



State Administration and Veterans' Affairs Interim Committee
62nd Montana Legislature

SENATE MEMBERS

KENDALL VAN DYK--Vice Chair
RON ARTHUN
LARRY JENT
DAVE LEWIS

HOUSE MEMBERS

PAT INGRAHAM--Chair
BRYCE BENNETT
JOANNE BLYTON
KATHY SWANSON

COMMITTEE STAFF

SHERI SCURR, Lead Staff
DAVID NISS, Staff Attorney
FONG HOM, Secretary

MEMORANDUM

TO: Members, State Administration and Veterans' Affairs Interim Committee
FROM: David Niss, Staff Attorney
RE: Litigation Report
DATE: May 30, 2012

I

Introduction

At the last meeting of the State Administration and Veterans' Affairs Interim Committee (SAVA), staff presented a litigation report on two of the three pending cases in which Western Tradition Partnership (WTP - now American Tradition Partnership) has sued the office of the Commissioner of Political Practices (COPP) over campaign finance and practices laws. At that time, the SAVA Chair inquired about the case denoted as "WTP II" on written material passed out by the Commissioner's office. This litigation report provides information on that civil Montana District Court action.

II

Discussion

This case began in 2008 with the filing of what is known as the Graybill Complaint alleging a violation of section 13-35-225, MCA, Montana's statute prohibiting anonymous campaign material. As alleged in the complaint and as determined by the COPP, the actions of producers of certain political fliers involved violations of that statute because the fliers: (1) did not contain the phrase "Paid for by"; (2) did not contain a reference to the particular vote or votes involved in the legislative bills referred to in the fliers; (3) were actually the work of the WTP, rather than another political group, and that fact was not disclosed on the fliers and WTP was not even registered as a political committee. Because of these violations, the COPP found that the WTP had violated section 13-35-225, MCA, and that a civil penalty was therefore warranted pursuant to section 13-37-128, MCA.

WTP and several other plaintiffs then sued the COPP because of the Commissioner's findings brought about by the Graybill Complaint. The plaintiffs alleged

that section 13-35-225(1), MCA, and a number of other statutes, was unconstitutional in that the constitutional jurisprudence of the courts requires that political advocacy can be regulated only if the election of a candidate is the major purpose of a political committee and that WTP was a nonpartisan organization involved only in educating the public, did not participate in express advocacy, and had not made any contributions or expenditures involving a candidate. For these reasons, WTP and the other plaintiffs sought a declaratory ruling that the statutes involved were unconstitutional and that the defendants should be enjoined from enforcing them. The plaintiffs therefore moved for summary judgment on these issues of law.

Judge Sherlock denied the plaintiffs' motion for summary judgment, holding that there were many factual issues involved, such as what the purpose of WTP was and whether WTP, and not some other organization that was registered as a political committee, in fact financed the political fliers that violated the disclosure statute; that certain wording used in the statutes was not unconstitutionally vague as a violation of the First Amendment of the U.S. Constitution; and that the distinction the plaintiffs tried to draw between advocating on issues only and not in favor or against a candidate did not exist in the decisional law of all courts and the Court would therefore not impose it at this stage of the proceedings

III Conclusion

The decision by Judge Sherlock is a preliminary one only, holding that there are many facts yet to be determined at trial and that the Court therefore cannot decide the case based only upon the language of the statutes involved, but must know the facts to which that language applies. The case is now set for a nonjury trial to begin in March of 2013, before Judge Sherlock.