

**BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES**

In the Matter of the Complaints	)	AMENDED SUMMARY OF FACTS
Against Richard Stamey	)	AND
	)	STATEMENT OF FINDINGS

Gary MacLaren filed a complaint with the Commissioner of Political Practices (CPP) alleging Richard Stamey violated Montana Campaign Finance and Practices law. The complaints refer to four newspapers advertisements published in the Bitterroot Star on June 3, 2010.

SUMMARY OF FACTS

1. Gary MacLaren (MacLaren) was a Republican candidate for the office of State Representative, House District 89, in the 2010 election cycle. His primary opponent was Richard Stamey (Stamey). MacLaren prevailed in the primary election in June, 2010.
2. MacLaren filed a complaint with this office alleging that Stamey violated Montana campaign and finance law by not referencing particular votes included in his advertising, not complying with the Clean Campaign Act by providing a copy of election material to his opponent, and not filing financial disclosure paperwork with this office.
3. The Bitterroot Star is a newspaper with circulation in the Bitterroot Valley including the area encompassed by HD 89.
4. On June 3, 2010, the Bitterroot Star published four newspaper advertisements paid for by Stamey's campaign.
5. The advertisements consisted of two display layouts, and two separate paragraphs of text.
6. The first advertisement contained the following language:

My opponent, Gary Maclaren's (*sic*) voting record:

- Co-sponsored streamside setbacks
- Co-sponsored WUI
- Pro-zoning
- Pro-spending
- Pro-regulation
- Voted against Montana's State Sovereignty Bill
- Voted Conservative less than 30% of the time

7. One of the paragraph advertisements read as follows:

My opponent, Gary MacLaren, co-sponsored The Big Sky River Act which proposed 250-foot streamside setbacks immediately after the repeal of the 420-page growth policy. He voted for pro-zoning legislation, and voted against the Montana Sovereignty Bill. I am 100% pro-property rights and I actively helped repeal the growth policy. I'll support your property rights and I will sponsor a new state sovereignty bill.

8. The second paragraph advertisement read as follows:

My opponent, Gary MacLaren, has voted for more government spending and regulation. He has less than a 30% conservative voting record. I will vote against more spending and government regulations and foster your rights to keep the money you earn, and more freedom to create income for your families.

9. As of June 4, 2010, MacLaren had not received notice of the advertisements from Stamey, as required by Montana's Clean Campaign Act, §13-35-402, MCA.

10. Copies of the advertisements are attached as **Exhibit 1, 2, and 3**.

11. In the 2010 election cycle, legislative candidates were required to report pre-primary contributions from the date of their first contribution through May 23, 2010, to this office on May 27, 2010. In addition, any contribution over \$100 was required to be reported to this office within 48 hours of receipt between May 29th and June 8th. Finally, on June 28, 2010, a post-primary report was required for contributions that had not previously been reported.

12. A review of records shows that Stamey submitted one report of contributions and expenditures on July 14, 2010.

13. Stamey responded to the complaint on July 6, 2010. Included in his response was:

- a. An admission that he did not provide MacLaren with copies of the advertisements run on June 3, 2010,
- b. A statement that he believed the information provided in his advertisements was true because it had been provided to him by a group called the Montana Conservative Alliance, "...legislators very familiar with the process...",
- c. A request to take into consideration that this was Stamey's first foray into the political arena, and
- d. A request to dismiss the complaint.

STATEMENT OF FINDINGS

Alleged Violation of §13-35-225

The complaint alleges that Stamey's newspaper advertisement referred to in Fact 5 violates §13-35-225. The section states, in pertinent part:

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.

...

(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 advertisement referred to in Fact 5 clearly included information about MacLaren's voting record, as it stated that MacLaren "Voted against the State Sovereignty Bill". §13-35-225 (3)(a), MCA states that "printed election material...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;...and (iii) a statement...that to the best of the signer's knowledge, the statements made about the other candidate's voting record are accurate and true."

MacLaren states in his complaint that his vote on the "State Sovereignty Bill" was inaccurately reported, but as Stamey did not reference the particular vote upon which the information was based, the vote is difficult to verify. This is Stamey's failure, not MacLaren's, and the failure violates §13-35-225(3)(a)(i).

