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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

DOUG LAIR; STEVE DOGIAKOS; AMERICAN TRADITION PARTNERSHIP; AMERICAN TRADITION PARTNERSHIP PAC; MONTANA RIGHT TO LIFE ASSOCIATION PAC; SWEET GRASS COUNCIL FOR COMMUNITY INTEGRITY; LAKE COUNTY REPUBLICAN CENTRAL COMMITTEE; BEAVERHEAD COUNTY REPUBLICAN CENTRAL COMMITTEE; JAKE OIL LLC; JL OIL LLC; CHAMPION PAINTING INC.; and JOHN MILANOVICH, Plaintiffs, v. JAMES ("JIM") MURRY, in his official capacity as Commissioner of Political Practices; STEVE BULLOCK, in his official capacity as Attorney General of the State of Montana; and LEO GALLAGHER, in his official capacity as Lewis and Clark County Attorney, Defendants.	Cause No. 6:12-cv-00012-CCL **DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON COUNTS I, II, AND III OF THE VERIFIED COMPLAINT**

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INTRODUCTION

In this case, Plaintiffs seek a declaratory judgment that the contribution limits set forth in Mont. Code Ann. §§ 13-37-216(1), (3), and (5) are unconstitutional and must be permanently enjoined. *See* Counts I, II and III of the Verified Complaint (Doc. No. 1) (Complaint). Because there is no genuine dispute of material fact, a trial is not necessary and Defendants are entitled to summary judgment as a matter of law.

As the Court has recognized, Montana's contribution limits were previously held constitutional in *Montana Right to Life Ass'n v. Eddleman*, 343 F.3d 1085 (9th Cir. 2003), *cert. denied*, 125 S. Ct. 47 (2004). *See* Order Granting and Denying Motion for Preliminary Injunction (Doc. No. 66) (February Order), at 15-25. The Court declined to enter a preliminary injunction against enforcement of the contribution limits, noting Plaintiffs were not likely to succeed based upon the facts presented, and left Plaintiffs with the opportunity to develop evidence that the contribution limits are inadequate. Plaintiffs have developed no such evidence.

Plaintiffs have identified only five lay witnesses and one expert. The expert offers no opinion that Montana's contribution limits are too low for candidates to amass the resources for effective campaign advocacy, but merely opines that some persons would like to contribute more money to campaigns, which is a fact recognized by the Ninth Circuit in *Eddleman*. Plaintiffs' expert also ignores

critical facts. Plaintiffs' lay witnesses also will offer testimony that they were willing to make more contributions. None of this evidence supports any contention the contribution limits are unconstitutional.

The central issues in this matter were previously tried in this Court in the *Eddleman* case. Findings and Conclusions were entered by Judge Shanstrom on December 19, 2000. *See* Ex. A to Foundational Declaration of Michael G. Black (Found. Decl.). Defendants have submitted evidence that the competiveness of Montana elections has not substantially changed since the *Eddleman* case, and candidates are able to amass resources to mount effective campaigns. There is no genuine dispute of material fact, and summary judgment is appropriate.

FACTS

I. THERE IS NO EVIDENCE TO SUPPORT ANY CLAIM THAT MONTANA'S CONTRIBUTION LIMITS ARE SO LOW THAT CANDIDATES CAN NO LONGER AMASS RESOURCES FOR EFFECTIVE CAMPAIGN ADVOCACY.

The central issues in this matter were previously tried in this Court in the *Eddleman* case, and Findings and Conclusions were entered in that case on December 19, 2000. *See* Ex. 1, Found. Decl. Since the February Order was entered, Plaintiffs identified only five lay witnesses who may support Plaintiffs'

claims or who may testify at trial. *See* Ex. 2, Found. Decl.[1] The Complaint indicates Plaintiff John Milanovich intended to run for office in 2012 (Doc. No. 1, at 32, ¶ 94), but he never filed to run.

