

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaints)
Against the Montana Republican Party)
)

**SUMMARY OF FACTS
AND
STATEMENT OF FINDINGS**

Jill Cohenour filed two complaints with the Commissioner of Political Practices (CPP) alleging the Montana Republican Party violated Montana Campaign Finance and Practices Law. The complaints refer to two campaign flyers, but only one of the two flyers is attributed to the Montana Republican Party, and therefore this Statement of Facts and Findings will only address the complaint issues in relation to the flyer attributed to the Montana Republican Party.

SUMMARY OF FACTS

1. Jill Cohenour (Cohenour) was a Democratic candidate for the office of State Representative, House District 78 (HD 78), in the fall of 2008. Her Republican opponent was Steve Gibson (Gibson). Cohenour prevailed in the election in November of 2008.
2. In October 2008, a campaign flyer promoting Steve Gibson for HD 78 was mailed to electors in HD 78. The return address on the flyer was that of the Montana Republican Party (MRP). The flyer contained language indicating it had been paid for by the MRP.
3. Cohenour’s complaint alleges the campaign flyer distorted her voting record and contained misrepresentations made with reckless disregard. She also contends the flyer contained “calculated falsehoods” and presented only a partisan point of view with respect to her voting record. Cohenour contends the flyer should have included contrasting votes on various bills, which she lists in the complaint. She alleges violations of §§ 13-35-225, 13-37-131, 27-1-802, and 45-8-212, MCA.

4. The flyer referenced five (5) legislative bills from the 2007 Montana Legislative Session, Cohenour's votes on each bill, and a few words as summary of what the bill did or would have done.
5. The following is a list of the referenced bills, how Cohenour actually voted on each according to the official legislative record, and how the MRP interpreted Cohenour's actions on each.

<u>Bill No.</u>	<u>Cohenour Vote</u>	<u>MRP Summary of the action</u>
HB 257	No on 2 nd reading No on 3 rd reading	Opposed the Taxpayer Bill of Rights
HB 315	No on 2 nd reading No on 3 rd reading	Opposed property tax relief
HB 529	No on 2 nd reading No on 3 rd reading	Opposed tax relief for small businesses
HB 610	No on 2 nd reading No on 3 rd reading	Opposed efforts to increase oil and coal production in an environmentally responsible way
HB 405	No on 2 nd reading No on 3 rd reading	Opposed natural resource development that would reduce energy costs

6. A scanned image of the flyer is attached as Exhibit A.

STATEMENT OF FINDINGS

The complaints allege violations of of §27-1-802, MCA and §45-8-212, MCA. This office does not have jurisdiction over those sections, and therefore the alleged violations of those statutes will not be addressed in this decision. See §13-37-111(1), MCA (Commissioner responsible for investigating alleged violations of chapters 35 and 37, MCA).

Allegations are also made of violations §13-35-225 and §13-37-131, MCA.

Alleged Violations of § 13-35-225, MCA

§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 flyer qualifies as communication advocating the success or defeat of candidates or a political party.

Cohenour contends that MRP did not list 'contrasting votes' on the flyer. Cohenour identified some contrasting votes that she believes should have been listed, as follows:

- The flyer referenced HB 257 (2007 session), and stated that Cohenour opposed it. However, the flyer did not mention that Cohenour voted in favor of the bill when it returned from the Senate in an amended form. The amended version of the bill passed the House with strong bipartisan support (96-4 on 2nd reading, 95-5 on 3rd reading).
- Cohenour believes that SB 48 should have been listed as a contrasting vote on the issue of taxes.

- Cohenour believes that her support of HB 545, regarding Business Energy audit credits; HB 3, regarding Tax Incentives for Energy Development; SB 69, Coal Severance Tax Trust Funds availability for Value Added Loan Program and Infrastructure; and HB 680, Revising Tax Laws to authorize the Department of Revenue to Collect out-of-State Debts should have been included as contrasting votes under the section of the flyer discussing taxes.
- Cohenour believes that her support of SB 2 Special Session, May '07 should have been included as a contrasting vote under the section of the flyer discussing education.
- Cohenour believes that her support of HB 3 Special Session, May '07, HB 748, directing the Department of Revenue to revise energy Tax Credit Rules; HB 330, Clean and Renewable Energy Bonding; and SB 220, which would have "increased Clean Coal production" should have been included as contrasting votes under the section of the flyer discussing Natural Resource Development.

Regarding HB 257, Cohenour's yes vote on the amended bill was, in fact, a contrasting vote closely related in time that should have been included in the material. At the very least, the flyer should have contained language that Cohenour's vote against it was in the unamended form.

Cohenour's other suggested contrasting votes are not, in fact, contrasting votes, but votes for a different approach to the policy issues described. It is true that the other bills Cohenour listed are related to topics addressed in MRP's flyer, but Cohenour is asking for an extremely broad interpretation of §13-35-225(3)(ii), MCA, one that would require candidates to list not only votes that highlight personal philosophical differences between the candidates, but also that promote the actions that the candidate with a voting record has already taken for his or her constituency. That, in my opinion, would be a far-reaching and unreasonable application of the statute.

Alleged Violations of § 13-37-131, MCA

§13-37-131, MCA provides that:

Misrepresentation of voting record -- political civil libel. (1) It is unlawful for a person to misrepresent a candidate's public voting record or any other matter that is relevant to the issues of the campaign with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.

(2) It is unlawful for a person to misrepresent to a candidate another candidate's public voting record or any other matter that is relevant to the issues of the campaign with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.

(3) For the purposes of this section, the public voting record of a candidate who was previously a member of the legislature includes a vote of that candidate recorded in committee minutes or in journals of the senate or the house of representatives. Failure of a person to verify a public voting record is evidence of the person's reckless disregard if the statement made by the person or the information provided to the candidate is false.

