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A PROFESSIONAL CORPORATION

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October 20, 2006

VIA TELECOPIER
AND U.S. POSTAL SERVICE

MATTHEW D NEILL
CYNTHIA L CATE

OF COUNSEL

ROBERT A POORE

URBAN L ROTH

DONALD C ROBINSON

JAMES A POORE, JR.

(1916-2002)

2006 OCT 20 A 11:04
FEDERAL
OFFICE
RECEIVED

ROBERT C BROWN
J RICHARD ORIZOTTI
BRENDON J ROHAN
JOHN P DAVIS
THOMAS M. WELSCH
PATRICK M SULLIVAN
LEE BRUNER
LISA A LEVERT
RONALD A THUESEN
CHARLES K SMITH

Jeff S. Jordan, Esq.
Supervisory Attorney
Federal Election Commission
Complaints Examination & Legal Administration
999 E Street, N.W.
Washington, D.C. 20463

Re: Complaints : ~~MUR No. 5827 - Montana for Fester~~
MUR No. 5829 - MacNaughton
Respondent : Resodyn Corporation

Dear Mr. Jordan:

Enclosed is Resodyn Corporation's Combined Response to Complaints. This submittal is made on behalf of Resodyn Corporation to explain why the FEC should take no action against it in either of these matters.

We look forward to your prompt dismissal of the Complaints. Please call if we can be of further assistance.

Very truly yours,

POORE, ROTH & ROBINSON, P.C.

By


Thomas M. Welsch

TMW:ct

Enclosures

cc: Mr. Larry Farrar, Resodyn Corporation

27044162611

Thomas M. Welsch, Esq.
Poore, Roth & Robinson, P.C.
1341 Harrison Avenue, P.O. Box 2000
Butte, Montana 59702
Telephone: (406) 497-1200

Attorneys for Respondent, Resodyn Corporation

BEFORE THE FEDERAL ELECTION COMMISSION

Montanans for Tester,

Complainant,

v.

MUR No. 5827

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.

Jaime MacNaughton,

Complainant,

v.

MUR No. 5829

Resodyn Corporation,

Respondent.

**RESODYN CORPORATION'S
COMBINED RESPONSE TO
COMPLAINTS**

1. **RESODYN CORPORATION'S COMBINED RESPONSE TO COMPLAINTS**

27044162613

COMES NOW Respondent RESODYN CORPORATION and responds to the Complaints filed by Montanans for Tester (MUR 5827) and Jaime MacNaughton (MUR 5829):

First, the premise underlying both complaints is misinformed. 11 C.F.R. § 110.13 prohibits the staging organization's structuring a debate to promote or advance one candidate over another. The seating arrangement at issue here did not involve the structure of the debate, and neither did it promote or advance Senator Burns over Jon Tester. While Resodyn Corporation and its guests and employees had seats in the center section of the audience, the seating arrangements could not have had an effect on the substance of the debate itself, i.e., on the questions asked, and there is no claim that the seating arrangements hampered Mr. Tester's ability to respond to the questions. The seating arrangement simply did not violate § 110.13.

Second, Resodyn Corporation did not request reserved seating. That was offered by the debate sponsor, *The Montana Standard*, after Resodyn Corporation had agreed to partner with the paper, at its request, to cover the cost of the debate venue. That is confirmed both by *The Montana Standard's* October 1, 2006, article explaining its actions in organizing and presenting the debate, and by the e-mail sent by Larry Farrar, President of Resodyn Corporation, to the Corporation's employees on September 28, 2006, addressing the same issue. Both those documents are attached hereto as Exhibit 1.

Third, Resodyn Corporation did not make any expenditure for or contribution to the Burns campaign. The \$200 Resodyn Corporation paid ultimately went to The Mother

2. **RESODYN CORPORATION'S COMBINED RESPONSE TO COMPLAINTS**

Lode Theater where the debate was held, not to the Burns campaign. The Burns campaign itself had stickers and other election materials available at the debate for anyone interested. Resodyn Corporation did not distribute those materials to any persons at the site, and neither did it encourage or require any of its employees or any other person attending the debate to support one candidate or the other. See the Farrar e-mail of September 28, 2006, included in Exhibit 1.