Plaintiffs have identified one expert who may testify at trial: Clark Bensen of Corinth, Vermont. Mr. Bensen issued a report (Bensen Report)[2] providing that he was "asked to review campaign finance statistics for the state of Montana." Ex. 3, Found. Decl., at 1.[3] There is no evidence that Mr. Benson did anything other than review data posted on the website of the Commissioner of Political Practices,[4] and

[1] Plaintiffs have not supplemented their Initial Disclosures since March 30, 2012. These Initial Disclosures do not satisfy the terms or spirit of Fed. R. Civ. P. 26(a)(1), and omit several persons who submitted verifications of the Complaint. In recent responses to discovery requests directed to each Plaintiff, only two additional persons with knowledge were identified, namely: Greg Hertz, the treasurer for the Lake County Republican Central Committee who has knowledge of the Committee's contribution to one candidate; and, Gayle Hansen, the treasurer for the Beaverhead County Republican Central Committee who has knowledge of the Committee's "attempts to contribute to candidates during the 2010 election." Plaintiffs will not call Ms. Hansen as a witness.

[2] The Bensen Report is on letterhead for Clark Bensen, but is not signed as required by Fed. R. Civ. P. 26(a)(2)(B). The Bensen Report was not supplemented in any respect within the time allowed by Fed. R. Civ. P. 26(a)(2)(D)(i), which expired June 14, 2012. In fact, Mr. Bensen averred by declaration that an extension of time until May 15, 2012 to prepare a report would be all the "necessary time" he would need. Declaration of Clark Bensen (Doc. No. 86-1), at 2, ¶ 8.

[3] In recent responses to discovery requests directed to each Plaintiff, no Plaintiff had contact with Mr. Bensen or provided Mr. Bensen with any documents.

[4] Mr. Bensen's deposition has been scheduled for June 26, 2012, and questioning will be limited to review of the unsupplemented Bensen Report. Defendants object to any untimely attempted supplementation after June 14, 2012.

the website includes a disclaimer that the data is incomplete.[5] Mr. Bensens's purpose of reviewing the campaign finance statistics on the internet was expressly stated: "[t]he basic inquiry revolved around the general nature of this information and the degree to which the contribution limits as applied to individual campaigns might be too restrictive, thus limiting resources that would otherwise be available to the campaigns." *Id.* The purpose was *not* to develop an opinion that candidates could not attract sufficient resources to mount an effective campaign and the Bensen Report offers no such opinion. *Id.* at 3-11, 3-12 (Bensen Report Conclusions).

Mr. Bensen cherry-picked "data for selected campaigns" involving 112 candidates over four different election cycles during 2004 through 2010. *Id.* at 3-2, 3-3. The Bensen Report specifically discusses only two races, one in 2006 and one in 2008. *Id.* at 3-5, 3-6. Terms limits are not mentioned in the Bensen Report. The author admits that the nature of Montana's legislative districts and costs associated with communication are "factors unknown to me." *Id.* at 3-5. The Bensen Report repeatedly points to the inadequacy or inaccuracy of the data considered. *Id.* at 3-8 (data in downloaded files "not consistently delineated" and imaged reports "frequently difficult to read"), at 3-9 ("there are limitations on the

[5] The Commissioner's website expressly states the data available is incomplete: "*Disclaimer: This service offers a view of the original report only. Contact our office for amended versions of the reports." See* Campaign Report Search on Commissioner's website at http://campaignreport.mt.gov/ (emphasis in original).

data," "[t]here is no overall database available," and possibly incorrect data used "given the lack of other information"), 3-10 ("[c]onsidering the limited time available for review, campaigns of interest needed to be selected"), and Appendix at 3-14 to 3-15("exceptions encountered in the data" fall into ten categories with #10 stating the author "did not have time to check if all reports were filed and/or converted").[6]

The Bensen Report excludes analysis of all donors making campaign contributions below the $35 reporting threshold, and considers only "itemized" contributions.[7] *Id.* at 3-3 (last full paragraph), at 3-12 (second full paragraph). The Bensen Report does not identify any experience with Montana elections, and even disclaims knowledge of relevant considerations such as the nature of legislative districts and the cost of campaigning.

As noted by Defendants' experts who have actually lived in Montana and have experience with Montana elections, the conclusions drawn from such an

[6] Plaintiffs faced no time limitations. They began working on this case a year ago, as demonstrated by references to the campaign of Dave Wanzenried "running for the Democratic nomination for governor in 2012." Verified Complaint (Doc. No. 1) at 19-20, ¶ 56. Mr. Wanzenried terminated his campaign in early July 2011. *See* "Missoula's Dave Wanzenried Drops Out Of Governor's Race published in the *Missoulian* (July 8, 2011), at http://missoulian.com/news/local/article_a4959760-a8ca-11e0-ad3f-001cc4c002e0.html.

