

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Fitzpatrick v. Kantorowicz No. COPP 2016-CFP-008	Dismissal of Complaint Based on Injunction Issued by A Federal Court
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On April 20, 2016, Steve Fitzpatrick, a resident of Great Falls, Montana, filed a complaint against JC Kantorowicz, a resident of Great Falls, Montana. Messrs. Fitzpatrick and Kantorowicz are both candidates seeking 2016 election to the Montana legislature Montana from Senate District 10 (SD 10). The Complaint alleges that Candidate Kantorowicz failed to properly attribute a voting record claim made against Candidate Fitzpatrick.

Foundational Findings of Fact

The following findings of fact are necessary before proceeding to discussion of this Matter:

Finding of Fact No. 1. Steve Fitzpatrick and J. C. Kantorowicz are primary election candidates for Republican Party nomination to the general election to be elected Senator from SD 10. Deborah Magin is the only Democratic Party nominee for election from SD 10 and will therefore proceed to the general election to face the winner of the Republican primary election. (Montana Secretary of State Website.)

Finding of Fact No. 2. Steve Fitzpatrick served as the elected Representative from House District 20 in the 2015 Montana legislature. (Montana Secretary of State Website.)

Discussion

Candidate Fitzpatrick has served as a legislator (FOF No. 2). Consequently, Candidate Fitzpatrick had a legislative voting record prior to running for a SD 10 seat in 2016. (FOF No. 2). Candidate Fitzpatrick filed the Complaint in this Matter alleging that Candidate Kantorowicz violated a particular campaign practice disclosure law (§13-35-225(3)(a) MCA) when, during the 2016 primary election campaign, he made public claims about Candidate Fitzpatrick's voting record without substantiating those claims as required by Montana law. *Id.*

It is noted that §13-35-225(3)(a) MCA is the latest of series of attempts by the Montana legislature to regulate words a candidate can use when challenging an incumbent's voting record. As of May 23, 2016, §13-35-225(3)(a), MCA joined the fate of its predecessor laws when a federal court struck the statute as an unconstitutional attempt to regulate the content of candidate speech. *National Association for Gun Rights v. Motl*, CV-16-23-H-DLC.

Candidate Fitzpatrick's allegations of unfounded voting record claims by Candidate Kantorowicz may or may not be true. Either way the Court has determined that the remedy for voting record issues is more information, that is to say more political speech

is the remedy. Candidate Fitzpatrick must respond in that light, in other words, with responsive speech.

The Commissioner notes that Candidate Fitzpatrick filed his complaint at a time when §13-35-225(3)(a), MCA was in place and not enjoined. Accordingly there was good basis for filing the complaint at the time it was filed.

DATED this 25th day of May, 2016.



Jonathan R. Motl
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