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MUDD NELSON, P.C.
100 West Railroad Street, Suite 200
P O Box 8154
Missoula, Montana 59807-8154
Tel (406) 549-5468
Telefax (406) 549-5469

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COMMISSION
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COUNSEL

2006 SEP 27 P 12:34

September 26, 2006

VIA OVERNIGHT COURIER

Lawrence H. Norton, Esq., General Counsel
Office of the General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

MUR # 5827

RE: Complaint against Friends of Conrad Burns, et al.

Dear Mr. Norton:

Please be advised that this firm represents Montanans for Tester. Attached hereto is a Complaint for filing against Friends of Conrad Burns, et al., alleging violations of the Federal Election Campaign Act of 1971 as amended, 2 USC § 431 et seq, and related regulations of the Federal Election Commission, 11CFR §§ 100.1, et seq., by the Respondents named therein.

Should you have any questions or concerns regarding the same, please do not hesitate to contact me.

Very truly yours,

MUDD NELSON, P.C.

By:

John J. Mudd

JJM:nbr

Enclosure (as stated)

cc: Montanans for Tester
Ezra W. Reese, Esq.

BEFORE THE
FEDERAL ELECTION COMMISSION

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COMMISSION
OFFICE OF GENERAL
COUNSEL

2006 SEP 27 P 12: 34

Montanans for Tester,

Complainant,

v.

Friends of Conrad Burns
P.O. Box 1596
Helena, MT 59624,

James Swain,
Treasurer, Friends of Conrad Burns
P.O. Box 1532
Billings, MT 58103,

Resodyn Corporation
130 N. Main Street,
Suite 600
Butte, MT 59701, and

The Montana Standard
25 W. Granite St.
Butte, MT 59701,

Respondents.

MUR No. 5827

COMPLAINT

Complainant, Montanans for Tester, through its undersigned counsel, files this complaint against Friends of Conrad Burns; James Swain, as Treasurer; Resodyn Corporation; and the *Montana Standard* (collectively, "Respondents"), for violations of the Federal Election Campaign Act ("the Act"), 2 U.S.C. § 431 *et seq* (2006) and Federal Election Commission regulations, as described below.

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I. FACTS

Conrad Burns is a United States Senator representing the state of Montana, and a candidate for re-election on November 7, 2006. His opponent in the general election is Jon Tester. On September 23, 2006 the *Montana Standard*, a newspaper based in Butte, Montana, hosted a debate between Tester and Burns at the Mother Lode Theater. One of the co-sponsors of the debate was Resodyn Corporation, a Butte, Montana company which paid for a portion of the expenses of the debate. Resodyn contributed \$200 to the event. C. Johnson & J. McKee, "Sponsorship Bedevils Debate," *Billings Gazette*, Sep. 26, 2006, attached as Exhibit "A."

Resodyn, as a co-sponsor, received a certain portion of reserved seats in the theater. It also appears that Resodyn provided Resodyn employees or guests using these reserved seats stickers supporting Burns's re-election. As the *Associated Press* reported, "The seats clearly ended up being given to Burns supporters, who stood up and loudly applauded the Republican senator to start the debate." M. Gouras, "Burns, Newspaper Under Fire for Debate's Corporate Sponsor," *Associated Press*, Sep. 25, 2006, attached as Exhibit "B." Though "Tester supporters outnumbered the Burns supporters by at least three or four to one . . . [t]hose people sitting in the reserved Resodyn section, sporting Burns stickers, were among the Republican's loudest backers." C. Johnson & J. McKee, *supra*.

Resodyn and Burns have a history of mutual cooperation. Burns, as a member of the Senate Appropriations Committee has obtained a number of federal grants for Resodyn, including a \$10 million grant announced on September 7, 2006. *Id* Resodyn's lobbyist company is ranked as Burns's 14th largest campaign contributor from 2001-2006; until recently that company employed a former Burns employee, Randy Popelka, who returned to Burns' employ in July of 2005. *Id* Lawrence Farrer, Resodyn's president, is a large contributor to the Montana Republican Party. *Id* Senior Resodyn senior officers have also contributed directly to Burns's campaign, including one of Resodyn's directors, Jeffrey C. Barrows, and his spouse. M. Gouras, *supra*.

II. ARGUMENT

A. Legal Background

Corporations are explicitly prohibited from making contributions or expenditures in connection with Federal elections. 2 U.S.C. § 441b(a) (2006). Federal Election Commission regulations carve out narrow exceptions to permit corporations to make certain donations for nonpartisan activity. Among those exceptions is a provision permitting certain corporations to help defray expenses for candidate debates, but only under certain, limited circumstances. 11 C.F.R. §§ 114.4(f), 110.13 (2006). Chief among them is a strict requirement that the "staging organization(s) does not structure the debates to promote or advance one candidate over another." *Id.* § 110.13(b)(2).

