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IN THE SUPREME COURT OF THE STATE OF MONTANA

NO. DA 11-0081

WESTERN TRADITION PARTNERSHIP, INC., a corporation
registered in the State of Montana, and CHAMPION PAINTING,
INC., a Montana corporation, MONTANA SHOOTING SPORTS
ASSOCIATION, INC., a Montana corporation,

Plaintiffs and Appellees,

v.

ATTORNEY GENERAL of the State of Montana, and
COMMISSIONER OF POLITICAL PRACTICES,

Defendants and Appellants.

MOTION TO APPEAR AS *AMICI CURIAE* BY DOMINI SOCIAL
INVESTMENTS LLC, TRILLIUM ASSET MANAGEMENT CORPORATION,
NEWGROUND SOCIAL INVESTMENT, INTERFAITH CENTER ON
CORPORATE RESPONSIBILITY, HARRINGTON INVESTMENTS, INC.,
THE SUSTAINABILITY GROUP OF LORING, WOLCOTT & COOLIDGE,
CALVERT ASSET MANAGEMENT COMPANY, INC., THE CHRISTOPHER
REYNOLDS FOUNDATION, INC., AND WALDEN ASSET MANAGEMENT,
A DIVISION OF BOSTON TRUST & INVESTMENT MANAGEMENT
COMPANY

For the following reasons, Domini Social Investments LLC, Trillium Asset Management Corporation, Newground Social Investment, Interfaith Center on Corporate Responsibility, Harrington Investments, Inc., The Sustainability Group of Loring, Wolcott & Coolidge, Calvert Asset Management Co., The Christopher Reynolds Foundation, Inc., and Walden Asset Management, a Division of Boston Trust & Investment Management Company (collectively, “*amici*”), respectfully move the Court to grant leave to file the enclosed brief of *Amici Curiae*.

I. STATEMENTS OF INTEREST

Domini Social Investments LLC is an investment adviser that manages a global family of broadly diversified mutual funds subject to a comprehensive set of social, environmental and governance standards. Domini has neither the ability nor the mandate from its investors to represent their political interests. Although Domini engages companies in which it invests on environmental, economic and societal issues that impact the long-term value of its investments, it is beyond its capacity and its shareholders’ expectation to engage companies on electoral choices.

Trillium Asset Management Corporation is an investment adviser concerned that corporate political activity inherently creates political and legal risks for investments. Trillium firmly believes that the companies in which it invests cannot and should not attempt to engage in electoral politics on behalf of its shareholders.

Trillium's investors would reject the idea that a publicly traded corporation can fairly represent their interests in election contests the results of which may have a profound impact on many aspects of those shareholders and other stakeholders' personal and private lives.

Newground Social Investment is an investment advisor that promotes transparency and accountability in corporate political spending. After *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010), Newground is deeply concerned that increased corporate political spending, with declining transparency, puts long-term shareholder value at risk.

Representing over 300 institutions, including religious orders, pension funds, investment advisers, foundations and health-care systems, the Interfaith Center on Corporate Responsibility is a coalition of active investors with an enduring record of corporate engagement that has demonstrated influence on policies promoting justice and sustainability in the world. The Interfaith Center knows that its coalition partners lack the legal and technical capacity to use existing procedures of corporate governance to influence which candidates a corporation decides to support or oppose.

Harrington Investments, Inc. is an independent investment advisor that specializes in socially responsible investing. Harrington's clients are specifically concerned with corporate transparency but, more importantly, they are concerned

that no governance procedures exist that can prevent managers of publicly traded companies using corporate resources in support of their own political preferences. Harrington's clients believe that existing corporate law largely insulates corporate managers from liability for their political spending decisions.

Loring, Wolcott & Coolidge is a multifamily wealth management firm and its Sustainability Group is made up of four private Trustees who manage approximately \$800 million in securities subject to a comprehensive set of social, environmental and governance standards. It has no interest in expending funds to monitor and objecting to corporate political choices that it cannot influence.

Calvert Asset Management Company, Inc. is an investment adviser in the field of sustainable and responsible investing. Calvert believes that corporate participation in the political process via political spending presents a challenge to management's accountability to shareholders and, at times, threatens shareholder interests that companies are otherwise responsible to protect.

The Christopher Reynolds Foundation, Inc. is a private grant-making foundation that focuses on issues of social, environmental, and economic justice, and human rights. Its endowment is supervised by a four-member board of trustees that has a duty to obtain a reasonable rate of return on the Foundation's portfolio of investments, in order to support its grant-making activities. In so doing, the Foundation seeks to do the least societal and environmental harm while

obtaining those returns. To the extent possible, it attempts to consider how societal and environmental issues will impact its investments, and also how its investments will impact societal and environmental problems. As a charitable foundation, the Foundation is prohibited from intervening in elections and consequently may not use the corporate proxy system to vote on a corporation's political activities.

