equal protection of the laws;
- To underwrite, develop, sponsor, and support scholarship regarding successes and failures of actions affecting the Constitution and the rights established by the Founding Fathers to all citizens, especially in regard to the Second, Ninth, Tenth, and Fourteenth Amendments.
- To underwrite, develop, sponsor and support scholarship as to the means whereby said successes may be encouraged and failures may be prevented and alleviated through legislative and executive reforms, and through enhanced public awareness of such successes and failures;
- To underwrite, develop, sponsor and support studies and analyses of how the institutions of government at all levels can be made more responsive and accountable to the public;
- To sponsor fora and symposia at which scholars, citizens, legislators and governmental officials can meet to give full and fair consideration of topics which relate to the above objectives, to the discussion of studies, reports, and analyses which relate to the above objectives, and to debate and discussion thereof;
- To publish the aforesaid scholarship, studies, reports, and analyses and make them available to the public and governmental officials;
- To educate the public as to the above issues, and other issues of public

concern within the corporation's general purposes, so that the public may participate meaningfully in dialogue and debate as to said issues and so the public may make its preferences known to legislators and governmental officials;

- To provide testimony at hearings before governmental agencies, commissions, legislative bodies, committees, and at other public bodies as to the issues and objectives described above; and
- To perform all other acts necessary or incidental to the above and to do whatever is deemed necessary, useful, advisable, or conducive, directly or indirectly, to carry out any of the purposes of the corporation, as set forth in these articles of incorporation, including the exercise of all other powers and authority enjoyed by non-profit corporations generally.

15. The Association is a tax-exempt social welfare organization under Internal Revenue Code § 501(c)(4).

16. Organizations under 501(c)(4) must be "primarily engaged in promoting in some way the common good and general welfare of the people of the community." (26 C.F.R. § 501(c)(4)-1.) Further, "[t]he promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." (Id.) So, while 501(c)(4) organizations may engage in some unambiguously campaign related speech, their major purpose can never be the nomination or election of candidates. The Association is in compliance with this requirement, and will remain so in the future.

17. The Association's budget for 2011 was approximately \$3.5 million. Its anticipated budget for 2012 is \$ 5 to 6 million. It has 6,427 members in Montana and 1.8 million members in the United States.

18. Many candidates for public office, particularly in states with large numbers of rural voters, inaccurately claim to strongly support the rights of citizens to keep and bear arms as well as to engage in lawful self-defense.

19. The Association intends to begin informing voters of the identities of these candidates, as well as provide them with information about these candidates' voting records.

20. If permitted to do so without being subject to Montana's unconstitutional "political committee" laws, the Association intends to mail postcards to Montana voters describing the failures of Steve Bullock, currently a gubernatorial candidate, to support the rights of citizens to keep and bear arms and engage in lawful self-defense. (A true and correct copy of the front and back sides of the postcard the Association intends to mail is attached as **Exhibit 1**).

21. The Association is concerned, however, that its anticipated mailing of the postcards depicted in **Exhibit 1** will cause the Commissioner of Political Practices to enforce Montana's "political committee" laws

against the Association.

22. These laws subject entities to onerous reporting requirements if they engage in even a *de minimus* amount of protected speech that the Commissioner deems to be “express advocacy” in support of, or opposition to, a candidate for public office.

23. The Association’s concerns are heightened by the Commissioner’s ruling in another matter that the mailing of a similar postcard constituted “express advocacy” regarding the election or defeat of a candidate for public office and therefore required the entity to register as a “political committee” under Montana law.

24. The Commissioner issued this ruling in a case entitled “*In the Matter of the Complaint Against Western Tradition Partnership and Coalition for Energy and the Environment*” (hereinafter, the “WTP Matter”). (A true and correct copy of the Commissioner’s ruling in the WTP Matter is attached as **Exhibit 2**.)<sup>1</sup>

25. The Commissioner is now seeking to impose monetary fines against the entities involved in the WTP Matter.

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<sup>1</sup> The subjects of the complaint filed in the WTP Matter are challenging the Commissioner’s ruling in state court. *Western Tradition Partnership, et al., v. David Gallik, et al.* (Lewis & Clark Dist. Ct. Case No. BDV 2010-1120). The state court matter is currently in litigation.



