

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint Against)	SUMMARY OF FACTS
the Schweitzer for Governor Campaign)	AND
Filed by the Lewis and Clark County)	STATEMENT OF FINDING
Republican Central Committee)	

Complainant, the Lewis and Clark County Republican Central Committee, by and through its chairman and vice chair, filed a complaint on October 19, 2004 alleging that the Schweitzer for Governor Campaign (hereinafter "Schweitzer Campaign") engaged in deceptive election practices under Section 13-35-207, MCA, and deceived electors as defined in Section 13-35-208, MCA.

Specifically, Complainant alleges that the Schweitzer Campaign's political ads were deceptive in portraying Governor-elect Brian Schweitzer's running mate, John Bohlinger, as a Republican because Lieutenant Governor-elect Bohlinger became a Democrat and was clearly listed as a Democrat on the November 2004 ballot, notwithstanding Mr. Bohlinger's previous record as a Republican legislator from Billings.

SUMMARY OF FACTS

1. Brian Schweitzer and John Bohlinger filed a Declaration for Nomination for the offices of Governor and Lt. Governor with the Montana Secretary of State on February 18, 2004. The Declaration states that Mr. Schweitzer and Mr. Bohlinger "are candidates for nomination by the Democrat Party for the offices of Governor and Lieutenant Governor in the State of Montana at the primary nominating election to be held in said state on June 8, 2004" The Declaration also states that Mr. Schweitzer and Mr. Bohlinger "possess the qualifications prescribed by the Constitution and laws of the

State of Montana for the offices herein named" The Declaration was duly notarized and contained the required acknowledgment by both candidates.

2. Montana law requires that candidates for Governor and Lieutenant Governor be elected as a team and file a joint declaration for nomination. Article VI, Section 2, 1972 Montana Constitution and Section 13-10-201(1), MCA.

3. Mr. Schweitzer was the Democratic Party's nominee for the office of United States Senator in 2000, losing to incumbent and current Republican U.S. Senator Conrad Burns. Mr. Schweitzer began campaigning for the Democratic Party's nomination for governor on January 8, 2003. Mr. Schweitzer publicly solicited running mates by asking individuals, both Democrats and Republicans, to apply.

4. Mr. Bohlinger is a sitting Republican State Senator from Yellowstone County, and he had previously served many years as a Republican member of the Montana House of Representatives from the Billings area. Mr. Bohlinger was selected to be Mr. Schweitzer's running mate in early 2004.

5. Mr. Schweitzer and Mr. Bohlinger had opposition in the June 8, 2004 Democratic Party primary election. The Schweitzer/Bohlinger ticket was opposed in the Democratic Party primary by two long-time Democrats, former Democratic Speaker of the House John Vincent and Democratic County Commissioner Mary Sexton. Mr. Schweitzer and Mr. Bohlinger won the Democratic Party's nomination for Governor and Lieutenant Governor, receiving 73% of the votes cast for Governor and Lieutenant Governor in the Democratic primary.

6. In August of 2004, Montana's Secretary of State and Mr. Schweitzer's general election opponent in the 2004 gubernatorial election, Bob Brown, issued a Certificate of

Nomination to Mr. Schweitzer and Mr. Bohlinger. The Certificate of Nomination certified that the Schweitzer/Bohlinger ticket had been nominated to appear on the 2004 general election ballot as the Democratic Party candidates for Governor and Lieutenant Governor by virtue of "having received the highest number of votes cast for that party affiliation"

7. Throughout the 2004 gubernatorial campaign, Schweitzer Campaign commercials stressed that Mr. Schweitzer, as a Democrat, and Mr. Bohlinger, as a Republican, would bring a new spirit of bi-partisanship and cooperation to Montana state government and that such bi-partisan cooperation would result in better government for Montana.

8. Mr. Schweitzer and Mr. Bohlinger were elected Governor and Lieutenant Governor in the November 2004 general election, receiving 50% of the votes cast for the State's highest offices.

STATEMENT OF FINDINGS

Montana has an open primary system. Voters do not have to register as Democrats or Republicans and electors can vote in either party's primary but not in both. See Section 13-10-301, MCA. Consistent with this open primary process, a candidate for partisan elective office in a Montana primary election does not have to provide proof of his or her party affiliation. A candidate for a partisan office, including the office of Governor or Lieutenant Governor, simply has to declare that he or she is a candidate for a political party's nomination. Montana statutes and the Declaration for Nomination filed with the Secretary of State by a partisan candidate do not require the candidate to declare that he or she is a Democrat or Republican and there is no

requirement that the candidate provide any proof of party affiliation. See, e.g., Section 13-10-201, MCA.¹

Mr. Schweitzer and Mr. Bohlinger filed Declarations for Nomination stating that they were candidates for "nomination by the Democrat Party for the offices of Governor and Lieutenant Governor in the State of Montana for the Democratic Party" in the June 2004 primary election. Neither Mr. Schweitzer nor Mr. Bohlinger declared that Mr. Bohlinger was a Democrat, nor is there any evidence that either candidate ever denied or misrepresented Mr. Bohlinger's Republican affiliations when filing for office or conducting their gubernatorial campaign. In fact, the complaint alleges the opposite—that the Schweitzer Campaign's truthful and public promotion of Mr. Bohlinger's Republican credentials somehow violates Sections 13-35-207 and 208, MCA.

