

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Osmundson v. Lund No. COPP 2016-CFP-015	Dismissal of Complaint Based on Injunction Issued by A Federal Court
--	---

On May 16, 2016, Ryan Osmundson, a resident of Buffalo, Montana, filed a complaint against Hertha Lund, a resident of Martinsdale, Montana.¹ Mr. Osmundson and Ms. Lund are both candidates seeking 2016 election to the Montana legislature from Senate District 15 (SD 15). The Complaint alleges that Candidate Lund failed to properly attribute a voting record claim made against Candidate Osmundson.

Foundational Findings of Fact

The following findings of fact are necessary before proceeding to discussion

¹ The Complaint lists Ms. Lund's address as Bozeman, Montana. The Commissioner has determined in a companion Matter (*Wilsman v. Lund*, COPP-2016-CFP-016) that Ms. Lund's residency address is Martinsdale, Montana.

of this Matter:

Finding of Fact No. 1. Hertha Lund, Harry Klock and Ryan Osmundson are primary election candidates for Republican Party nomination to the general election to be elected Senator from SD 15. Sean McConnaha is the only Democratic Party nominee for election from SD 15 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. Ryan Osmundson served as the elected Representative from House District 30 in the 2015 Montana legislature. (Montana Secretary of State Website.)

Discussion

Candidate Osmundson has served as a legislator (FOF No. 2.) Consequently, Candidate Osmundson had a legislative voting record prior to running for a SD 15 seat in 2016. (FOF No. 2). Candidate Osmundson filed the Complaint in this Matter alleging that Candidate Lund violated a particular campaign practice disclosure law (§13-35-225(3)(a), MCA) when, during the 2016 primary election campaign, she made public claims about Candidate Osmundson's voting record without substantiating those claims as required by Montana law. *Id.*

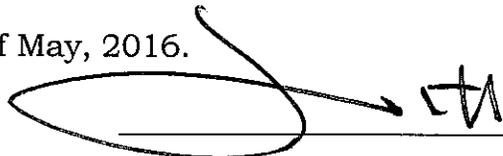
It is noted that §13-35-225(3)(a), MCA is the latest of series of attempts by the Montana legislature to regulate words a candidate can use when challenging an incumbent's voting record. As of May 23, 2016, §13-35-225(3)(a), MCA joined the fate of its predecessor laws when a federal court enjoined enforcement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

Candidate Osmundson's allegations of unfounded voting record claims by Candidate Lund 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 Osmundson must respond in that light, in other words, with responsive speech.

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

DATED this 25th day of May, 2016.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a vertical stroke and a horizontal crossbar, resembling the letters 'JM'. The signature is written over a horizontal line.

Jonathan R. Motl
Commissioner of Political Practices
Of the State of Montana
1209 8th Avenue
Helena, MT 59620