

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

O'Brien v. Hill No. COPP 2012-CFP-029	<u>Dismissal of Complaint</u>
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On October 17, 2012, Helena, Montana, resident Kevin O'Brien filed a complaint with the COPP against Rick Hill, also a resident of Helena, Montana, alleging Mr. Hill violated Montana campaign finance and practice laws during his 2012 campaign for election as Governor of the State of Montana.

SUBSTANTIVE ISSUES ADDRESSED

The substantive area of campaign finance law addressed by this decision is that of appropriate responsive behavior to changes in judicial interpretation of Montana's campaign practice laws.

FINDING OF FACTS

The foundational facts necessary for this Decision is as follows:

Finding of Fact No. 1: The complaint alleges, and Candidate Hill does not deny, that the 2012 Hill campaign for governor accepted certain contributions (\$685,000 in total, including \$500,000 from the Montana Republican party). As set out below, the complaint alleges the acceptance of these contributions was improper under Montana law.

DISCUSSION

The complaint alleges that Candidate Hill accepted certain campaign contributions in amounts that caused the donor to exceed the amounts allowed by Montana law. Under Montana law in place at the start of the 2012 campaign cycle an individual was limited to a maximum contribution of \$650, and a political party to maximum contribution of \$23,350, to a candidate for the elected office of governor of the State of Montana. 44.10.338 ARM, 2012.

The 2012 general election took place on November 6, 2012. A month prior to the general election (on October 3, 2012) Montana's contribution limit laws were enjoined¹ as unconstitutional by an Order issued by a federal judge. *Lair v. Murry*, CV-12-12-H-CCL U.S. District Court, for District of Montana. That Federal Court Order prohibited enforcement of Montana laws limiting the amount of money that could be contributed to the campaigns of 2012 candidates for Montana public office. The Federal Court Order allowed a flood of over-the-limit money to pour into a number of 2012 Montana candidate campaigns, including the campaign of Candidate Hill, and it touched off a firestorm of litigation in both federal and state district courts.

The litigation sequence needs to be discussed in part because it places in context the Commissioner's final dismissal, through this Decision, of the complaint concerning campaign contributions received by the Hill campaign. The October 3, 2012 Order by the Montana Federal District Court was immediately appealed to the 9th Circuit and on October 9, 2012 the 9th Circuit

¹ "Enjoined" is term used to mean a court prohibited a certain action, in this case it prohibited enforcement of Montana's campaign contribution limits.

temporarily stayed² the Montana District Court Order. The 9th Circuit's stay restored Montana's laws setting campaign contribution limits, including the contribution limits applicable to Candidate Hill's campaign for Governor. On October 16, 2012 the Ninth Circuit motions panel issued its opinion staying the Federal Court's Order for the duration of the appeal.

On May 26, 2015 the Ninth circuit merits panel issued its opinion (as amended and reissued on September 1, 2015). Those opinions reversed and remanded the *Lair* matter to the Montana United States District Court. On May 17, 2016 the Montana United States District Court, under the current case caption (*Lair v. Motl* CV12-12-H-CCL), issued its order striking Montana's contribution limits. The District Court's Order noted that the litigation included a representation that, as to pending campaign practice complaints, the "Commissioner will defer to the Court's ruling in this case." Order, p. 29.

DECISION

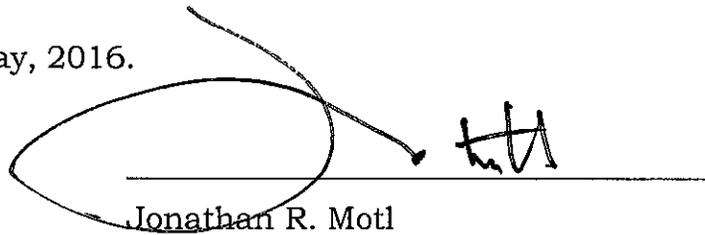
This Commissioner, having duly considered the litigation listed above, as specially applied to the matters raised in the Complaint³, hereby determines that the litigation in this particular Matter has reached a point where, regardless of any eventual final and differing resolution by an appellate court, basic justice requires that Candidate Hill be released from any consequence of his 2012 election activity. While there is substantial public interest in, regardless of time taken, making sure that the legal determinations in this

² "Stayed" means the 9th Circuit suspended the Federal District Order, leaving it of no effect unless later restored.

³ This Decision is limited to the facts and circumstances set out above and does not provide authority for candidates in 2016 elections to act without regard to contribution limits as those limits are reinstated from pre-existing law or by litigation.

Matter are thoroughly reviewed and decided, Candidate Hill, as a former candidate, is entitled to finality as to the determination of any campaign practice violation. Under the litigation governing this Matter, a determination can only be made in the form of a dismissal of the complaint against Candidate Hill. The Commissioner hereby dismisses this complaint in full.

DATED this 18th day of May, 2016.

A handwritten signature in black ink, appearing to be 'JRM', is written above a horizontal line. A large, loopy scribble in black ink overlaps the signature and extends to the left.

Jonathan R. Motl
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