

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

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In the Matter of the Complaint                    )   **SUMMARY OF FACTS AND**  
Against Lewie Schneller                        )   **STATEMENT OF FINDINGS**

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Ed Childers filed a complaint against Lewie Schneller, alleging he violated Montana campaign finance and practices laws.

**SUMMARY OF FACTS**

1. In 2007, Lewie Schneller ran against incumbent Ed Childers as a candidate for the Ward 6 position on the Missoula City Council. Childers defeated Schneller by 40 votes.
2. During that race, Schneller created and distributed a campaign brochure that urged the reader to “elect Lewie Schneller.” The brochure included the following statements regarding Childers:

CANDIDATE COMPARISON CHART

My opponent and incumbent, Mr. Ed Childers,

SUPPORTS

...

- Voted for not allowing neighborhood protest voice against density infill and neighborhood clusters. . . Is this fair play??
- Voted for requiring Missoulians to vote on the Iraq War resolution. . . Doesn't he realize this is not city council business??
- Voted 1.6 million dollar expenditure for the renovated council chamber meeting room, which is valued only at ½ that cost. . . Does this help our city??
- Supported and voted to approve 8-million dollar overcharge for the “Splash Aquatics Pool” projects without ballot and bond approval. . . And he used to be our city treasurer??

3. Childers' complaint alleges that the brochure violated § 13-35-225, MCA, because 1) it contained statements regarding his voting record without including a reference to the particular vote or votes upon which the information was based, and 2) the brochure did

not list any contrasting votes. When asked to identify any of his contrasting votes that should have been listed, Childers stated that since the brochure did not refer to any of his particular votes it was not possible for him to identify contrasting votes. While the complaint also questions the accuracy of some of the statements in the brochure, Childers does not contend that Schneller violated any provisions of Montana law other than § 13-35-225, MCA.

4. The brochure does not include references to any of Childers' specific votes referred to in the four statements listed in Fact 2. The brochure does not list any contrasting votes by Childers. The brochure does not include a statement signed by Schneller stating that to the best of his knowledge the statements regarding Childers' voting record are accurate and true.

5. On October 16, 2007, after the complaint had been filed, Schneller sent a letter to Mary Baker, Program Supervisor at the Office of the Commissioner of Political Practices (CPP). The letter states:

Information concerning Ed Childers' voting record was received by me thru conversations with currently sitting Missoula Council members, and a weekly political advisory group which I attend on a regular basis. To the best of my knowledge, the information on my brochure is true and correct.

6. Schneller estimates he paid \$500 to have the brochures formatted and printed. Schneller said he personally distributed the brochures in his neighborhood, with the assistance of some kids.

7. Schneller claims he obtained some information for his brochure from Mainstream Missoula, a political advisory group headquartered in Missoula. According to Schneller, he attended several Mainstream Missoula meetings and received a handout containing much of the information he included in his brochure. Schneller said he also attended Missoula City Council meetings, and he received help from Clayton Floyd, a former member of the Missoula City Council.

8. The Mainstream Missoula website describes the group's mission:

Mainstream Missoula believes a healthy community can emerge when more citizens participate in discussing issues which affect the future of our city. Therefore, our mission is to chronicle those issues in a non-biased easy to understand forum.

The website lists “hot issues,” including property tax increases, plans to subdivide the Lincoln School site, and a special improvement district tax to rebuild and maintain a park in the Rattlesnake area. Mainstream Missoula created a handout that included discussion of some of the issues included in Schneller’s brochure.

9. In a written response to the complaint, Schneller discussed the first bulleted statement quoted in Fact 2, regarding “neighborhood clusters.” Schneller claims the statement refers to planned neighborhood cluster (PNC) developments, noting that these types of developments do not get reviewed by the City Council unless requested by the Council, and therefore do not normally permit adjacent property owners to protest a PNC development before the Council. Citing minutes of the April 3, 2006 meeting of the Missoula City Council, Schneller claims that Childers voted against a one-year extension of a moratorium against PNC developments. The Council meeting minutes from that date state:

Plat, Annexation and Zoning Committee . . .

Ordinance – adopt a one year extension of an interim urgency zoning ordinance to suspend the City Council adopted Planned Neighborhood Cluster Development Standards ordinance set forth in. . . the Missoula Municipal Code, which will have an immediate effective date and be effective for one year from the date of adoption. . . The motion to adopt failed 5 ayes, 6 nays with Childers. . . voting nay.

Schneller contends that this vote by Childers supports the statement in his brochure that Childers “voted for not allowing neighborhood protest” against PNC developments.

10. Schneller’s written response discussed the second bulleted statement listed in Fact 2, regarding the Iraq War Resolution. According to Schneller, placing the resolution on the ballot required Missoula voters to make a choice; therefore, the statement in his brochure is accurate. Schneller’s response cited archives on the City of Missoula’s website which includes minutes from a June 20, 2007 Missoula City Council meeting, during which the Council voted to place the following referendum statement on the ballot:

The citizens of Missoula, Montana, hereby urge the Congress of the United States of America to authorize and fund an immediate and orderly withdrawal of the United States military from Iraq in a manner that is fully protective of U.S. soldiers.

The motion to place the referendum on the ballot passed 5 to 3, with Childers voting yes.