There simply was no violation of 11 C.F.R. § 110.13.

Ms. MacNaughton's complaint based on Mont. Code Ann. § 13-35-227 likewise fails, even assuming the FEC has jurisdiction to enforce the statute. The statute, a copy of which is included as Exhibit 2, provides that "A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party." There is no claim here that Resodyn Corporation made a contribution or an expenditure in connection with "a political committee that supports or opposes a candidate or a political party." The complaint is that Resodyn Corporation made an expenditure "in connection with a candidate," i.e., Senator Burns. Resodyn Corporation's expenditure, however, went to cover the cost of the venue, where both candidates appeared. It was not made in connection with one candidate to the exclusion of the other. There was no violation of the statute.

//

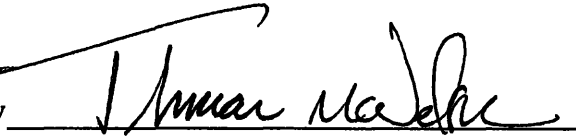
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3. **RESODYN CORPORATION'S COMBINED RESPONSE TO COMPLAINTS**

Both Complaints MUR 5827 and 5829 must be dismissed. Neither warrants the use of Commission resources.

RESPECTFULLY SUBMITTED this 20th day of October, 2006.

POORE, ROTH & ROBINSON, P.C.

By 

Thomas M. Welsch

Attorneys for Resodyn Corporation
1341 Harrison Avenue, P.O. Box 2000
Butte, Montana 59702

CERTIFICATE OF SERVICE BY MAILING

This is to certify that on the 20th day of October, 2006, the foregoing attached RESODYN CORPORATION'S COMBINED RESPONSE TO COMPLAINTS was duly served upon the following, by depositing a true copy thereof in the United States mails, postpaid, addressed as follows, to-wit:

John J. Mudd, Esq.
Mudd Nelson, P.C.
100 West Railroad Street, Suite 200
P.O. Box 8154
Missoula, Montana 59807-8154

Attorneys for Montanans for Tester

Ms. Jaime MacNaughton

Helena, Montana 59601

POORE, ROTH & ROBINSON, P.C.

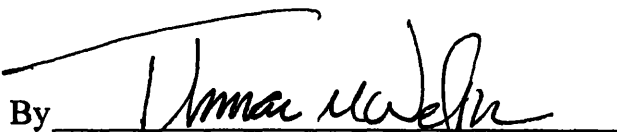
By 
Thomas M. Welsch

EXHIBIT "1"

27044162617

Standard takes responsibility. The issue is debatable

By The Standard Staff - 10/01/2006

As readers of The Montana Standard know, there has been a lot news generated this past week over the Standard's sponsorship and reserved seating at the senate debate between Republican U. S. Sen. Conrad Burns and Democrat state Sen. Jon Tester.

What's been lost in the coverage is the fact that Butte played host to a well-attended debate and the public had a chance to see how both candidates operate under pointed questions from the press.

Up front, the corporate sponsorship of the public debate was a mistake on the Standard's part, and solely rests on our shoulders. No question about that.

This error in judgment should not overshadow the fact that more than 1,000 people — young, middle-aged and seniors — attended and came away with a better understanding of who they may vote for on Nov. 7.

It was great to see high school and college students take an interest in the future of their state.

First a little background. The Standard decided after the June primary that Butte needed to be included in a series of senate debates because Butte could very well be a deciding factor in the outcome of a close race. Both camps readily agreed to this.

From there, The Standard worked on securing the Mother Lode Theatre because it was a large venue that could accommodate 1,200 people and the various press needs and had the best acoustics.