(4) A person violating subsection (1) or (2) is liable in a civil action brought by the commissioner or county attorney pursuant to 13-37-124 for an amount up to \$1,000. An action pursuant to this section is subject to the provisions of 13-37-129 and 13-37-130.

Cohenour alleges that MRP violated §13-37-131, MCA, contending that the flyer showed reckless disregard because the “State Republican Party failed to verify the public voting record” and alleging that “Information included...shows how my record was misrepresented and how calculated falsehoods are used to further distort my record on the issues contained in the piece.”

The flyer referenced HB 610 summarizing Cohenour’s position as “Opposed efforts to increase oil and coal production in an environmentally responsible way”. Cohenour believes that her vote on HB 610 (no on 2nd and 3rd readings) actually was a vote for citizens’ ability to fully participate in permitting processes. In fact, Cohenour states that the MRP “distorted [her] records and use[d] ‘calculated falsehoods’ by telling only the partisan view point on the bills...”

MRP’s commentary on the purpose and fate of the bills cannot be interpreted as a distortion of Cohenour’s voting record. This office recently found, in *Matter of Complaints Against Steve Gibson, Summary of Facts and Statement of Findings (April 19, 2011)*, differing interpretations of a person’s voting record, and in fact every aspect of one’s public life, are the very topics upon which a political campaign is based. Unsurprisingly, Cohenour’s interpretation of what her votes meant on particular legislation, as a Democratic lawmaker and candidate, differs significantly from the Republican Party opposing her candidacy. The courts have emphasized that debate and discussions in political campaigns should be “uninhibited, robust, and wide-open.” *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964). That principle must yield only in the rare case where there is sufficient evidence of a knowing misrepresentation or reckless disregard.

When construing statutes similar to §13-37-131, MCA, the courts have consistently afforded a high degree of First Amendment protection to campaign statements made by candidates for public office. A thorough discussion of this principle is found in the *Matter of Complaints Against John Vincent, Amended Summary of Facts and Statement of Findings (Nov. 17, 2008)*. Applying the principles discussed in that decision, the facts established in this case do not support a finding that MRP knowingly made a misrepresentation or false statement. In addition, there is insufficient evidence that MRP acted with reckless disregard, since there is no clear and convincing proof that the committee subjectively entertained serious doubts as to the truth of any of the representations made in the campaign materials. Thus there is insufficient evidence to prove a violation of § 13-37-131, MCA.

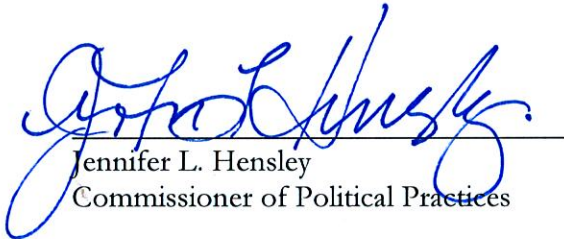
CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is insufficient evidence to conclude that there was a violation of §13-37-131, MCA. CPP has no enforcement authority for alleged violations of §27-1-8 02, MCA and §45-8-212, MCA.

There is sufficient evidence to conclude that the flyer did violate a provision of §13-35-225, MCA.

- The flyer did not list Cohenour's contrasting vote on HB 257, in violation of §13-35-225(3)(a)(ii).


DATED this 19th day of April, 2011.



Jennifer L. Hensley
Commissioner of Political Practices

013/14113071
HAGLER \$0.23
10/22/08
Ballot Print 34110
US POSTAGE

People in East Helena are feeling the **SQUEEZE**



of higher taxes,
higher energy
prices, and
an unstable
economy...

JILL COHENOUR
is helping to
tighten the vice.

Pa... he Montana Republican Party
Sh... hime, Treasurer
13... Chance Gulch
He... 59601

Jill Cohenour (HD 78)
2610 Colt Drive
East Helena, MT 59635

LARRY GRINDE

To the best of my knowledge, this
information is accurate and true.

EXHIBIT A

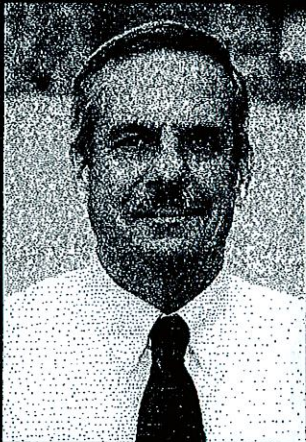


Jill Cohenour has a record of putting the squeeze on Montana families.

- X Opposed** natural resource development that would reduce energy costs (HB 405, 2nd & 3rd Reading)
- X Opposed** efforts to increase oil and coal production in an environmentally responsible way (HB 610, 2nd and 3rd Reading)
- X Opposed** the Taxpayer Bill of Rights (HB 257, 2nd and 3rd Reading)
- X Opposed** property tax relief (HB 315, 2nd & 3rd Reading)
- X Opposed** tax relief for small businesses (HB 529, 2nd & 3rd Reading)

East Helena families are feeling the squeeze—
and just when you need relief,

Jill Cohenour tightens her grip!



If you're ready for relief, there's one choice...

Steve Gibson FOR STATE REPRESENTATIVE

Steve Gibson understands what families are going through. He knows that providing tax relief and encouraging energy development is critical to Montana's economic future. That's why he supports a better business environment to create 40,000 new jobs statewide. Steve will do this by eliminating the business equipment tax, permanently reducing property taxes for all Montana property owners, and stopping the efforts of environmental extremists and trial lawyers, who are standing in the way of Montana energy development.

VOTE NOVEMBER 4TH