

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Smith v. StopSetEmFreeSandefur.com Committee No. COPP 2016-CFP-039	DISMISSAL OF COMPLAINT
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On October 28, 2016, Al Smith of Helena, Montana filed a complaint against StopSetEmFreeSandefur.com Committee (hereafter, “SSEFS”), a 2016 Montana independent political committee, for failing to timely and properly report and disclose certain campaign expense and contribution information.

Discussion

The Complaint alleges that SSEFS failed to timely report and disclose contributions involved in a 2016 candidate election.

Finding of Fact No. 1: On September 19, 2016, SSEFS filed by fax a Statement of Organization (C-2) as a Montana independent political committee. The statement of purpose lists “Oppose Dirk Sandefur – Supreme Court” and “Support Kristen Juras – Supreme Court.” (Commissioner’s records.)

Finding of Fact No. 2: Kristen Juras and Dirk Sandefur are 2016 candidates on the ballot for election to the Montana Supreme Court, Justice No. 3 position. (Montana Secretary of State (SOS) records.)

Finding of Fact No. 3: SSEFS reported cash and in-kind contributions of \$268,000 from the Republican State Leadership Committee – Judicial Fairness Initiative Montana PAC (RSLCJFIMTPAC). (Commissioner’s records.)

Finding of Fact No. 4: As part of COPP 2016-CFP-040, the investigation concluded the cash and in-kind contribution to SSEFS were from the Republican State Leadership Committee – Judicial Fairness Initiative (RSLCJFI); RSLCJFI had not registered as a Montana independent political committee at the time of the contributions. (Commissioner’s records.)

Finding of Fact No. 5: The RSLCJVI was directed to register as a Montana independent political committee in COPP 2016-CFP-040. (Commissioner’s records.)

Finding of Fact No. 6: In response to COPP 2016-CFP-040, on November 3, 2016, the RSLCJVI updated its Montana political committee entity, The RSLCJFIMTPAC by filing an amended C-2 and updated campaign finance reports. (Commissioner’s records.)

Finding of Fact No. 7: As directed in COPP 2016-CFP-040, on November 3, 2016, the SSEFS updated its campaign finance reports to indicate the source of the cash and in-kind contributions of \$268,000 was from the recently amended RSLCJFIMTPAC. (Commissioner’s records.)

Finding of Fact No. 8: SSEFS’s campaign finance reports show it spent \$268,000 to fund direct mail and TV ads opposing the 2016 election of Candidate Sandefur to the Montana Supreme Court. (Commissioner’s records.)

Under Montana law a political committee involved in a statewide candidate campaign must file campaign finance reports with the COPP “on the first day of each month from March through November during a year in which an election is held.” §13-37-226(1)(b), MCA. The reports must disclose contributions and expenses “to 5 days before the date of filing of [such] a report.” §13-37-228(2), MCA. StopSetEmFreeSandefur.com Committee (SSEFS) fax filed a fillable pdf

C-2 Form with the COPP on September 19, 2016, as an independent political committee, with a purpose of opposing Candidate Sandefur, and supporting Candidate Juras for Montana Supreme Court Justice. Political committees who support or oppose statewide candidates have been required to report electronically since 2009 and the enactment of Senate Bill 227, Mont. Code Ann. § 13-37-226(1).

In 2015, the legislature passed the SB 289 the Disclose Act and the COPP engaged in rulemaking which resulted in candidates and committees who make reportable election expenditures in state legislative, public service commission and district court judge races are also required to report and disclose electronically through the use of CERS, Mont. Code Ann. § 13-37-226(1) and (6), and Mont. Admin R. 44.11.302(1)(c) and (3).

Mr. Eaton, SSEFS's Treasurer, owns and operates a political consulting firm that provides paid guidance and consulting services to candidates and committees in Montana. Mr. Eaton, as SSEFS's Treasurer, should be fully aware of SSEFS's mandatory electronic filing obligation for reporting and disclosure of the independent political committee's contributions and expenditures. SSEFS's response to the campaign finance Complaint that it was previously permissible to fax file a fillable pdf is disingenuous at best, and led to the issues caused in reporting and disclosure errors just prior to the 2016 general election. The fillable pdf forms available on the COPP's website are for use by candidates and committees who are not required to report electronically through CERS.