11. The third bulleted statement listed in Fact 2 is a claim that Childers voted for a 1.6 million dollar expenditure to renovate the City Council chamber meeting room. With his response Schneller included copies of Missoula City Council meeting minutes from February 1 and February 6, 2006. Those minutes reflect that Childers voted in favor of a motion to approve a preliminary design plan that would eventually result in the remodeling the Blue Heron building, which would house the Missoula City Council chambers. The estimated cost for completion of the project was 1.5 million dollars. Schneller contends an alternate plan that would entail selling the Blue Heron building and adding onto the existing city hall building would have been much more cost effective.

12. The last bulleted statement listed in Fact 2 alleges that Childers voted to approve an \$8 million overcharge for the Splash Aquatics Pool projects. In support of the statement Schneller cited minutes from the January 5, 2005 and June 6, 2005 Missoula City Council meetings. The January 5 minutes include an update on the “Aquatics Project,” which consisted of a proposal to renovate and replace certain public swimming facilities in the city. The project was originally authorized pursuant to a resolution passed by the Missoula City Council in 2004, resulting in a bond issue to raise \$8.1 million to fund the project. The minutes state:

In reviewing the budget, the bond was passed for \$8.1 million dollars. . . .  
With the current projection for construction the budget is at a \$999,259 deficit.

Minutes from a June 1, 2005 meeting reflect that the Council voted to authorize the Mayor to sign a contract for construction of the Aquatics Facilities project for a total cost not to exceed \$10,225,341, with Childers voting yes. Schneller contends that when the construction was actually completed it cost the city \$13 to \$14 million, and Childers voted to approve the payments. According to information posted on the Mainstream Missoula website, the cost of the entire project over the life of the bonds, including cost overruns and interest on the bonds, will be double the original authorized amount of the bonds.

## STATEMENT OF FINDINGS

§ 13-35-225, MCA, provides:

**Election materials not to be anonymous -- statement of accuracy.** (1) All communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, internet website, or other form of general political advertising must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication. When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign. In the case of a political committee, the attribution must be the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer.

(2) Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

(3) (a) Printed election material described in subsection (1) that includes information about another candidate's voting record must include:

- (i) a reference to the particular vote or votes upon which the information is based;
- (ii) a disclosure of contrasting votes known to have been made by the candidate on the same issue if closely related in time; and
- (iii) a statement, signed as provided in subsection (3)(b), that to the best of the signer's knowledge, the statements made about the other candidate's voting record are accurate and true.

(b) The statement required under subsection (3)(a) must be signed:

- (i) by the candidate if the election material was prepared for the candidate or the candidate's political committee and includes information about another candidate's voting record; or
- (ii) by the person financing the communication or the person's legal agent if the election material was not prepared for a candidate or a candidate's political committee.

(4) If a document or other article of advertising is too small for the requirements of subsections (1) through (3) to be conveniently included, the candidate responsible for the material or the person financing the communication shall file a copy of the article with the commissioner of

political practices, together with the required information or statement, at the time of its public distribution.

(5) If information required in subsections (1) through (3) is omitted or not printed, upon discovery of or notification about the omission, the candidate responsible for the material or the person financing the communication shall:

- (a) file notification of the omission with the commissioner of political practices within 5 days of the discovery or notification;
- (b) bring the material into compliance with subsections (1) through (3); and
- (c) withdraw any noncompliant communication from circulation as soon as reasonably possible.

The campaign brochure created by Schneller clearly qualifies as a communication advocating the success or defeat of a candidate, as described in subsection (1) of the statute. The brochure, which qualifies as printed election materials containing information about another candidate's voting record (subsection (3)(a)), fails to comply with the requirements of subsection (3) of the statute. The brochure does not reference the particular vote or votes upon which the information represented in the brochure is based. (§ 13-35-225(3)(a)(i), MCA.) The brochure also does not include a statement signed by Schneller stating that to the best of his knowledge the statements concerning Childers' voting records are accurate and true. (§§ 13-35-225(3)(a)(iii) and 13-35-225(3)(b)(i), MCA.)

The complaint alleges that the brochure also fails to comply with § 13-35-225(3)(b)(ii), MCA, which requires "disclosure of contrasting votes known to have been made by the candidate on the same issue if closely related in time." Because the brochure does not reference any of the particular votes upon which the representations in the brochure are based, it is not possible to conclude that specific contrasting votes should have been cited. (See *Matter of the Complaints Against John Vincent* at page 18 (Amended November 18, 2008).)

§ 13-35-225(5), MCA states that if the information required in subsections (1) through (3) of the statute is omitted or not printed, upon discovery of or notification about the omission the person financing the communication shall:

- 1) file notification of the omission with the Commissioner within five days;
- 2) bring the material into compliance; and
- 3) withdraw any noncompliant communication from circulation.

Schneller sent a letter to CPP on October 16, 2007, stating that to the best of his knowledge the information in his brochure was true and correct. However, this did not constitute notification of the “omission” because it did not disclose that the brochure failed to include references to the particular vote or votes upon which the information contained in the brochure was based. It is also important to note that compliance or attempted compliance with the requirements of § 13-35-225(5), MCA does not cure a violation of the provisions of the statute, nor does it prohibit an action seeking a civil penalty if appropriate. (See *Matter of the Complaint Against Excellence in Voting*, at page 8 (November 1, 2006).)

### CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is substantial evidence to conclude that Lewie Schneller violated § 13-35-225, MCA, and that a civil penalty action under § 13-37-128, MCA is warranted.

Dated this 21<sup>st</sup> day of December, 2009.



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Dennis Unsworth  
Commissioner of Political Practices