To help defray the costs of the venue, the Standard sought out corporate partners. Both Resodyn Corp and Rhodia Chemical agreed when contacted by us.

Larry Farrar, president of Resodyn, said that Resodyn Corp. was glad to see the debate in Butte, and thought it was an exciting opportunity for our city.

"Sponsorship of the debate was not an endorsement for either candidate by Resodyn Corp.," Farrar told The Standard. And no one was coerced to wear Burns stickers in the reserved seating section, he said.

The Standard, at the start of the debate, made note of the fact that Resodyn is the recipient of millions of dollars in federal grants. The company is very good at securing federal dollars that support high-tech research and development projects. Some of the money did come through the actions of Sen. Burns.

Resodyn and Rhodia did not ask The Montana Standard, or anyone else, for reserved seats at the debate. The Standard's publisher, Janet Taylor, as a courtesy to both sponsors, offered 50 seats to Resodyn and a few to Rhodia. And The Standard chose where those seats would be.

The Standard also reserved front-row seats on either side of the theatre for the Tester and Burns campaigns for friends and family members.

Since then, the Tester campaign has filed a Federal Election Commission complaint over the reserved seating. In response, The Standard has decided not to charge the sponsors for their participation.

For those who have attended events at The Mother Lode, it's obvious that there was no bad seat in the house. To us, where people sat was irrelevant. The focus was on the candidates.

At no point were the sponsors involved in the format of the debate, the questions asked or any other issue

surrounding the outcome of the debate. And, there have been no election complaints filed about the format, questions or end result of the debate.

We believe that the questions were fair and balanced and each candidate was given ample opportunity to respond. We encourage those who could not attend to view the video of the debate posted on our Web site at www.mtstandard.com. Click on the "Breaking News" icon. Also, there are several more debates coming up. The next one is at MSU-Bozeman on Oct. 9.

Our goal has always been to provide the public with the best, unbiased information regarding this election. You, the voter, can take action by staying informed, following the campaigns and casting a ballot on Nov. 7.

27044162619

Larry Farrar

From: Larry Farrar
Sent: Thursday, September 28, 2006 1:32 PM
To: All Exchange Users
Cc: 'Gerry O'brien'
Subject: Comments Provided to Montana Standard

Tracking: Recipient Read

All Exchange Users

'Gerry O'brien'

Jeff Draper Read: 9/28/2006 1:36 PM

Brian Seaholm Read: 9/28/2006 1:42 PM

Teresa Hayward Read: 9/28/2006 1:51 PM

Tom Knowles Read: 9/28/2006 2:07 PM

Darren Tuss Read: 9/28/2006 2:16 PM

Jessica Bertoglio Read: 9/28/2006 2:35 PM

Steve Galbraith Read: 9/28/2006 2:36 PM

Ed Davis Read: 9/28/2006 2:56 PM

Manfred Biermann Read: 9/28/2006 2:56 PM

Jeffery Kline Read: 9/28/2006 3:12 PM

Peter Lucon Read: 9/28/2006 3:56 PM

Harold Howe Read: 9/28/2006 3:57 PM

Sherri Dingley Read: 9/28/2006 4:03 PM

Michael Delly Read: 9/28/2006 4:23 PM

Cameron Reagor Read: 9/28/2006 5:29 PM

Dan P. Olsen Read: 9/28/2006 6:05 PM

Jeff Nicholls Read: 9/29/2006 6:39 AM

Scott Cogull Deleted: 10/2/2006 9:56 AM

Resodyn Corporation Staff:

The following remarks were sent to Gerry O Brian, Editor of the Montana Standard, relative to recent articles that have been published related to the debate. Gerry is going to issue an editorial in tomorrow's paper on the debate and the ensuing issues.

The remarks below should provide clarification to all staff regarding the misleading and incorrect statements that were reported in the Montana Standard articles written on Monday and Tuesday of this week.