[7] Candidates are not required to itemize or report contributors unless the aggregate contribution exceeds $35. *See* Mont. Code Ann. § 13-37-229(2). On this date, Plaintiff Steve Dogiakos testified at his deposition that he recalls making only one contribution in his life, which was in the amount of $25, which is below the reporting threshold.

analysis wildly exaggerate the untapped contributor pool by failing to consider the many contributors who fall under the $35 reporting threshold. *See* Ex. 4, Found. Decl., at 4-9, 4-10, 4-15, 4-16; Ex. 5 at 5-6 to 5-12. In the end, the Bensen Report states six conclusions. Bensen Report at 3-12 to 3-13. All of these conclusions, even the conclusions that overstate the percentage of "maxed-out" contributors because of the failure to include the under-threshold contributors, state the unremarkable (and irrelevant) opinion that candidates could raise more money if contribution limits were higher.[8] Notably *absent* from the Bensen Report is any conclusion that Montana's current contribution limits prevent candidates from amassing the resources necessary to mount effective campaigns.

Montana has competitive elections. Ex. 4, Found. Decl., at 4-12 to 4-16. Elections have changed little since *Eddleman* was decided and remain competitive. Ex. 4, Found. Decl., at 4-16, 4-17, 4-37. Term limits in Montana operate as a brake on the power of incumbents and yield more competitive elections. Baker Decl. (Doc. No. 61), at 3-7; Ex. 4, Found. Decl., at 4-16, 4-37. There is simply no evidence that Montana's contribution limits no longer allow candidates to amass

[8] As the Ninth Circuit observed several years ago, "It is undisputed that the total money contributed to political campaigns in the State of Montana has *decreased considerably* since the challenged measures went into effect." *Eddleman*, 343 F.3d at 1094 (emphasis added). The issue is whether the contribution limits prevent candidates from mounting effective campaigns, and the Bensen Report *offers no opinion* on this issue.

the resources necessary for effective advocacy or significantly hinder any associational rights. *See* February Order at 23-25.

II. THERE IS NO EVIDENCE TO SUPPORT ANY CLAIM THAT PACS ARE DEPRIVED OF ANY VOICE IN MONTANA ELECTIONS BECAUSE OF MONTANA'S CONTRIBUTION LIMITS.

A recent press release from Plaintiff American Tradition Partnership and/or Plaintiff American Tradition Partnership PAC quotes Plaintiff Doug Lair boasted about ATP's success in Montana's 2012 primary elections. *See* Ex. 10, Found. Decl. ATP and/or Lair claimed that their efforts led to successful election of twelve out of fourteen candidates they supported in the June 5 primary. *Id.* Plaintiffs American Tradition Partnership PAC and Montana Right to Life Association PAC have refused to answer interrogatories, and in particular have failed to identify any contribution they could not make or accept as alleged in the Complaint. Ex. 6, Found. Decl., at 6-15; Ex. 8 at 18-4. These PACs have also refused to identify any person authorized to act on their behalf. Ex. 6, Found. Decl., at 6-13 to 6-14; Ex. 8 at 8-13.[9]

[9] Because these parties failed object or seek a protective order within thirty days after service of discovery on May 11, 2012, all objections of these parties were waived pursuant to LR 26.3(a)(4). The purpose of these discovery requests, particularly in light of the facially inadequate Initial Disclosures, was to make sure Defendants had an opportunity to depose all potential witnesses prior to close of discovery, and counsel for Plaintiffs was specifically informed of Defendants' desire to have the opportunity to depose all individuals with discoverable information.

Both of these PACs have disavowed the verifications filed to support the allegations in the Complaint. The American Tradition Partnership PAC verification (Doc. No. 1-12) was signed by Donny Ferguson. The ATP PAC now admits that Donny Ferguson has no information it may use to support its claims. Ex. 7, Found. Decl., at 7-3. Likewise, the Montana Right to Life Association PAC verification (Doc. No. 1-3) was signed by Gregg Trude. The MRLA PAC now admits that Gregg Trude has no information it may use to support its claims. Ex. 9, Found. Decl., at 9-4. Neither of these men was identified as having discoverable information in Plaintiffs' Initial Disclosures, even though they allegedly verified allegations in the Complaint. Ex. 2, Found. Decl.[10] In sum, there is no evidence that these PAC have been deprived any opportunity to have their voices heard in Montana elections, and Count II of the Complaint should be dismissed.

