

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Greenwood v. Montanans for Justice and Liberty No. COPP 2014-CFP-051	<u>Dismissal of Complaint</u>
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On October 29, 2014, Bowen Greenwood, a resident of Helena, Montana filed a complaint against the political action committee, Montanans For Liberty and Justice (MFLJ) duly registered in Helena, Montana with the COPP. Mr. Greenwood's complaint alleged that the committee violated several Montana campaign practice laws with the layout and content of a certain election brochure.

INTRODUCTION

A certain election flyer produced by Stanford/Dartmouth has been the subject of improper campaign practice examination, resulting in a partial Decision issued by the COPP. See *McCulloch v. Stanford/Dartmouth*, COPP 2014-CFP-046. The partial Decision in *McCulloch v. Stanford/Dartmouth* was based on the layout and language of a 6 inch by 11 inch 2 page flyer (Stanford Flyer) printed on slick notecard stock paper.

The complaint in this Matter references a 17 inch by 11 inch paper stock brochure attributed by Montanans For Liberty and Justice (MFLJ Brochure). The MFLJ Brochure is printed on both sides and folded in the middle to create a 4 page 8 ½ inch by 11 inch document. The complaint compares the MFLJ Brochure to the Stanford Flyer, claiming the former be a fraudulent, misleading document that serves to impersonate an elected official, violating thereby §§ 13-35-218(2), 13-35-235 and 45-7-209 MCA.

FINDINGS OF FACT

The Commissioner makes the following relevant findings of fact:

Finding of Fact No. 1: On August 28, 2014, Montanans for Liberty and Justice submitted a C-2 Statement of Organization form (since amended) to the Commissioner of Political Practices Office (COPP) to register as a Political Action Committee (PAC). (Commissioner's records).

Finding of Fact No. 2: On October 23, 2014, Montanans for Liberty and Justice submitted a C-6 Political Committee Finance Report for the period of June 19, 2014 to October 18, 2014. That report included, among other items, \$163,000 in production, printing and postage costs promoting election of Justice Wheat. The C-2 and C-6 reports are available for public viewing on the COPP website. (Commissioner's records).

DISCUSSION

1. The MFLJ Brochure Did Not Use the Great Seal

The MFLJ Brochure, by observation, is remarkably different than the Stanford Flyer. Measured by appearances, the image of the Great Seal of the State of Montana, is prominently displayed on both sides of the Stanford Flyer. Further, both sides of the Stanford Flyer place the words "2014 Montana General Election Voter Information Guide" next to the image of the Great Seal.

In contrast, the MFLJ Brochure does not use the image of the Great Seal of the State of Montana and is entitled “Montana Voters Guide for Judicial Elections.” The only inclusion of a reference to state authority is the listing of “sos.mt.gov/elections”, a site maintained by the Montana Secretary of State.

The Commissioner determines by this facial examination that the two documents are remarkably different, with the Stanford Flyer attempting to present the image of an official document while the MFLJ Brochure does not.¹ Any possible doubt about the MFLJ Brochure is removed by another critical contrast of displayed information. The Stanford Flyer lacks full “attribution”, or disclosure of the entity paying for the document and seeking thereby to influence an election.² In contrast, the MFLJ Brochure fully attributes in prominent type on the upper left hand corner of last page of the 4 page brochure. As explained below the difference in attribution and layout were reflected by the measure of reaction of Montanans to the two documents.

2. The MFLJ Brochure Did Not Wrongfully Inject Partisanship

The content of the MFLJ Brochure is also remarkably different than that of the Stanford Flyer. The *McCulloch v. Stanford* partial Decision noted that Montanans saw the Stanford Flyer “as wrongfully appropriating use of the Great Seal of the State of Montana and wrongfully injecting partisanship into Montana’s non-partisan Supreme Court election.” It did this through an

¹ The Commissioner has not yet issued a substantive determination as to whether or not the image and content of the Stanford Flyer violates the Montana Campaign Practices Act. See Partial Decision in *McCulloch v. Stanford/Dartmouth* COPP 2014-CFP-046.

² The Stanford Flyer does have a statement in the text of the document to the effect that “paid for by researchers at Stanford University and Dartmouth College, 616 Serra Street, Stanford, CA 94305.”

unidentified group of “researchers”, who did not register with the COPP nor disclose or report campaign contributions or expenditures.³

In contrast, the MFLJ Brochure is a straightforward campaign election piece. It urges a vote for one Supreme Court candidate. The entity campaigning is identified on the MFLJ Brochure. That entity is a properly registered political committee with the COPP (see FOF No. 1). The funds used to produce and mail the MFLJ Brochure are disclosed and reported by the political committee. (See FOF No. 2).

Consistent with the standard electoral registration, reporting and disclosure, the MFLJ Brochure makes no mention of political affiliation nor presents any contrast with the leaders of a political party. There is no partisanship in the MFLJ Brochure, only constitutionally protected and normal candidate advocacy.

3. Montanans Did Not Object to the MFLJ Brochure

The COPP received an unusually large volume (at least 70) of informal complaints or inquiries over the Stanford Flyer.⁴ In contrast there were two informal inquiries concerning the MFLJ Brochure.

Importantly, the MFLJ Brochure inquiries concerned whether or not the political committee had registered. Those inquiries were satisfied by directing the caller to the COPP website where the MFLJ registration and reporting forms

³ Again, the Commissioner has not yet determined whether or not the Stanford Flyer is express advocacy, thereby requiring such registration, reporting and disclosure. The Commissioner uses these facts at this point simply to illustrate the contrast between the two documents.

⁴ Kym Trujillo and Mary Baker received a minimum of 20 complaints each. Jonathan Motl received a minimum of 30 such complaints.

were available for public review. In contrast the COPP had no registration or reporting information by any group of people concerning the Stanford Flyer, a circumstance that launched a number of private investigations by Montana citizens.⁵

4. Non-Sufficiency Finding

The Commissioner determines that there are no facts showing that the MFLJ Brochure interjected partisanship into a nonpartisan judicial race or appropriated private use of the Great Seal of the State of Montana. The Commissioner further determines that there is a lack of sufficient facts to show a possible violation of §§ 13-35-218(2), 13-35-235 and 45-7-209 MCA, as alleged by the Complaint. The Complaint is hereby dismissed.

CONCLUSION

We need, as a political body of Montanans, to dissect and distinguish between what is allowed and prohibited political actions and speech. On occasion it will be a necessarily fluid and nuanced distinction, as in the case of the Stanford Flyer. But on other occasions there is no nuance. The MFLJ Brochure has no nuances – it is protected electoral speech made by a properly registered political committee that is reporting and disclosing. The complaint is dismissed.

DATED this 31st day of October, 2014.



Jonathan R. Motl
Commissioner of Political Practices
Of the State of Montana

⁵ These citizens reported their findings to the COPP.