26. Page 7 of Commissioner's ruling (**Exhibit 2**) depicts a postcard that is materially indistinguishable from the one that the Association intends to mail and which is depicted in **Exhibit 1**.

27. The Association therefore fears that the Commissioner will also deem **Exhibit 1** to be "express advocacy" and fine the Association if it mails the postcard without subjecting itself to Montana's unconstitutional political committee statutes and regulations.

28. The Association intends to mail the postcards this year if it obtains injunctive relief from this Court and hopes to be permitted to do so in the week prior to the general election on November 6, 2012.

29. It intends to incur approximately \$20,000 in costs (mainly printing and mailing) to execute its plan to mail the postcards depicted in **Exhibit 1**. Assuming a total budget of \$ 5 million for the Association for 2012, the costs of the intended distribution of the postcard depicted in **Exhibit 1** would constitute 0.4 % of Plaintiff's total expenditures for 2012.

30. The Association intends to budget similar sums of money for the 2014 and 2016 election cycles in order to print and mail similar postcards informing voters of other candidates for statewide and legislative offices in Montana with dismal records on gun rights and other civil rights of concern to the Association.

31. The Association has not engaged in any other acts of “express advocacy” as defined by the United States Supreme Court.

32. The Association has not and will not register as a political committee under Montana’s unconstitutional political committee statutes and regulations.

33. Absent injunctive relief, the Association will suffer irreparable harm.

34. Plaintiff has no adequate remedy at law.

### **Count 1**

#### **Section 13-1-101(22), MCA, Unconstitutionally Requires Persons to Register as Political Committees.**

35. Plaintiff re-alleges and incorporates by reference all allegations contained in the preceding paragraphs.

36. Under section 13-1-101(22), MCA, a “political committee” is “a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure . . . to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination.”

37. Section 13-1-101(20), MCA, defines “person” to include a “corporation, association, firm, partnership, cooperative, committee, club,

union, or other organization or group of individuals.”

38. Once an entity becomes a political committee, it must comply with a panoply of burdens, including: registration (§ 13-37-201, MCA), appointment of a campaign treasurer (§§ 13-37-201 to -204, MCA), creation of a campaign depository, (§ 13-37-205, MCA), record keeping requirements, (§§ 13-37-207, -208), and reporting requirements (§ 13-37-225 to 231, MCA); Rules 44.10.401 to .535, ARM.

39. Violations of these statutes result in penalties and fines.

40. Plaintiff reasonably fears that the Commissioner will enforce the above-cited statutes and regulations and impose penalties against Plaintiff if it mails the postcard depicted in **Exhibit 1** to voters without registering under Montana’s unconstitutional political committee laws.

41. Because Montana cannot show that its political committee definition is substantially related to a sufficiently important government interest, and because it is vague and overbroad, it is unconstitutional, both facially and as-applied to Plaintiff and its intended activities.

## **Count 2**

### **Rule 44.10.327(c)(2), ARM, Unconstitutionally Regulates Entities That Only Incidentally Engage in Political Advocacy**

42. Plaintiff re-alleges and incorporates by reference all allegations contained in the preceding paragraphs.

43. Every entity that is swept into Montana's unconstitutional definition of "political committee" contained in § 13-1-101(22), MCA, must appoint a campaign treasurer, then submit the name of the treasurer and an organizational statement, and the names of all of its officers within five days after the entity makes or authorizes an "expenditure." § 13-27-201, MCA, Rule 44.10.405, ARM. After an entity submits these documents, the Commissioner classifies it as either a "principal campaign committee," "independent committee" or an "incidental committee." Rule 44.10.329(1)-(2) & 44.10.327, ARM.