B. Application to Facts

The facts demonstrate that Resodyn's contribution to the debate was a violation of the statutory ban on corporate contributions and expenditures in connection with a Federal election. Resodyn, as a co-sponsor, structured the debate seating to ensure that Burns supporters were given prominent and visible positions, and appears to have provided stickers supporting Burns to those who used Resodyn's reserved seating. Resodyn used its contribution to the debate to promote Burns's candidacy, in direct violation of the statutory prohibition on corporate contributions and the strict regulations requiring fair and nonpartisan candidate debates. The *Montana Standard*, if aware of Resodyn's conduct, failed to meet its obligation to structure the debate to avoid promoting or advancing one candidate over the other.

Further, due to the long-standing close relationship between Resodyn and Burns, it is likely that Burns, and/or those in his campaign, knew of Resodyn's activities to support Burns and his campaign committee. Therefore, Resodyn's expenditures may constitute illegal in-kind contributions to Burns's campaign.

III. CONCLUSION

As shown, Respondents have violated the Federal Election Campaign Act and Commission Regulations. Accordingly, Complainant requests that the Commission conduct a

prompt and complete investigation of this matter and that Respondents be enjoined from further violations and be fined the maximum amounts permitted by law.

Respectfully submitted this 26th day of September, 2006.

MUDD NELSON, P.C.

Counsel for Montanans for Tester

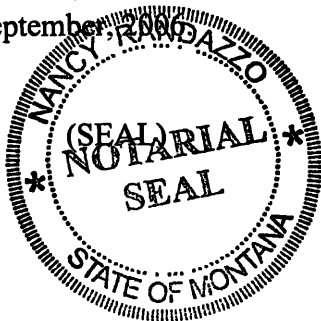
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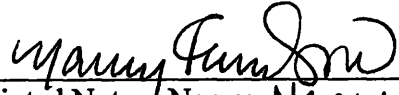
John J. Mudd

STATE OF MONTANA)

County of Missoula)

SUBSCRIBED AND SWORN to before me by JOHN J. MUDD this 26th day of
September, 2006




Printed Notary Name: Nancy Randazzo
Residing at Missoula
My Commission Expires: 3/1/09

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Story available at <http://www.billingsgazette.net/articles/2006/09/26/news/state/45-sponsorship.txt>

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Sponsorship bedevils debate

By CHARLES S. JOHNSON and JENNIFER McKEE

Gazette State Bureau

HELENA - Senate candidate Jon Tester's campaign complained Monday that some of the best seats in the theater at a Butte debate Saturday night were reserved for backers of Sen. Conrad Burns, who has close ties to one of the event's sponsors.

Tester's campaign said it expects to file a complaint with the Federal Election Commission over the controversy. Details of the complaint were not available Monday.

At issue is the fact that Resodyn Corp., one of three sponsors of the debate, was given 30 reserved seats in the center section near the front of the Mother Lode Theater. The theater, which holds 1,230 people, drew a crowd estimated at 1,000 people.

Seating had been billed in advance as being on a first-come, first-served basis, except for the 25 seats reserved for each campaign and those set aside for media covering the debate. Some Democrats and Tester backers were irked when they were told they couldn't sit in the reserved section.

Judging by the cheering, Tester backers outnumbered the Burns supporters by at least three or four to one at the debate in heavily Democratic Butte.

Those people sitting in the reserved Resodyn section, sporting Burns stickers, were among the Republican's loudest backers, greeting the senator with a standing ovation when he was introduced.

It cost \$500 to rent the theater for the event. The Montana Standard, Butte's daily newspaper, organized the debate and recruited two other corporations as sponsors. Resodyn and Rhodia Chemical each paid \$200, with the Standard kicking in \$100, plus lots of in-kind time, the newspaper's editor, Gerry O'Brien said.

O'Brien called the Resodyn connection "an honest mistake." The newspaper wanted to rent the theater because it held far more people than a Montana Tech site it had used for past debates, he said.

Because of the bias accusations, O'Brien said the newspaper may not accept the Resodyn check. In the future, he said the Standard probably won't co-sponsor a debate with another corporation, "especially one that gets money from the federal government."

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O'Brien defended the debate itself, saying Resodyn's sponsorship didn't influence the debate or affect the questions asked by journalists.

"I think it was a good debate," he said. "It was fair, the public had adequate access, we didn't have to turn anyone away from the door."

Strongly disagreeing was Tester spokesman Matt McKenna.

"It looks like the Montana Standard and Resodyn tried their best to rig this debate," he charged. "Despite their efforts, Jon Tester still won and more of his supporters showed up to watch him do it. That's got to be frustrating for those guys to cheat and lose."

Burns spokesman Jason Klindt countered, "Jon Tester gets trounced at a debate in a Democratic stronghold where he was unable to defend his extreme liberal voting record, and somehow it's the audience's fault. Maybe he can get his buddies at the ACLU (American Civil Liberties Union) to file suit against Montanans for sitting quietly and watching him at a debate."