Walden Asset Management is a division of Boston Trust & Investment Management Company whose clients include both individual and institutional investors. Walden integrates environmental, social, and governance ("ESG") analysis into investment decision-making and corporate engagement. Walden offers separately managed accounts tailored to meet client-specific investment guidelines and works to strengthen corporate ESG performance, transparency and accountability. Walden's experience in actively engaging companies convinces it that mechanisms of corporate democracy are incapable of protecting the political interests of its shareholders.

II. THE ISSUES ON WHICH *AMICI* MOVE TO SUBMIT THEIR BRIEF

The Montana Corrupt Practices Act of 1912, now codified at Section 13-35-227, Montana Code Annotated, prohibits corporate political speech. Does Section 13-35-227 violate free speech rights under the United States and Montana Constitutions when applied to large publicly traded corporations?

III. REASONS WHY THIS BRIEF IS DESIRABLE

Amici represent a diverse group of investors both individual and institutional. They invest in publicly traded companies both mid-size and large. All are active investors and each has its own investment goals and objectives. They do not share a common partisan political agenda. They do not expect the companies in which they invest to make political expenditures on their or their investor's behalf and would object to a company in which they invest assuming that responsibility. *Amici* individually and collectively are aware of the limitations of the mechanisms of corporate governance to take into consideration and reflect the collective political preferences of investors. *Amici's* participation and perspective in this matter are rooted in their daily experience in investing and engaging publicly traded companies on numerous matters and a profound understanding that publicly traded corporations are incapable of representing and acting on behalf of the political interests of shareholders.

Amici have a keen interest in how the law develops to protect institutional investors and their clients from the risks to shareholder value and the broader economy posed by the use of corporate resources of publicly traded corporations to promote candidates for public office. *Amici* appreciate how the Montana Corrupt Practices Act protects the First Amendment interest of shareholders. Absent those

protections, they cannot envision how their investors can avoid underwriting political speech, to which they object.

The purpose of *amici*'s brief is to discuss corporate political spending by large and mid-cap firms from the perspective of institutional and individual investors. As *amici* explain, for shareholders of widely held, publicly traded corporations, the procedures of corporate democracy are unavailable to protect shareholders' interests when management decides to engage in political spending. Shareholders are presented with a Hobson's choice of surrendering their political autonomy, supporting views that they find objectionable, or not investing in publicly traded companies.

IV. IDENTITY OF THE PARTY WHOSE POSITION *AMICI* SUPPORT

Amici support the State of Montana's position.

V. THE PARTIES' POSITION REGARDING PARTICIPATION AS *AMICI*

Counsel for both parties has been contacted and neither has objected to *Amici*'s participation in the matter.

VI. DATE ON WHICH THE *AMICI* BRIEF CAN BE FILED

The brief is filed contemporaneously herewith and on the date set in the Court's Scheduling Order for filing *amicus* briefs on behalf of the State: April 29, 2011.

Respectfully submitted this 28th day of April, 2011.

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CERTIFICATE OF SERVICE

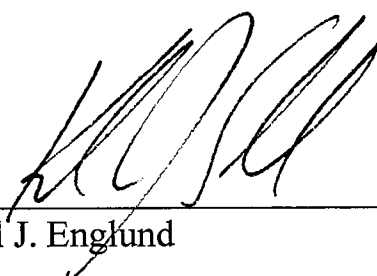
I hereby certify that I caused a true and accurate copy of the foregoing Motion to Appear as *Amici Curiae* by Domini Social Investments LLC, Trillium Asset Management Corporation, Newground Social Investment, Interfaith Center on Corporate Responsibility, Harrington Investments, Inc., The Sustainability Group of Loring, Wolcott & Coolidge, Calvert Asset Management Company, Inc., The Christopher Reynolds Foundation, Inc., and Walden Asset Management, a Division of Boston Trust & Investment Management Company to be mailed to:

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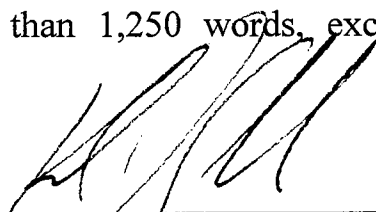
DATED: April 28, 2011



Karl J. Englund

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11 and 16 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count calculated by Microsoft Word for Windows is not more than 1,250 words, excluding certificate of service and certificate of compliance.



Karl J. England