Finally, even if the aggregate contribution limits in Mont. Code Ann. § 13-37-216(3) may prevent PACs from giving as much money as they might like, any political committee can pay for manpower supplied to a candidate. Such payment for personal services is not a contribution that counts toward aggregate

[10] At depositions on this date, Counsel for Plaintiffs provided copies of unverified discovery responses by ATP PAC and MRLA PAC. These new responses are not even signed by counsel. These discovery responses have signature lines for Messrs. Ferguson and Trude, but Plaintiffs have already admitted these individuals have no information that may be used in support of their claims, and they were not identified in Plaintiffs' Initial Disclosures.

contribution limits. Ex. 11, Found. Decl., at 11-4 (last paragraph).[11] There is simply no evidence that PAC contribution limits are too low.

III. THERE IS NO EVIDENCE TO SUPPORT ANY CLAIM THAT POLITICAL PARTY COMMITTEES ARE DEPRIVED OF ANY VOICE BECAUSE OF MONTANA'S CONTRIBUTION LIMITS.

Under Montana law, campaign "contributions" are specifically defined. Mont. Code Ann. §13-1-101(7)(a). However, any payment by a political committee for personal services rendered to a candidate or a political committee is *excluded* from the definition pursuant to Mont. Code Ann. §13-1-101(7)(a)(iii). The statute is not ambiguous. A Deputy Commissioner recently issued a decision specifically providing that such payments by a political party committee are not contributions. *See* Ex. 11, Found. Decl. Since these payments are not contributions, they do not count against any aggregate limit. Therefore, political party committees may pay compensation of persons who provide personal services rendered to a campaign or political committee, and such payments are not contributions.

The Bensen Report, aside from failing to offer any opinion on whether contribution limits prevent candidates from mounting effective campaigns, also

[11] At his deposition on this date, attorney James E. Brown (testifying as the Rule 30(b)(6) designee of the Beaverhead County Republican Central Committee) admitted that the now-recognized ability of PACs and political party committees to pay for such personal services greatly increases the ability to speak in Montana elections and also undermines Plaintiffs' claims in this suit.

fails to consider that a political party committee providing manpower is not making a contribution. By paying the compensation for those who provide personal services to a candidate, political parties certainly can have an effective voice in campaigns and provide resources for candidates who seek to attract contributions from many untapped potential donors who have not contributed to the individual limit. Ex. 4, Found. Decl., at 4-8 through 4-17; Ex. 5 (Bender Rebuttal) at 5-6 to 5-14. By providing such manpower, political party committees may help "candidates to acquire a broad and diverse base of support to eliminate undue influence, or the appearance thereof, from large contributors and special interests," which is the purpose of contribution limits recognized by Judge Shanstrom in *Eddleman*. *See* Ex. 1, Found. Decl., at 1-9.

Montana has competitive elections, and elections have changed little since *Eddleman* was decided. In sum, there is no evidence that these political party committees have been deprived any opportunity to have their voices heard in Montana elections, and Count III of the Complaint should be dismissed.

ARGUMENT

I. INTRODUCTION.

Montana has adopted a number of campaign finance and election laws in Title 13, chapters 35 and 37, of the Montana Code Annotated. Presently, only

claims regarding Mont. Code Ann. § 13-37-216 remain at issue in this case. Montana has a clearly recognized interest in preventing corruption and the appearance of corruption in its elections, this interest is embodied in the requirement that candidate "work harder and talk to more people" to raise campaign funds.[12] Montana previously prevailed on a challenge to this statute. The statute has been held constitutional.