Gerry

Thanks for returning my call

A few points:

1.) Resodyn Corporation did not ask to be a debate sponsor, but gladly consented to sponsor the debate between both candidates when asked by the Montana Standard. Resodyn Corporation was glad to see this process occurring in Butte, and thought it was an exciting opportunity for our city. We want to contribute anything we can to help Butte. Sponsorship of the debate was not an endorsement for either candidate by Resodyn Corporation.

2.) Resodyn Corporation did not ask the Montana Standard, or anyone else, for reserved seats Nonie Swan of the

10/15/2006

27044162620

Montana Standard called us on September 20, 2006 and asked if we would like reserved seats. We acknowledged on that day that we would and which were assigned to us by the Montana Standard. We were told that each of the reserved seats would be marked with a sign saying "Resodyn Corporation."

3.) No one from Resodyn Corporation was providing Burns stickers, or other Burns campaign information, or insignia, to people in the reserved seating area. Any stickers, or other campaign information, were being offered by Burns supporters throughout the theatre, as were stickers and shirts from the Tester supporters. No encouragement, or discouragement, to take and/or display their preference for either candidate was provided by Resodyn Corporation. Each individual was free to make their own choices.

4.) Tester staff, Matt McKenna, asked for some of the reserved seats to be provided to his elderly, 85 year old grandmother and her friend. They were provided and the seats were occupied by them. They were positively greeted and welcomed.

5.) A few people that were not pre-assigned seats in the Resodyn Corporation reserved area, both Burns supporters, who were wearing Burns campaign insignia, and Tester supporters, who were wearing Burns campaign insignia, did sit in the reserved section. Some were told by Resodyn Corporation that the seating was reserved for others, but failed to move. They were not harassed, insulted, or forcefully ejected by Resodyn Corporation, but were allowed to stay.

6.) Resodyn Corporation did not provide any questions to be asked at the debate. Neither Lawrence Farrar, Cynthia Farrar, Jeffrey Barrow, or Starr Barrow submitted any questions to the Montana Standard on behalf of Resodyn Corporation, or on their own behalf.

7.) Resodyn Corporation made no inquiries to the Montana Standard, or anyone else, about the format or content of the debate. There was no effort, or interest, by Resodyn Corporation to influence the debate. We were glad see it happen in Butte, and happy to be able to attend this important event.

8.) Senator Burns has been a strong supporter of Montana, Butte and Resodyn Corporation. The appropriations that he has provided to Resodyn Corporation is a matter of public record. In addition, any time we get to talk about these projects within the community, the state, or nationally, we clearly point that Senator Burns has provided these funds to Resodyn Corporation and is mentioned in our presentations to the public and in our press releases as they are granted and/or received.

9.) Senator Burns, as well as most Democratic and Republican Senators and Congressmen, has been able to work with various appropriations committees to obtain both contracts and grants from federal sponsors. These contracts are allocated within the strict regulations of the Federal Acquisition Regulations (FAR), require proposals, work plans and deliverables. They are audited by the Defense Contract Audit Agency to ensure the funds were spent in accordance with the FAR's and provisions of the each contract to conduct the work that we establish with each Federal agency that monitors them.

10.) Lawrence Farrar, Cynthia Farrar, Jeffrey Barrow, or Starr Barrow have been supporters of both the Republican Party and/or Senator Burns campaign reelection for many years. This information, again, has been, and is a matter of public record, and made with full disclosure in accordance with the Federal laws.

11.) We acknowledge that there are signs promoting the re-election of Senator Burns on the Hennessy building

12.) There were many folks in the Resodyn Corporation reserved section that had neither Burns, nor Tester insignia. A criterion for being in the section did not include being a supporter of anyone or anything. The criterion was to have been on the reserved list.

Resodyn Corporation feels that the debate was conducted in a fair and orderly fashion. The Montana Standard and Chamber of Commerce President, Marco Lucich, are to be complemented.

