

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)	SUMMARY OF FACTS
Against Citizens for Strong)	AND
Law Enforcement)	STATEMENT OF FINDINGS

Charles Denowh filed a complaint alleging that Citizens for Strong Law Enforcement violated Montana campaign finance and practices laws.

SUMMARY OF FACTS

1. Tim Fox and Lee Bruner were candidates for the Republican nomination for Attorney General in 2008. Fox was ultimately nominated in the primary election and was defeated in the general election.
2. In 2008, just prior to the primary election, automated phone calls were made in support of Bruner's candidacy. The calls included the following scripts:

(Male voice) Hello. In the race for Attorney General this fall Republicans have a clear choice. Lee Bruner is a genuine conservative with the experience Republicans can count on. His opponent, Tim Fox, has little court experience. If the Republicans want to take back the Attorney General's office this fall, they need a candidate with experience. So please vote for Lee Bruner on Tuesday. Thank you. Paid for by Citizens for Strong Law Enforcement.

(Female voice) Hello. In the race for Attorney General this fall Republicans have a clear choice. Lee Bruner is a genuine conservative that has been endorsed by Montana Right to Life. His opponent, Tim Fox, has represented criminals and drunk drivers. Fox can't win in November. Please vote for Lee Bruner on Tuesday. Thank you. Paid for by Citizens for Strong Law Enforcement.
3. The automated calls began less than 10 days prior to the primary election.
4. The complaint alleges that the calls did not include appropriate attribution language in violation of § 13-35-225, MCA. That statute requires campaign materials advocating the success or defeat of a candidate to, if financed by a political committee, include the name of the committee treasurer and the address of the committee or treasurer. The complaint also alleges that the calls violated the Clean Campaign Act, § 13-35-402, MCA. With certain exceptions, that statute requires a political committee to provide a final copy of campaign

advertising that identifies or mentions an opposing candidate to the candidate, if intended for public distribution within the 10 days preceding an election.

5. A political committee known as Citizens for Strong Law Enforcement (CSLE) filed a C-2 statement of organization with the office of the Commissioner of Political Practices (CPP) on May 29, 2008. The C-2 designated Thomas E. Boland as the Treasurer.

6. In a written response to the complaint, Boland argued that neither § 13-35-225, MCA nor § 13-35-402, MCA apply to political campaigning by the use of automated telephone calls.

7. CSLE hired Winning Connections, Inc., a Washington D.C. political consulting firm, to make the automated calls described in Fact 2. According to its website Winning Connections was founded in 1996. The firm represents itself as “the premier interactive voter contact firm in the country.”

8. According to Stuart Jameson of Winning Connections, the omission of the name of CSLE’s Treasurer and its address from the attribution language at the conclusion of the calls was due to an error made by the Winning Connections employee who recorded the calls. Jameson contends that when the call scripts were provided to Boland, CSLE’s Treasurer, Boland was informed that CSLE would be “properly identified” at the conclusion of the calls.

9. Boland described Winning Connections as a firm that has been around for a while, and that has experience in performing political telephone calling nationwide. Boland contends he believed the proper attribution language would be included at the end of the call scripts, and was surprised when he learned that the language did not comply with the statute. Boland recalls that the final call scripts were read to him over the telephone by a representative of Winning Connections. He could not locate any emails or other correspondence with Winning Connections establishing that the text of the call scripts was provided to him beforehand. Thus, he concludes that he must have approved the scripts during the telephone conversation with Winning Connections described above.

10. Boland stated that Winning Connections placed 88,400 calls, and that each of those numbers was dialed twice. Neither Boland nor Winning Connections has any information to establish how many of the calls actually connected to the numbers dialed. CSLE disclosed \$6,413.68 in expenditures to Winning Connections in its campaign financial disclosure reports filed with CPP. It is unclear whether 88,400 phone numbers were each dialed twice, or whether 88,400 was the resulting total number of dials to 44,200 phone numbers.