44. Plaintiff reasonably fears that if it submits the required information to the Commissioner as a "political committee" under section 13-1-101(22), MCA, the Commissioner will seek to regulate Plaintiff as an incidental committee.<sup>2</sup>

45. Rule 44.10.327(2)(c), ARM, defines an "incidental committee"

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<sup>2</sup> The other two categories of political committees defined by the Commissioner's regulations are inapplicable to the Association. A "principal campaign committee," is one "specifically organized to support or oppose a particular candidate or issue." Rule 44.10.327(2)(a), ARM. An "independent committee" is "one that is organized *for the primary purpose of supporting or opposing various candidates and/or issues.*" Rule 44.10.327(2)(b), ARM, emphasis added. It is axiomatic that the Association's intention to devote 0.4 % of its 2012 budget to publishing the postcard depicted in **Exhibit 1** is not the "primary purpose" of the organization.

as “a political committee that is not specifically organized or maintained for the primary purpose of influencing elections *but that may incidentally become a political committee by making a contribution or expenditure to support or oppose a candidate.*” (emphasis added).

46. Enforcement of this Rule would require the Association to submit to the requirements imposed by Rules 44.10.411 and Rule 44.10.519, ARM.

47. Plaintiff reasonably fears that it may be considered to be in violation of the above statutes and rules if it proceeds with its intention to distribute the postcard depicted in **Exhibit 1** without complying with the requirements of a Montana incidental political committee.

48. Montana’s regulation of incidental political committees is patently unconstitutional because it regulates organizations that do not have “a primary purpose of political advocacy” and applies to organizations that “only incidentally engage in such advocacy.” *Human Life of Washington, Inc. v. Brumsickle*, 624 F.3d 990, 1011 (9th Cir.2010).

49. Montana’s regulation of incidental political committees is unconstitutionally vague and overbroad because there is no minimum spending requirement to trigger political committee status, so that it inherently sweeps in organizations engaging in *de minimus* campaign-related

speech regardless of the size and resources of the organization. See *Canyon Ferry Road Baptist Church of East Helena, Inc. v. Unsworth*, 556 F.3d 1021, 1028-29 (9th Cir. 2009).

50. Because Montana cannot show that its incidental political committee definition is substantially related to a sufficiently important interest, and because it is vague and overbroad, it is unconstitutional facially and as applied to Plaintiff and its activities.

#### **PRAYER FOR RELIEF**

A. A declaratory judgment that the political committee definition in § 13-1-101(22), MCA, does not apply to Plaintiff as a matter of law so that Plaintiff is not a political committee as a matter of law.

B. A declaratory judgment that the political committee definition contained in § 13-1-101(22), MCA, is limited to organizations that are under the control of, or have the major purpose of nominating or electing, a candidate for state or local office in Montana.

C. A declaratory judgment that the political committee definition contained in section § 13-1-101(22), MCA, is unconstitutional, both facially and as applied to Plaintiff.

D. A declaratory judgment that the incidental political committee

definition contained in Rule 44.10.337(2)(c), is unconstitutional, both facially and as applied to Plaintiff.

E. A declaratory judgment that the incidental political committee definition and regulations do not apply to Plaintiff as a matter of law.

F. Preliminary and permanent injunctions enjoining Defendants, all county attorneys, and all successors in office, from enforcing all challenged provisions against Plaintiff and its activities, and all other entities similarly situated.

G. Costs and attorney fees pursuant to any applicable statute or authority.

H. Any other relief this Court in its discretion deems just and appropriate.

### **REQUEST FOR JURY TRIAL**

Plaintiff requests a jury trial as to all issues so triable.

DATED: October 2, 2012

/s/ Matthew G. Monforton  
Matthew G. Monforton  
Monforton Law Offices, PLLC  
32 Kelly Court  
Bozeman, Montana 59718  
Telephone: (406) 570-2949  
Facsimile: (406) 551-6919

Attorney for Plaintiff

**VERIFICATION BY DUDLEY BROWN**

I, Dudley Brown, declare as follows:

1. I am the Executive Vice President of the National Association of Gun Rights, Inc., the Plaintiff in this matter.
2. I have personal knowledge of the activities set out in this Complaint as well as the Exhibits attached thereto, and if called upon, I would competently testify as to the matters stated herein.
3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this Complaint are true and correct.

Executed on October 2, 2012.

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a long, sweeping horizontal line that ends in a small flourish.

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Dudley Brown