Thanks for taking these points into consideration for your Editorial

Best regards,

Larry

Lawrence C. Farrar, P.E.
President
Resodyn Corporation

10/15/2006

27044162621

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Phone (406) 497-5252
FAX (406) 497-5207

email: _____

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27044162623

EXHIBIT "2"

*11404 MCA 13-35-227

**MONTANA CODE
ANNOTATED
TITLE 13. ELECTIONS
CHAPTER 35. ELECTION
AND CAMPAIGN PRACTICES
AND CRIMINAL
PROVISIONS
PART 2. SPECIFIC
PROVISIONS**

*Current through the 2005 Regular
Session of the 59th Legislature*

**13-35-227. Prohibited contributions from
corporations**

(1) A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party.

(2) A person, candidate, or political committee may not accept or receive a corporate contribution described in subsection (1).

(3) This section does not prohibit the establishment or administration of a separate, segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee, or member of the corporation.

(4) A person who violates this section is subject to the civil penalty provisions of 13-37-128.

History En. Sec 25, Init Act, Nov 1912, re-en Sec 10790, R.C.M. 1921; re-en Sec 10790, R.C.M. 1935, Sec 94-1444, R.C.M. 1947, redes 23-4744 by Sec 29, Ch 513, L 1973; amd Sec 1, Ch 296, L 1975, R.C.M. 1947, 23-4744; amd Sec 1, Ch 404, L 1979, amd Sec 1, I.M. No 125, Nov 5, 1996, amd Sec 1, Ch 294, L 1997 (voided by I.R. No 114, Nov 3, 1998), amd Sec 1, Ch 59, L 2003

<General Materials (GM) - References,
Annotations, or Tables>

**NOTES, REFERENCES, AND
ANNOTATIONS**

Compiler's Comments

2003 Amendment: Chapter 59 in (1) at beginning deleted "Except as provided in subsection (4)" and in two places after "candidate" deleted "a ballot issue"; deleted former (1)(b) that read: "(b) For purposes of this section, "corporation" refers to for-profit and nonprofit corporations"; deleted former (4) that read: "(4) The provisions of subsection (1) prohibiting corporate contributions to or expenditures in connection with a ballot issue do not apply to a nonprofit corporation formed for the purpose, among others, of promoting political ideas and that:

(a) does not engage in business activities;

(b) has no shareholders or other affiliated persons who have a private claim on the corporation's assets or earnings;

(c) does not accept foreign or domestic for-profit corporations as members, and

(d) does not accept in the aggregate more than 5% annually of its total revenue from foreign or domestic for-profit corporations"; and made minor changes in style Amendment effective March 5, 2003

*11405 Preamble The preamble attached to Ch. 59, L. 2003, provided "WHEREAS, in Montana Chamber of Commerce v. Argenbright, 226 F3d 1049 (9th Cir. 2000), the Ninth Circuit Court of Appeals held that corporate wealth has not distorted the ballot issue process in Montana and that therefore the first amendment to the United States Constitution does not permit the section 13-35-227, MCA, provision that prohibits a corporation from making a contribution or expenditure in connection with a ballot issue."

1997 Amendment -- Rejected. The amendments made by Ch 294, L. 1997 (House Bill No 575), were removed from this section because House Bill No. 575 was rejected by the electorate in an initiative referendum held November 3, 1998

1997 Amendment: Chapter 294 at beginning of (1)(a) deleted "Except as provided in subsection (4)" and in two places, after "candidate", deleted "a ballot issue", deleted former (4) that read: "(4) The provisions of subsection (1) prohibiting corporate contributions to or expenditures in connection with a ballot issue do not apply to a nonprofit corporation formed for the purpose, among others, of promoting political ideas and that.

(a) does not engaged in business activities;

(b) has no shareholders or other affiliated persons

who have a private claim on the corporation's assets or earnings,

(c) does not accept foreign or domestic for profit corporations as members; and

(d) does not accept in the aggregate more than 5% annually of its total revenue from foreign or domestic for profit corporations"; and made minor changes in style Amendment effective April 17, 1997.

