

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Campbell v. Skees  No. COPP 2014-CFP-024	DISMISSAL OF COMPLAINT
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On May 23, 2014, Kalispell, Montana resident John M. Campbell filed a Complaint with the Commissioner of Political Practices (COPP) against Derek Skees. Both Mr. Campbell and Mr. Skees were 2014 candidates for the Public Service Commission District 5 seat. The Complaint alleges that Mr. Skees violated Montana campaign practice laws by making false and misleading statements on campaign fliers. The Complaint is hereby dismissed for the reasons set out below.

**ISSUE POSED BY THE COMPLAINT**

The complaint alleges that Candidate Skees prepared campaign material that set out “false and misleading” information concerning Candidate Skees’ campaign.

**DISCUSSION**

Candidate Campbell alleges that Candidate Skees distributed, through his campaign flyer, information that was potentially misleading to Montana voters.

Although no specific statute or regulation was named in Candidate Campbell's complaint, the Commissioner believes that Candidate Campbell alleged that Candidate Skees acted in violation of Montana's voting record statute §13-35-225(3)(a) and/or the political libel statute §13-37-131 MCA.

Candidate Campbell's complaint presents the "truthful campaigning" issue that has been, and is, of consistent concern to candidates for office in Montana. Truthful campaigning is a nuanced issue because it presents two competing concerns. On one hand, Montana's interest in fair and effective governance is supported by a requirement of truthful election speech. On the other hand a candidate's constitutionally protected speech rights require that any limitation based on truthful election speech be narrowly drafted so as not to unnecessarily interfere with a candidate's campaign speech.

Despite several tries the Montana legislature has not passed a narrowly written truthful election speech law. Accordingly, the Commissioner of Political Practices is permanently enjoined from enforcing §13-35-225(3)(a) MCA as it was unconstitutionally vague as written, *see Lair v. Murray*, 871 F. Supp. 2d 1058, 2012 U.S. Dist. LEXIS 68688. The Commissioner of Political Practices is also permanently enjoined from enforcing §13-37-131, MCA, as it, too, was unconstitutionally vague as written, *id.*<sup>1</sup>

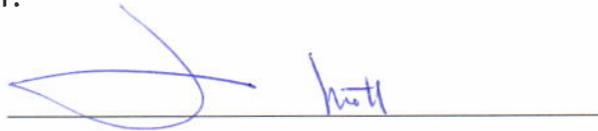
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<sup>1</sup> The 2013 Montana legislature revised the language of § 13-35-225(3)(a) MCA, but the revision did not accomplish a "narrowly" drafted law. In February of 2014 the State of Montana (through the Commissioner and the Attorney General) stipulated to non-enforcement of the 2013 revised version of § 13-35-225(3)(a)MCA, agreeing that revised statute was still unconstitutionally vague.

## DECISION

The Commissioner hereby determines that the Complaint alleges violations of statute that fall under §13-35-225 and §13-37-131, MCA. In turn, the Commissioner is enjoined from enforcing these statutes for the reasons set out above. The Complaint (attached to this Decision as an Exhibit) is hereby accepted and dismissed for the reasons set out above.

DATED this 4th day of June, 2014.



Jonathan R. Motl  
Commissioner of Political Practices  
Of the State of Montana  
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Helena, MT 59620  
Phone: (406)-444-4622

THE STATE OF MONTANA

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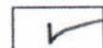
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COMMISSIONER OF  
POLITICAL PRACTICES  
HAND DELIVERED

CERTIFIED MAIL



SIGNED/NOTARIZED



Ethics

Complaint Form (10/09)

Type or print in ink all information on this form except for verification signature

Person bringing complaint (Complainant):

Complete Name John M. Campbell  
Complete Mailing Address PO Box 233  
Kalispell, MT. 59903-0233  
Phone Numbers: Work 406 150-2921 Home 406 290-2921

Person or organization against whom complaint is brought (Respondent):

Complete Name Derek Skees  
Complete Mailing Address PO Box 9134  
Kalispell, MT. 59904  
Phone Numbers: Work \_\_\_\_\_ Home 406 212-5493

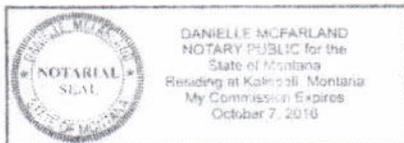
*Please complete the second page of this form  
and describe in detail the facts of the alledged violation.*

Verification by oath or affirmation

State of Montana, County of Flathead

I, John M. Campbell, being duly sworn, state that the information in this  
Complaint is complete, true, and correct, to the best of my knowledge and belief.

(SEAL)



John M. Campbell  
Signature of Complainant

Subscribed and sworn to before me this 21 day of  
May, 2014.

Danielle McFarland  
Notary Public

My Commission Expires: 10/7/16

**Statement of facts:**

Describe in detail the alleged violation(s), including pertinent dates, and cite the statute or statutes you believe have been violated. Please attach copies of documentary evidence to support the facts alleged in your statement.

If the space provided below is insufficient, you may attach additional pages as necessary.

I believe Derek Skees is making false and misleading statements with the "fliers" he is passing out. I will attach a copy of one of them also. The two (2) claims are below.

On the "flier;" Mr. Skees claims:

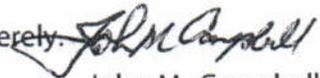
1) Derek Skees has a reputation for battling against - - - , - - - , costly state energy policy, - - - .

2) Derek has the endorsemsnts of - - - , as well as the current PSC chair and District 5 Commissioner, Bill Gallagher.