While Plaintiffs urge the limits are unconstitutional, the Court observed "[c]ontrolling Ninth Circuit precedent suggests the opposite is true, though, and plaintiffs are not likely to succeed on their claim . . . [t]hat could change, though, as the factual evidence continues to develop." February Order, at 15. As this Court recognized, (1) the State of Montana has an anti-corruption interest that justifies the contribution limits and (2) the statute is closely drawn. *Id.* at 16-17. The Plaintiffs have the burden of demonstrating that the contribution limits, while formerly adequate, no longer allow candidates to amass the resources necessary for effective campaign advocacy. *Id.* at 22-23, 25 (citing *Eddleman* and *Randall v. Sorrell*, 548 U.S. 230 (2006)). Plaintiffs "must show that limiting donations prevents candidates from amassing the resources necessary for effective advocacy, making a donee candidate's campaign to be not merely different but ineffective."

[12] Ex. 1, Found. Decl., at 1-8 and 1-9.

Montana Right to Life Ass'n v. Eddleman, 343 F.3d 1085, 1095 (9th Cir. 2003), *cert. denied*, 125 S. Ct. 47 (2004).

Here, Plaintiffs have only mustered evidence that campaigns would be different, but they have no evidence that campaigns are ineffective because of the campaign limits. Defendants are entitled to summary judgment and dismissal of the remaining claims in the Verified Complaint as a matter of law.

II. SUMMARY JUDGMENT STANDARDS

Summary judgment is governed by Fed. R. Civ. P. 56, which provides that summary judgment, shall be rendered forthwith if the record demonstrates that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." All *reasonable* inferences as to the existence of genuine issues of material fact must be resolved against the moving party. *Anderson v. Liberty Lobby*, 477 U.S. 242, 250 (1986). If the moving party carries its burden, the party opposing summary judgment must then "set forth specific facts showing that there is a genuine issue for trial." *Kaiser Cement v. Fischback & Moore*, 793 F.2d 1100, 1103-04 (9th Cir. 1986) *cert. denied*, 469 U.S. 949 (1986).

Nevertheless, "[d]isputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment." *T.W. Electrical Serv. v. Pacific Electrical Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987). The Ninth Circuit has held:

> A moving party without the ultimate burden of persuasion at trial--usually, but not always, a defendant--has both the initial burden of production and the ultimate burden of persuasion on a motion for summary judgment. *See* 10A Charles Alan Wright, Arthur R. Miller and Mary Kay Kane, *Federal Practice and Procedure* § 2727 (3d ed.1998). In order to carry its burden of production, the moving party must either produce evidence negating an essential element of the nonmoving party's claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial.

Nissan Fire & Marine Ins. v. Fritz Companies, 210 F.3d 1099, 1102 (9th Cir. 2000) (citation omitted). Plaintiffs always have the burden of demonstrating standing.

Summary judgment must be entered "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett,* 477 U.S. 317, 322, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 265 (1986). A defendant who moves for summary judgment bears the initial burden of proving the absence of any triable issue of fact but need not produce evidence negating elements of a claim for which the plaintiff bears the burden of proof at trial. Id. A nonmoving plaintiff can defeat a motion for summary judgment by producing evidence "such that a reasonable jury could return a verdict" in his favor. *Anderson v. Liberty Lobby*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). Pursuant to Fed. R. Civ. P. 56(e)(2), a nonmoving plaintiff cannot rest upon the pleadings but must instead produce evidence to "set

out specific facts showing a genuine issue for trial." A mere scintilla of evidence is insufficient to avoid summary judgment. *Anderson*, 477 U.S. at 251. If the plaintiff fails to satisfy Rule 56(e), the law requires entry of judgment in the defendant's favor. *Celotex Corp.*, 477 U.S. at 322.

III. MONTANA'S CONTRIBUTION LIMITS ARE CONSTITUTIONAL.

Plaintiffs seek a permanent injunction against enforcement of Mont. Code Ann. §§ 13-37-216(1), (3), and (5). Previously, Montana's contribution limits were unsuccessfully challenged in this Court by the same counsel on behalf of one of the same Plaintiffs. *Montana Right to Life Ass'n v. Eddleman*, 343 F.3d 1085 (9th Cir. 2003). In that case, after a four-day trial, this Court held the limits on contributions by individuals and PACs were constitutional, and the Ninth Circuit affirmed on appeal. The Ninth Circuit noted that the contribution limits are adjusted for inflation. *Id.* at 1089; *see also* Mont. Code Ann. § 13-37-216(4).