11. CSLE did not provide final copies of the telephone call scripts to Fox when the calls were made.

STATEMENT OF FINDINGS

Alleged Violation of § 13-35-225, MCA

The complaint alleges that the automated telephone calls were in violation of § 13-35-225, MCA, because the name and address of the committee treasurer was not stated at the end of the calls. § 13-35-225, MCA provides, in pertinent part:

Election materials not to be anonymous -- statement of accuracy. (1)

All communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, internet website, or other form of general political advertising must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication. When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign. In the case of a political committee, the attribution must be the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer. (Emphasis added).

...

The automated telephone calls advocated the success of candidate Lee Bruner and the defeat of candidate Tim Fox. Although Boland contends the statute does not apply to the calls, they clearly qualify as a "form of general political advertising" subject to the attribution requirements of the statute.

The calls included language identifying CSLE as the group that paid for the calls, but did not include the name of the committee treasurer or the address of CSLE or its treasurer. Therefore the election materials were in violation of § 13-35-225(1), MCA.

Boland stated that the call scripts were read to him over the telephone by a representative of Winning Connections. Although Boland assumed the proper attribution language would be included in the calls based on representations made to him during the

telephone conversation, he did not review a written version of the call scripts prior to approving them. See Facts 8 and 9.

§ 13-37-128(1), MCA provides that a person who intentionally or negligently violates § 13-35-225, MCA is liable in a civil action for an amount up to \$500 or three times the unlawful contributions or expenditures, whichever is greater. I find that Boland and CSLE negligently violated § 13-35-225, MCA by not taking appropriate steps to ensure that the campaign calls would include the complete attribution language required by the statute. Moreover, this was not an insignificant violation, since CSLE spent more than \$6,400 for some 88,000 calls.

Alleged Violation of § 13-35-402, MCA

The “Clean Campaign Act” is codified in §§ 13-35-401 to 403, MCA. The Act provides that, with certain exceptions, candidates and political committees must provide a final copy of certain campaign advertising intended for public distribution in the 10 days prior to an election to any opposing candidate who is identified or mentioned in the advertising. The Act generally requires final copies to be provided to opposing candidates at the time the material is published, broadcast, or otherwise disseminated to the public. § 13-35-402(3), MCA. The statute applies to “campaign advertising in print media, in printed material, or by broadcast media.” § 13-35-402(1), MCA. The first two categories obviously do not apply to automated telephone calls. The question is whether such calls constitute campaign advertising by “broadcast media.”

There is no definition of the term in the statute. Merriam-Webster’s Collegiate Dictionary, Eleventh Edition (2008), defines “broadcast” as 1) cast or scattered in all directions; 2) made public by means of radio or television; and 3) of or relating to radio or television broadcasting. While two of the more common forms of broadcast media are radio and television, the telephone can also be utilized for broadcasting a message to a widespread audience. For example, both for-profit and charitable organizations have employed telemarketing as an effective means of either selling products or soliciting monetary contributions. The use of automated telephone calls, also known as “robocalls,” for transmission of political messages¹ such as the ones used by CLSE, has also become more prevalent in recent years. It appears that the intent of the Legislature was to require virtually all forms of political advertising subject to the Act to comply with the contemporaneous

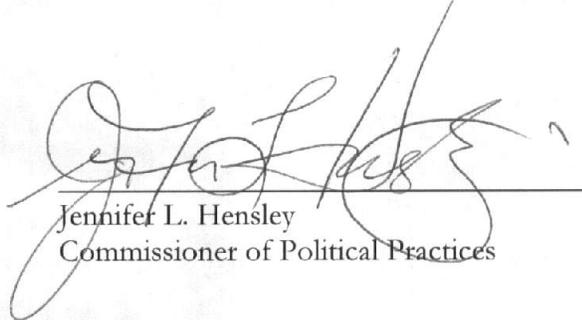
¹ § 45-8-216(1)(e), MCA makes it illegal to use an automated telephone system or device to play a recorded message for the purpose of promoting a political campaign. CPP, however, has no jurisdiction to enforce the law.

notice requirement. CSLE did not provide candidate Tim Fox with final copies of the telephone scripts at the time the calls were made, thereby violating the statute.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings there is substantial evidence to conclude that Citizens for Strong Law Enforcement violated Montana campaign financial reporting and disclosure laws, and that a civil penalty action under § 13-37-128, MCA is warranted.

DATED this 3rd day of February, 2011.



Jennifer L. Hensley
Commissioner of Political Practices