O'Brien said he doesn't believe the dispute rises to the level of a campaign violation, accusing Democrats of "just blowing smoke."

Burns, as a member of the Senate Appropriations Committee, has obtained a number of federal grants to Resodyn, a Butte company that develops technical products.

Asked about the media soliciting other corporate sponsors for political debates, Dennis Swibold, a University of Montana journalism professor and former Bozeman Daily Chronicle editor, said, "I think it looks better if you have sort of nonpartisan groups sponsoring the debate. It removes any suspicion that anyone's playing around with the rules."

The Butte debate is the only one of the eight past and future Senate debates involving corporate sponsorships other than media companies.

Resodyn started out as a Butte company called Montec. In 2003, the company changed its name to Resodyn. That same year, the company hired Van Scoyoc and Associates as its lobbyist. Van Scoyoc is ranked as Burns' 14th largest campaign contributor between 2001 and 2006, according to the Center for Responsive Politics, a nonprofit research group in Washington, D.C., that tallies campaign donations.

Until 2005, former Burns aide Randy Popelka was one of three registered lobbyists for Resodyn. Popelka had worked for Burns for seven years before leaving in 2003 to lobby for Van Scoyoc. He left the lobby house in July of 2005 and returned to Burns' Senate office as legislative director.

On Sept. 7, just more than two weeks before the debate, Burns announced \$10 million in federal dollars involving Resodyn.

One of Resodyn's directors, Jeffrey C. Barrows of Woodland, Calif., and his wife, Starr, have each given Burns the maximum \$4,200 in campaign donations this campaign. Resodyn's president, Lawrence Farrer, has donated \$10,080 to the Montana Republican Party the past 10 months.

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Corporate sponsorship of Burns-Tester debate draws criticism

By MATT GOURAS

HELENA, Mont. - Democrats are complaining that supporters of U.S. Sen. Conrad Burns got choice seats at the debate with Jon Tester in Butte on Saturday night, thanks in part to a debate sponsor close to Burns.

Resodyn Corp. co-sponsored the debate and was given some reserved seats near the front of Butte's 1,230-seat Mother Lode Theater. The seats clearly ended up being given to Burns supporters, who stood up and loudly applauded the Republican senator to start the debate.

The move rankled Democrat Tester's supporters, who outnumbered the Burns supporters. The Tester backers claimed they were forced to sit behind the Burns people.

But the Montana Standard, which organized the debate, said Resodyn received only 30 reserved seats. Those seats were in the front section but were about 10 rows back from the stage, the newspaper said.

Any other Burns supporters occupying the very front rows took advantage of first-come, first-serve seating to surround the Resodyn seats, said Montana Standard Editor Gerry O'Brien.

"Quite frankly, it is just Tester's campaign grasping at straws here," he said.

The Tester campaign said the arrangement gave Burns supporters an advantage.

"A Burns contributor bought premium seats from the Montana Standard exclusively for Burns supporters," said Tester spokesman Matt McKenna. "To me that doesn't sound like first-come, first-serve _ and the Montana Standard needs to answer to that."

The Tester campaign said it planned to file a complaint with the Federal Election Commission.

The ties between Burns and Butte-based Resodyn involve federal contracts Burns has said he helped secure for the company, and campaign contributions the company's senior officers or spouses gave to the GOP or Burns.

O'Brien said there was adequate seating for everyone and noted that each campaign was given some reserved seats on the sides of the theater's front section. The candidates were questioned by professional journalists and the format was not dictated by sponsors, he said.

"I think we bent over backward for the Tester campaign. They had a lot of access," O'Brien said.

He said the reserved seating or sponsorship did not affect the debate.

As a sponsor, Resodyn contributed \$200 toward the \$500 cost of theater rental, O'Brien said. Now, he said, the newspaper may not accept the donation because of the appearance of bias.

O'Brien said it was the newspaper's decision to approach Resodyn, and the company did not seek the sponsorship.

McKenna said the newspaper can't fix the situation by now refusing to accept the donation. "Now

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Resodyn was allowed to come in and reserve seats just because?" he said.

O'Brien said the newspaper had received a few complaints from the public, via e-mail, about the issue.

The Burns campaign said it agrees with O'Brien that the seating arrangement did not influence the debate.

"What a whiner," Burns spokesman Jason Klindt said of Tester. "Maybe he can get his buddies at the ACLU (American Civil Liberties Union) to file suit against Montanans for sitting quietly and watching him at a debate."

Unlike a prior debate in Hamilton, the crowd was not allowed to cheer or interrupt during the Butte debate. Applause was limited to the opening introductions and the end of the debate.

Rhodia Chemical also was given some reserved seats near the back of the theater's front section for its sponsorship, but O'Brien said he did not think the company used the seats.

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