There has been no case from the United States Supreme Court, or from the Ninth Circuit, that has altered the *Eddleman* Court's analysis concerning limitations on contributions. As the Ninth Circuit recently recognized in *Thalheimer*, the Supreme Court in *Citizens United* drew a distinction between limitations on *expenditures* versus limitations on *contributions*. In doing so, the *Citizens United* "Court made clear that it was not revisiting the long line of cases

finding anti-corruption rationales sufficient to support [contribution] limitations." *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1124 (9th Cir. 2011).

Thus, beginning with *Buckley v. Valeo*, 424 U.S. 1 (1976) (*Buckley*), and in the "long line of cases" since, the Supreme Court has distinguished laws restricting campaign expenditures from laws restricting campaign contributions. *Thalheimer*, 645 F.3d at 1124. The Court has determined that laws limiting campaign expenditures "impose significantly more severe restrictions on protected freedoms of political expression and association than do" laws limiting campaign contributions. *Id.* at 23. As a result, the Court has evaluated laws limiting campaign expenditures under the "strict scrutiny" standard, which "requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest." *Citizens United, supra*, 130 S. Ct. at 898.

For laws limiting campaign contributions, by contrast, the Court has conducted a "relatively complaisant review under the First Amendment." *Federal Election Comm'n v. Beaumont*, 539 U.S. 146, 161 (2003). Such laws, the Court has concluded, are "merely 'marginal' speech restrictions," since contributions "lie closer to the edges than to the core of political expression." *Id.* Thus, "instead of requiring contribution regulations to be narrowly tailored to serve a compelling governmental interest," a law limiting contributions "passes muster if it satisfies

the lesser demand of being 'closely drawn' to match a 'sufficiently important interest.'" *Id.* at 162. (*quoting Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 387-88 (2000) (some quotation marks omitted); *see also* *Buckley v. Valeo*, 424 U.S. at 25.

The Ninth Circuit applied the "closely drawn" standard in *Eddleman.* As long as limits are otherwise constitutional, "it is not the prerogative of the courts to fine-tune the dollar amounts of those limits." *Eddleman*, 343 F.3d at 1095 (citation omitted). The Ninth Circuit's analysis and holding in *Eddleman* remain good law, and control the disposition of Plaintiffs' challenge to Montana's contribution limits as they apply to individuals and PACs. *Eddleman* also supports upholding contribution limits as they apply to political party committees.

For purposes of determining the constitutionality of contribution limits, there is no constitutionally determinative distinction between contributions by political parties and contributions by individuals or PACs. *See Federal Election Comm'n v. Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 455-56 (2001) ("The Party's arguments for being treated differently from other political actors subject to limitation on political spending . . . do not pan out. . . ."). In a subsequent plurality opinion, the Supreme Court suggested there may be circumstances under which political parties could be treated differently with respect to contribution limits. *Randall v. Sorrell*, 548 U.S. 230 (2006); *see Thalheimer*, *supra*, 645 F.3d at 1127.

This Court has recognized that the "danger signs" present in *Randall* have not been demonstrated here. The Vermont political party contribution limit at issue in *Randall* was the same for political parties as it was for individuals and PACs. There is no evidence the Montana contribution limits significantly restrict the amount of funding available to run competitive campaigns. The evidence is otherwise. Unlike Vermont, the aggregate limits for contributions by political parties in Montana are much higher than for individuals and PACs. Ex. A, Baker Decl. (Doc. No. 61). Moreover, under Montana law, a political party committee may pay the compensation of individuals who provide personal services to candidates and these payments do not count as contributions under Mont. Code Ann. § 13-37-216(3). *See also* Ex. 11, Found. Decl., at 11-2 to 11-4 (personal services payments may include expense reimbursements, payroll taxes, and health insurance premiums). Payments for personal services by individuals are not excluded from the statutory definition of "contribution" and would be considered an in-kind contribution. Mont. Admin. R. 44.10.321(2). This opportunity by political parties to support candidates in Montana, in a manner much different than allowed for individuals, was not allowed under the Vermont law considered in *Randall.* Montana limits are also adjusted for inflation, unlike Vermont, and were most recently adjusted on October 24, 2011. *See* Declaration of Mary Baker (Doc. No. 61) at 6-7, ¶ 11, and Exhibit A thereto; Mont. Code Ann. § 13-37-216(4).