Complainant alleges that Schweitzer Campaign commercials touting Mr. Bohlinger's Republican affiliation were deceptive and violated Section 13-35-208, MCA. Complainant's allegations are without merit. Section 13-35-208, MCA, makes it a misdemeanor for a person to deceive "an elector voting under 13-13-118 or 13-13-119." These statutes apply to deceptive acts committed by an election judge who assists a disabled person in marking a ballot. Sections 13-35-118 and 119, MCA, do not apply to campaign commercials run by a candidate, political parties, or any other political committee.

Section 13-35-207, MCA, describes the following acts, among others not relevant to this decision, as deceptive election practices:

¹ Montana law does prohibit a candidate from filing a Declaration for Nomination for more than one party's nomination. Section 13-10-201(4), MCA. Similarly, a candidate for one party's nomination who is also nominated via write-in votes in another party's primary must decide within ten days after the primary election which party the candidate will be listed under on the general election ballot. Section 13-10-303, MCA.

1. Falsely making a declaration or certificate of nomination:
2. Filing or receiving a declaration or certificate of nomination knowing that all or part of the declaration or certificate is false; or
3. Making a false oath or affidavit.

Based on Montana law and the facts of this matter, there is no evidence that Mr. Schweitzer or Mr. Bohlinger committed a deceptive practice as defined in Section 13-35-207, MCA. Mr. Schweitzer and Mr. Bohlinger did not falsely make, file, or receive a declaration or certificate of nomination. The Montana Constitution and applicable statutes require candidates for the offices of Governor and Lieutenant Governor to run as a team. Mr. Schweitzer and Mr. Bohlinger only declared that they, as a team, were candidates for the Democratic Party's nomination to the offices of Governor and Lieutenant Governor and that they satisfied the legal qualifications to serve in those public offices. The Certificate of Nomination issued by Secretary of State Bob Brown simply confirmed that the Schweitzer/Bohlinger ticket had received the highest number of votes cast in the Democratic Party's primary election. Mr. Bohlinger won nomination and election to the office of Lieutenant Governor as part of the Democratic Party ticket for Governor and Lieutenant Governor. Montana law does not prohibit Mr. Bohlinger, as a Republican, from seeking or receiving the Democratic Party's nomination to the office of Lieutenant Governor.²

It is also necessary to briefly address the general issue of deception raised in the complaint. Those who voted in the 2004 Democratic Primary for Governor and Lieutenant Governor had a clear choice between a ticket featuring two long-time

² The only prohibition applicable to Mr. Bohlinger's candidacy for the Democratic Party's Lieutenant Governor nomination is that Mr. Bohlinger could not have filed a Declaration for Nomination to be the 2004 Republican Party's nominee to the same office. See Section 13-10-201(4), MCA.

Democrats and the bi-partisan Schweitzer/Bohlinger ticket. Mr. Bohlinger's presence on the Schweitzer/Bohlinger ticket was openly and publicly discussed as a campaign issue from the moment Mr. Bohlinger was selected as Mr. Schweitzer's running mate. A clear majority of electors voting in the contested Democratic Party primary decided that it was permissible for Mr. Bohlinger to be part of the Democratic Party's gubernatorial team despite Mr. Bohlinger's historic and current Republican affiliations. The Schweitzer Campaign made the presence of a Republican Lieutenant Governor candidate on the Democratic Party ticket a major campaign issue during the general election. The Schweitzer/Bohlinger and Brown/Lewis campaigns for Governor and Lieutenant Governor spent more than \$2.5 million. This amount does not include expenditures made by the Democratic and Republican parties, by other independent political committees, and by those gubernatorial campaigns that lost in the Primary election. It is not possible to conclude that after such a costly and bitter gubernatorial campaign the Montana electorate was somehow deceived or misled by the presence of a Republican on the Democratic Party's gubernatorial ticket.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is no evidence to conclude that the Schweitzer Campaign violated Sections 13-35-207 and 208, MCA.

DATED this 29th day of November, 2004.

Linda L. Vaughey
Commissioner of Political Practices

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of November, 2004, the foregoing Decision of the Commissioner was served on the parties hereto, addressed to the parties as follows:

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