Further, the advertisement referred to in Fact 5 does not have a statement of accuracy as required by §13-35-225(3)(a)(iii). Stamey stated a third-party organization provided the information, but it is incumbent upon anyone running for public office to ensure that the information contained in their election material is in compliance with the very laws that person is campaigning to control.¹

¹ Stamey stated he received the information about MacLaren's voting record "from the TAB report and from the Montana Conservative Alliance. These people who are legislators very familiar with the process provided me with a copy of his voting record (*sic*)..." I would strongly urge Stamey and others who rely upon third-parties for their legislative research to remember that the official legislative record, not individual organizations, is the

The advertisement in question did not have an accuracy statement, nor did it reference particular votes upon which the information was based, and therefore violates §13-35-225(3)(i)&(iii). Further, the two paragraph advertisements don't have language identifying the funding source of the advertising, and therefore violate §13-35-225(1).

Alleged Violation of §13-35-402

Violations of §13-35-402 were alleged. The section states, in pertinent part:

Fair notice period before election -- definition. (1) A candidate, a political committee that has filed a certification under 13-37-201, and an independent political committee shall at the time specified in subsection (3) of this section provide to candidates listed in subsection (2) of this section any final copy of campaign advertising in print media, in printed material, or by broadcast media that is intended for public distribution in the 10 days prior to an election unless:

- (a) identical material was already published or broadcast; or
- (b) the material does not identify or mention the opposing candidate.

(2) The material must be provided to all other candidates who have filed for the same office and who are individually identified or mentioned in the advertising, except candidates mentioned in the context of endorsements.

(3) Final copies of material described in subsection (1) must be provided to the candidates listed in subsection (2) at the following times:

- (a) at the time the material is published or broadcast or disseminated to the public;
- (b) if the material is disseminated by direct mail, on the date of the postmark; or
- (c) if the material is prepared and disseminated by hand, on the day the material is first being made available to the general public.

(4) The copy of the material that must be provided to the candidates listed in subsection (2) must be provided by electronic mail, facsimile transmission, or hand delivery, with a copy provided by direct mail if the recipient does not have available either electronic mail or facsimile transmission. If the material is for broadcast media, the copy provided must be a written transcript of the broadcast.

appropriate verification source. A review of the information Stamey relied upon for his advertisements showed that it did, in fact, have specific bill numbers. Stamey, however, failed to include the information in the advertisements referred to herein.

According to Stamey's campaign, the brochure was distributed in mid-April. Accordingly, the information had been broadcast five to six weeks prior to the primary election and did not constitute a violation of the fair notice provision.

Stamey states, and this Commissioner agrees, that ignorance of the law is no excuse for breaking it. However, Stamey also stated that "the Republican Central Committee in Ravalli County and others involved in the campaign process with much more experience than myself..." didn't bring statutory requirements to his attention. Certainly, the responsibility for this research and verification lies squarely in the lap of the candidate, not committees advising the candidate.

It is Stamey, not the Republican Central Committee in Ravalli County or others "with much more experience" than he, who violated §13-35-402.

Alleged Violation of §13-37-226

Violations of §13-37-226 were alleged. The section states, in pertinent part:

Time for filing reports.

...

(3) Candidates for a state district office, including but not limited to candidates for the legislature...shall file reports:

- (a) on the 12th day preceding the date on which an election is held;
- (b) within 48 hours after receiving a contribution of \$100 or more if received between the 17th day before the election and the day of the election.

...

- (c) not more than 20 days after the date of the election; and
- (d) whenever a candidate or political committee files a closing report as specified in 13-37-228(3).

Stamey filed one finance report that was postmarked July 14, 2010, and received in this office July 15, 2010, 38 days after the primary election. In his response, Stamey stated he had faxed the information twice to this office, but did not state the date or the time he purportedly sent the fax. In addition, there were no facsimile transmission sheets provided to show that he had, in fact, attempted to submit the documentation.

Even if we are to take Stamey at his word and believe that he attempted to fax his financial report, he is still not in compliance with the reporting statute outlined above. His report would have been due on May 28, 2010, with another report due no later than June 28, 2010. The one report Stamey did file included expenditures made after May 28, 2010, so I presume that the missing report is that required by §13-37-228(3)(a), due May 28, 2010.

CONCLUSION

There is sufficient evidence to conclude that the newspaper advertisements paid for by Stamey's campaign violated Montana law.