This Court has recognized that *Randall* did not change the standard applied in *Eddleman*. February Order, at 22. Plaintiffs have not demonstrated that the contribution limits preclude candidates from running competitive campaigns or create serious associational or expressive problems as described in *Randall*. In fact, *Eddleman* established that it costs significantly less to campaign for political office in Montana than elsewhere, and Montana's contribution limits satisfy closely drawn scrutiny. The competitiveness of Montana elections is substantially unchanged since *Eddleman*. *See* Ex. 4, Found. Decl. (Bender Report), at 4-16 to 4-17; *see also* Declarations of Mike Cooney (Doc. No. 40) at 3-4, and Bob Brown (Doc. No. 34) at 3-4 (discussing the fact that political campaigns in Montana are inexpensive and cost less than in other states).

The *Randall* case recognized the "fundamental importance" of *stare decisis*, 548 U.S. at 243-44. Under *Randall*, there is a two-step process for evaluating the validity of contribution limits: (1) the court must determine whether there are "danger signs" in a particular case that the limits are too low; (2) the record must be reviewed for appropriate tailoring. Applied to this case, there are no danger signs, and appropriate tailoring was established in *Eddleman*. Plaintiffs have not established a genuine issue of material fact regarding the constitutionality of Mont. Code Ann. §§ 13-37-216(1), (3), or (5). Montana's contribution limits remain valid, just as held in *Eddleman*. This Court has recognized that the *Eddleman*

opinion is not inconsistent with the *Randall* plurality opinion, and *Eddleman* remains controlling precedent. Plaintiffs cannot overcome *Eddleman.*

The aggregate limits on contributions by PACs and political party committees serve to prevent circumvention of Montana's individual contribution limits. There are no restrictions on individual contributions to any PAC or political party committee. For example, a political party committee can contribute up to $22,600 for each election, including separate primary and general elections, for Governor. Because there are no limits on such contributions by individuals, the limits on contributions to candidates by any PAC or political party committee (including the aggregate limit from all political party committees) serve to prevent circumvention of individual contribution limits, and therefore prevent corruption or the appearance of corruption. This anti-circumvention interest is well recognized. *Federal Election Comm'n v. Beaumont*, 539 U.S. 146, 160 (2003); *Federal Election Comm'n v. Colorado Republican Fed. Campaign Comm'n*, 533 U.S. 431, 465 (2001). *See also* Ex. 4, Found. Decl., at 4-55 through 4-62.

Plaintiffs' claims in Counts I, II, and III lack merit. Montana has a recognized interest in limiting contributions, and the limits are appropriately tailored. Montana's contribution limits yield competitive and robust campaigns. Candidates can obviously amass resources necessary for effective campaigns, and significant untapped donors are available to candidates who can attract support and

are willing to work for support. PACs clearly have a voice in Montana elections. The voices of political parties have not been reduced to a whisper, but remain loud and vibrant. Defendants are entitled to summary judgment.

CONCLUSION

For the foregoing reasons, this Court should enter an order granting summary judgment in favor of Defendants on the remaining claims in this matter. There is no need for a trial. Plaintiffs cannot establish a genuine dispute of material fact, and the remaining claims at issue in this case should be dismissed.

Respectfully submitted this 20th day of June, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that under penalty of perjury that on the 20th day of June, 2012, a true and correct copy of the foregoing was personally served on the following:

Mr. John E. Bloomquist
Mr. James E. Brown
Doney, Crowley, Payne,
Bloomquist, P.C.
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Helena, MT 59601-1185

I also hereby certify that on June 20, 2012, I electronically filed the foregoing with the clerk of the court for the United States District Court for the District of Montana, by using the cm/ecf system.

Participants in the case who are registered cm/ecf users will be served by the cm/ecf system.

Dated: June 20, 2012

/s/ Michael G. Black
MICHAEL G. BLACK
Assistant Attorney General
Counsel for Defendants

CERTIFICATE OF COMPLIANCE

Pursuant to Rule Local Rule 7.1(d)(2), I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 4,768 words, excluding certificate of service and certificate of compliance.

/s/ Michael G. Black
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