On October 5, 2016, the staff of the COPP was hand inputting the information provided by SSEFS into the CERS system from this faxed fillable pdf form:

TYPE OR PRINT CLEARLY IN INK

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SCHEDULE A. Receipts – This Reporting Period (continued)		In-Kind		Cash or Check Amount	Total to Date Amount
		Description	Value		
8. Corporate Contributions (PAC's & Ballot Issues Only) Full name and mailing address REQUIRED for <i>Independent Expenditures Only</i>		Date Received Required			
Republican State Leadership CMTE Judicial Fairness Init+ Name 1201 F Street NW Suite 675 Address Washington DC 20004 City, State, Zip Code		9/21/2016		\$50,000.00	\$50,000.00
Republican State Leadership CMTE Judicial Fairness Init+ Name 1201 F Street NW Suite 675 Address Washington DC 20004 City, State, Zip Code		9/26	Polling & Research	\$43,000	\$93,000.00
Name					
Address					

Also on October 5, the COPP reached out to Mr. Eaton and reminded him that SSEFS was required to electronically report and disclose using CERS, and later that day Mr. Eaton corrected his reporting as requested by the COPP. When the COPP staff was inputting the information for SSEFS, they relied on the information provided above, specifically that the contributions had been received from "Republican State Leadership CMTE Judicial Fairness Init+¹" out of Washington, DC.

The committee who had the information as to who had made contributions to SSEFS on October 5, 2016 was SSEFS. Information provided

¹ The bold plus sign is critical. For candidates and committees who are allowed to use the fillable pdfs, the reporting and disclosure to the COPP is not complete unless you send the addendums with the additional information. Alternatively, you can email the pdf to CPPHelp@mt.gov. Finally, candidates and committees can choose to use the CERS system regardless of which office they are running for, and the information will be instantly confirmable as being received by the COPP before a reporting deadline.

by the Republican State Leadership Committee – Judicial Fairness Initiative (RSLC-JFI)(Federal PAC) to SSEFS included a \$50,000.00 contribution on September 21, 2016 from the Federal PAC and an in-kind research and polling contribution of \$43,000 on September 26, 2016 from the same Federal PAC.² On October 28, 2016, the Complaint was filed with the COPP, and the COPP began investigating the source of the contribution, and made a sufficiency determination, COPP-2016-CFP-040³.

The source of SSEFS contributions (Republican State Leadership Committee – Judicial Fairness Initiative) was not registered as a Montana independent political committee, but rather indicated it had a federal IRS filing. Commissioner Motl found the RSLCJFI (Federal Pac) did not report and disclose contributions as required by Montana law, and directed the RSLCJFI to register as a Montana independent political committee. Additionally, SSEFS was directed to update its campaign finance reports upon the RSLCJFI filing as a Montana independent political committee. The RSLCJFI did formally file per the COPP directive as a Montana independent political committee by amending the statement of organization of its entity, the Republican State Leadership Committee – Judicial Fairness Initiative Montana PAC and amending the required campaign finance reports on November 3, 2016 (see *Smith v. Republican State Leadership Committee – Judicial Fairness Initiative Montana PAC* COPP 2016-CFP-040). SSEFS also updated its campaign finance reports

² meaning the information reported by SSEFS, and input by the COPP, was correct

³ <http://www.politicalpractices.mt.gov/content/2recentdecisions/SmithvRepublicanJudicialDecision>

to reflect the accurate donor information on November 3, 2016, in compliance with Commissioner Motl's directive.

The COPP wholly disputes the assertion that COPP personnel were responsible for any inaccurate information reported on the electronic reports. The Commissioner respectfully reminds SSEFS that it was ultimately responsible for the accurate and timely disclosure of all information placed on its statement of organization and campaign finance reports.

Further, had the SSEFS simply addressed the fact all its reports were updated and corrected following the November 3, 2016 filing of an amended statement of organization and campaign finance reports by the RSLCJFIMTPAC, perhaps the issue may have been concluded as early as November 4, 2016. Instead, the SSEFS filed a Request for Disqualification of then Commissioner Motl, followed by its November 17, 2016 response to the Complaint. The response contained inaccurate information that further complicated and extended what should have been a Matter easily resolved.

Still further, SSEFS filed a district court action in Yellowstone County that was without basis in law or fact, Cause No. DV 16-1700. It is a waste of taxpayers resources to attempt to intervene in the Commissioner's discretionary determinations without waiting for the determination to be made.

As Commissioner, I find that SSEFS correctly reported and disclosed the contributions from RSCL-JFI's Federal and Montana PACs based on the information available to SSEFS at the time it reported the cash and in-kind contributions.

DETERMINATION

The StopSetEmFreeSandefur.com committee has not committed a campaign practices violation. The Complaint is hereby dismissed.

DATED this 5th day of July, 2017.



Jeffrey A. Mangan
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of the State of Montana
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