- The advertisement did not list a reference to the particular vote or votes upon which the information was based, in violation of §13-35-225(3)(a)(i).
- One of the advertisements did not contain a statement stating that to the candidate's knowledge, the votes references were accurate and true, in violation of §13-35-225(3)(a)(iii), MCA.
- One of the advertisements did not contain information identifying the source of the funds used to fund the advertisement.
- Requisite financial reports were not filed.

DATED this 27th day of July, 2011.

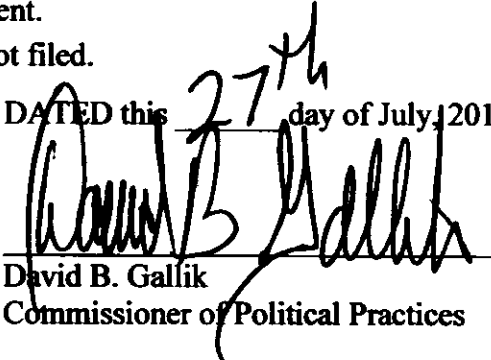

David B. Gallik
Commissioner of Political Practices

Exhibit 1

MACLAREN COMPLAINT RE STAMEY
ATTACHMENT # 1



Richard Stamey for House District 89

- ✓ Ensuring your constitutionally guaranteed right to privacy
- ✓ Exercising State's constitutional authority to utilize our resources to better educate our children
- ✓ Requiring state Forest Service to protect our forests
- ✓ Proposing legislation using Federal funds to public education such as GED programs and school vouchers
- ✓ Proposing legislation to eliminate taxes on ranchers, farmers and small businesses
- ✓ Eliminating state laws imposing unreasonable restrictions on property owners

My votes will be weighed against the needs of Montana.
If it's not constitutional, it's not Montana.

My opponent, Gary [redacted]

- Co-sponsored streamside setback
- Co-sponsored WUI
- Pro-zoning
- Voted Conservative less than 30% of the time

Paid for by Richard Stamey for HD 89 • PO Box 984 • Victor, MT 59875



Exhibit 2

MAC LAREN COMPLAINT RE: STAMEY

ATTACHMENT # 2

Vote for Richard Stamey - H.D. 89

MONTANA CONSERVATIVE ALLIANCE

freedom matters

P.O. Box 11803, Bozeman, MT 59719

Dear HD 89 voter,

People constantly ask, how do big government liberals get elected as Republicans??? The answer: voters get tricked into it. No Republican runs as a liberal. They all sound like conservatives while they're campaigning! Union-backed, far left front groups like Main Street Advocacy spend thousands of dollars trying to confuse and mislead the voters about who the true conservative is.

In House District 89 there is no question that Rick Stamey is the conservative in the race. He is solidly committed to smaller government, lower taxes and the preservation of our constitutional rights. This was recently confirmed by his strong conservative rating on our MCA "principles" questionnaire.

By contrast, incumbent Gary MacLaren refused to answer our survey, and his voting record was rated by the research group Montana Conservatives an alarmingly low 21 percent conservative. That means on key issues, MacLaren had voted with the liberal Democrats 79 percent of the time. It's clear that if MacLaren is re-elected, he will continue to vote for bigger government, greater spending and more regulation. We don't believe voters elect Republicans to do that.

If you seek conservative representation in House District 89, and want a legislator you can rely on to protect your rights, your job and your pocketbook, Rick Stamey is the only choice in the June 8th primary. Don't waste your vote on a conservative-sounding liberals who will go to Helena and let you down. You can count on Rick Stamey, the clear conservative choice in HD 89.

For liberty and less government,

Roger Koopman, former State Representative
Scott Orr, former State Representative
Montana Conservative Alliance

"The great and direct end of government is liberty" - Patrick Henry

Paid for by Richard Stamey for H.D. 89 • P.O. Box 1354 • Victor, MT

MACLAREN COMPLAINT RE: STAMEY

ATTACHMENT #3

My opponent, Gary MacLaren, co-sponsored The Big Sky River Act which proposed 250-foot streamside setbacks immediately after the repeal of the 420-page growth policy. He voted for pro-zoning legislation, and voted against the Montana Sovereignty Bill. I am 100% pro-property rights and I actively helped repeal the growth policy. I'll support your property rights and I will sponsor a new state sovereignty bill.

My opponent, Gary MacLaren, has voted for more government spending and regulation. He has less than a 30% conservative voting record. I will vote against more spending and government regulations and foster your rights to keep the money you earn, and more freedom to create income for your families.