1) In checking Mr. Skees voting record; There is only one (1) bill related to "energy." That is SB 329: Oil and Natural Gas Revenue for Schools. This bill was to increase the school funding from the "Oil and Natural Gas Revenue." It has nothing to do with "costly state energy policy." The bill "Passed;" but not with the help of Mr. Skees. He voted against increasing the school funding.

2) According to the information from Mr. Brad Johnson: Commissioner Bill Gallagher does "not endorse" anyone in the primary race. Please see the attached copy.

I believe actions like these are false and misleading to the general public. The people are to be given the true facts; to help make the best decision when voting. This is an example of corrupt campaign practices to deceive the public that "they" are the best choice.

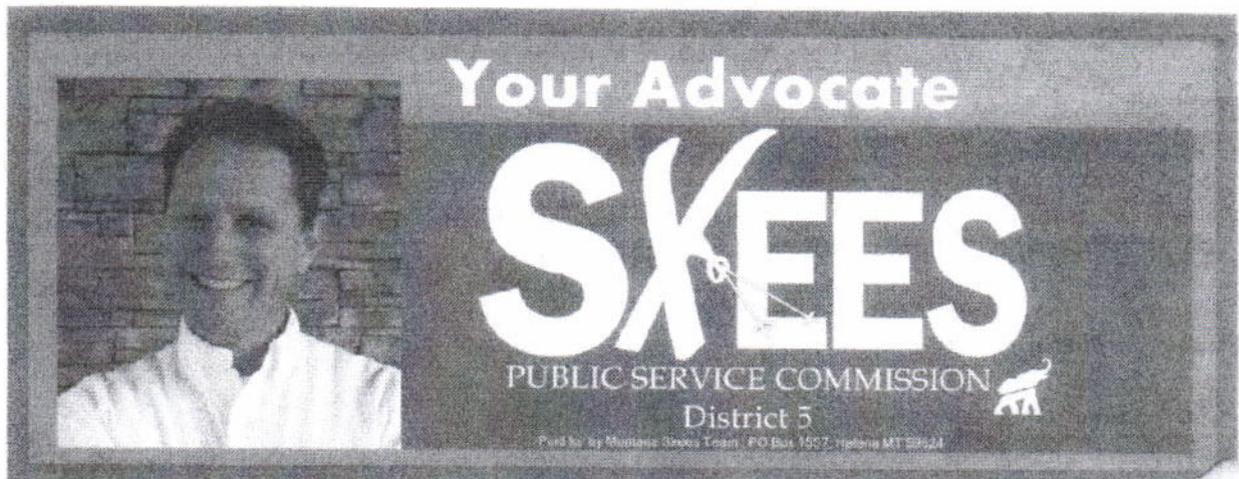
Sincerely,   
John M. Campbell

**Complaint must be:**

- signed
- notarized
- delivered in person or by certified mail.

This is a copy of the front and back of the "flier" in question. Please note "costly state energy policy" and "PSC Chair and District 5 Commissioner, Bill Gallagher."

*John Campbell*



## A proven defender of your rights

Derek Skees has a reputation for battling against judicial corruption, Obamacare, costly state energy policy, and corporate welfare. Electing Derek to Public Service Commission will put him back in the front line of protecting you and your family in Montana.

Derek has the endorsements of Montana Senate and House GOP Leadership, as well as the current PSC Chair and District 5 Commissioner, Bill Gallagher. They know he is the best candidate for the job. See the full list of endorsements on the website [www.derekskees.com](http://www.derekskees.com).

[derekskees@gmail.com](mailto:derekskees@gmail.com)



This is a copy of the statement from Mr. Brad Johnson.



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01 May

## Johnson runs for PSC

Created on Thursday, 01 May 2014 12:04 Hits: 350 

Former Secretary of State Brad Johnson is a candidate for the Public Service Commission, District 5. Here is his edited campaign announcement:

"I look forward to serving the people of Montana in this important role and I am extremely pleased to have the enthusiastic support of Sen. Conrad Burns." said Johnson. Burns announced his endorsement of Johnson saying: "I have known Brad for a long time and he's always been an honest, positive professional, a principled conservative and a good leader. He will do a good job for his district and for our state. I urge voters in District 5 to give Brad their vote."

In addition, Johnson recognized Commission Chairman Bill Gallagher's decision to remain neutral in the primary race as another example of his leadership and professionalism.

"Montanans have been well served by current Commissioner Bill Gallagher and I deeply regret that he has chosen not to run again. Under Bill's leadership, the atmosphere at the commission was transformed from one of turmoil and divisiveness to one of civility and professionalism.

"Chairman Gallagher has personally assured me that he will not endorse a candidate in the primary but that he will enthusiastically support the candidate chosen by Montana Republicans. I appreciate Bill's commitment to unity and leadership in this matter." Johnson concluded.

"The PSC is a little-appreciated yet vitally important part of Montana's economic structure. Its mandate is to ensure Montanans and Montana businesses have access to energy, telecommunication, water and sewer and transportation services which are affordable, reliable and sustainable. ...

"Having served Montana as secretary of state and State Land Board Member, combined with my success as small business owner, make me uniquely qualified to serve in this important office. The PSC is a quasi-judicial body which must adjudicate requests and complaints that come before it in a professional, equitable and unbiased manner and I have demonstrated that I possess the leadership skills and judicial temperament required to be an effective commissioner," he added.

"The privilege of serving as your secretary of state was one of greatest of my life and my heartfelt commitment to continue serving the people of Montana remains undiminished. That is why I have decided to seek election to the Montana Public Service Commission in 2014."

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