

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

McCulloch v. Stanford and Dartmouth No. COPP 2014-CFP-046	<u>Decision Finding Sufficient Facts to Demonstrate a Violation of Montana's Campaign Practice laws</u>
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On October 24, 2014, Linda McCulloch¹, a resident of Helena, Montana filed a complaint against Stanford University and Dartmouth College alleging that a certain document (see Flyer attached to this Decision) violated Montana campaign practice laws.

INTRODUCTION

The Stanford/Dartmouth Flyer started to show up in the mailboxes of Montanans on October 22, 2014. Informal complaints by Montanans to the COPP about the Flyer started immediately.² On October 24 a formal complaint was lodged with the COPP by Ms. McCulloch (see

¹ The complaint was filed by Linda McCulloch, individually. Ms. McCulloch is the elected Secretary of the State of Montana.

² The Flyer was explained by the Institutions as the field implementation of an academic research project by Standard/Dartmouth professors. That is not how the Montanans complaining to the COPP saw the Flyer. They saw the flyer as wrongfully appropriating use of the Great Seal of the State of Montana and wrongfully campaigning without reporting or disclosure.

above). An initial and partial Decision was issued by this Office on October 29, 2014 and is incorporated by reference into this Final Decision. The initial Decision recognized and incorporated a certain pre-election letter of apology issued to Montanans and signed by the Presidents of Dartmouth College and Stanford University on or about October 28, 2014.³ A copy of the letter of apology is attached to this Decision.⁴

This Decision Addresses Campaign Practices

The Commissioner's initial Decision retained for investigation and Decision the entire range of issues raised by and related to (*see* §13-37-111 MCA) the Complaint filed in this Matter. With this platform for the final Decision, Dartmouth College, Stanford University, the project researchers and the COPP engaged in review as described below:

Dartmouth College: Robert Donin is general counsel for Dartmouth College and his office is located at the College campus in Hanover, New Hampshire. Mr. Donin requested an outside investigation of Dartmouth's activities by the Hanover office of the law firm of Sheehan, Phinney, Bass and Green. The SPhBG firm, under the signature of Sean Gorman, provided a 9 page report of its investigation, along with 10 pages of response to interrogatory style questions sent by the COPP to Stanford and Dartmouth. The SPhBG response was accompanied by 36 pages of documents. The SPhBG response was dated December 18, 2014 and a copy was provided to the COPP that same day under a cover letter from Mr. Donin.

³ The Commissioner takes administrative notice, based on reports from Montana citizens, that the follow-up apology letter arrived in the mailboxes of Montana voters prior to the November 4, 2014 date of the general election.

⁴ The pre-election letter of apology was printed and mailed first class to Montana voters at a cost of \$51,343. (Stanford Response, P. 2) Stanford University handled the entire mailing and underwrote the entire cost of the mailing.

Stanford University: Stanford University engaged the services of California attorney Frederick Lowell and Montana attorney G. Steven Brown. Mr. Lowell is a partner in the firm of Pillsbury, Winthrop, Shaw and Pittman located in San Francisco, California. G. Steven Brown is in sole practice as an attorney in Helena, Montana. The Stanford response consisted of a 10 page memo to the Commissioner, co-signed by attorneys Lowell and Brown. In addition Stanford responded separately to 27 interrogatory style questions sent by the COPP to Stanford and Dartmouth. Finally, Stanford included 21 pages of exhibits with its response.

Project Researchers: The three researchers involved in the Flyer project were Professors: Kyle Dropp (Dartmouth); Jonathan Rodden (Stanford) and Adam Bonica (Stanford). The Dartmouth SPhBG investigation included a personal interview with Professor Dropp and telephone interviews with Professors Bonica and Rodden. Stanford's response includes information that could have only come from a similar interview process with the three project researchers.

The COPP: The COPP initially posed 27 questions to Stanford and Dartmouth. The Stanford and Dartmouth responses were designed to answer these questions. In addition, the COPP engaged the services of Montana political science professor Jeremy Johnson Ph.D.⁵ Professor Johnson provided a six page report to the COPP (a copy of the Johnson report accompanies this Decision) discussing issues related to the manner in which Institutional Review Board oversight was or was not engaged in regard to the research activity involved in this Matter.

The COPP will accompany release of this Decision to the parties in this Matter with a request that all privacy interests, if any, in the above identified documents be waived. Once any privacy interests are cleared then the entire range of documents identified above will be released to the press and interested researchers. Given the considerable interest in this Matter the COPP hopes to accomplish this release quickly.

⁵ Jeremy Johnson is an associate professor of political sciences employed at Carroll College, Helena, Montana.

I. The Montana Flyer Project

Researchers at Stanford and Dartmouth carried out a large scale (by Montana standards) election centered direct mail project (hereafter “Montana Flyer”) aimed at Montana voters in the 2014 Montana general election. The day of election in Montana was November 4, 2014.⁶ Stanford’s response to the Commissioner explains that “[b]etween October 17 and 19, 2014, political science researchers at Stanford University and Dartmouth College ...caused 102,780 postcard mailers [the Montana Flyer] to be sent to registered voters in the State of Montana.”⁷

The researchers’ Montana Flyer project provided the Montana Flyer to certain groups of Montana voters in a manner designed to trigger increased voting responses, as would later be shown by an empirical analysis determining whether or not voter turnout increased among those voters supplied with the Flyer. The May 2014 submission to the Dartmouth Institutional Review Board by Kyle Dropp listed the purpose of the prototype New Hampshire Flyer project: “[w]e aim to assess whether information provision has an effect among voters, particularly among moderate, independent or unaffiliated voters.”⁸ Professor Jeremy Johnson, who reviewed the COPP information base in this Matter under contract with the COPP, put it this way: “[t]he design of the study entirely revolved on how the flyers affected vote tallies.” (Johnson Report, p. 2).

⁶ Montana voters could vote by mail ballot for 30 days before the day of election or they could vote at a polling place on November 4, 2014.

⁷ The “postcard mailer” is the “Montana Flyer” accompanying this Decision.

⁸ Dartmouth Professor Dropp took the prototype project through the Dartmouth IRB.

A. The Institutional Review Board

Stanford and Dartmouth have, through their responses, acknowledged Institutional responsibility for the project that produced and used the Montana Flyer.⁹ In turn, the Montana Flyer project had an impact on human beings as it was mailed into the homes of 102,780 Montana voters and it was designed to affect voting in two 2014 Montana Supreme Court Justice races. This impact was not inconsequential to Montanans. As Professor Johnson noted, “[t]he outcome of a Supreme Court race is of great importance to the lives of the candidates, voters and people of Montana.” Johnson Report, p. 6.

The Commissioner determines that Montana Flyer project impacted the lives of Montanans, through its impact on voting by 102,780 Montana voters. There is a process by which Universities and Colleges are supposed to review or vet Institutional studies that have an impact on human beings. This process, called the Institutional Review Board (IRB) process, is defined by federal laws and administered by agency located within the US Department of Health and Human Services.¹⁰

The IRB process, however, was improperly engaged by the Dartmouth researcher and ignored completely by the Stanford researchers. Professor Dropp, the Dartmouth researcher, submitted the prototype Flyer project (the New Hampshire Flyer) to the Dartmouth IRB. The prototype New Hampshire

⁹ Stanford’s Spatial Social Science Lab provided funding for the Montana Flyer through a grant it received from the Hewlett Foundation. (Dartmouth and Stanford responses). The Montana Flyer was attributed as “[p]aid for by researchers at Stanford University and Dartmouth College, 616 Serra Street, Stanford, CA 94305.”

¹⁰ The “Office for Human Research Protection.”