1996 Amendment by Initiative: Initiative No. 125, proposed by initiative petition and approved at the general election held November 8, 1996, at beginning of (1)(a) inserted exception clause, inserted (1)(b) defining corporation, and inserted (4) relating to exempting nonprofit corporations from the prohibition on political contributions under certain circumstances. This amendment was not published in the 1997 Montana Code Annotated because the 1997 Legislature passed Ch 294, which removed the amendments that had been inserted by Initiative No. 125

Preamble. The preamble attached to I.M. No. 125 provided: "WHEREAS, corporations are not allowed to directly spend money to influence political candidate campaigns in Montana; and

WHEREAS, corporations are not allowed to directly contribute money to a political party in Montana; and

WHEREAS, the processes of initiative and referendum are a vital part of the political process in Montana, and

WHEREAS, corporations are not restricted in the direct use of corporate funds to support or oppose the adoption or rejection of ballot issues in Montana, and

WHEREAS, corporations are now making direct corporate expenditures of overwhelming amounts of money in Montana initiatives; and

*11406 WHEREAS, participation in the political system needs to be kept fair to citizens of normal financial means, and

WHEREAS, limitations on direct corporate contributions work toward that fairness

NOW, THEREFORE, BE IT RESOLVED BY THE PEOPLE OF THE STATE OF MONTANA.

That the prohibition on the direct use of corporate funds in the Montana political process be expanded to prohibit direct corporate expenditures in support of or in opposition to initiative and referendum ballot issues."

Severability: Section 4, I.M. No. 125, was a severability clause.

Cross-References

Limitations on contributions, 13-37-216.

Limitations on receipts from political committees, 13-37-218.

Case Notes

Corporate Expenditures in Connection With Ballot Issues. The District Court did not clearly err in finding that corporate wealth has not distorted the ballot issue process in Montana and that the first amendment therefore does not permit this section's provision that prohibits a corporation from making a contribution or expenditure in connection with a ballot issue. The provision is unconstitutional. *Mont Chamber of Commerce v. Argenbright*, 226 F3d 1049 (9th Cir 2000)

Statutory Limits on Contributions to Ballot Issue Committees Held Unconstitutional. A city ordinance placing a \$250 limit on contributions to committees formed to support or oppose ballot measures is an unconstitutional interference with the first amendment rights of association and free speech. *Citizens Against Rent Control v. Berkeley*, 454 US 290, 70 L Ed 2d 492, 102 S Ct 2d 434 (1981)

Corporate Free Speech -- United States Constitution. The portion of this section (prior to 1979 amendment) that totally prohibited payments or contributions by corporations in support of or opposition to ballot issues was an unconstitutional restriction of corporate rights to free speech guaranteed by the first amendment to the United States Constitution (similar to Art II, sec 7, Mont. Const.) *C & C Plywood Corp. v. Hanson*, 583 F2d 421 (9th Cir 1978), affirming 420 F. Supp 1254 (D.C. Mont 1976)

Law Review Articles

Money and the Pollution of Politics. Is the First Amendment an Obstacle to Political Equality?, *Wright*, 82 Colum L. Rev. 609 (1982)

*11407 The Constitutionality of Limitations on Ballot Measure Contributions, *Mueller & Parrinello*, 57 N.D. L. Rev. 391 (1981)

Prohibition of Corporate Political Expenditures. The Effect of First National Bank v. Bellotti, 1979 Utah L. Rev. 95 (1979)

Corporations' Right to Free Speech in Referendum Elections: First National Bank v. Bellotti, 32 SW. L. J. 1359 (1979)

Collateral References

Elections + 231, 317

29 C.J.S. Elections §§ 216, 329, 346.

26 Am. Jur. 2d Elections §§ 378, 483

Power of corporation to make political contribution
or expenditure under state law. 79 ALR 3d 491.

Current through the 2005 Regular Session of the
59th Legislature

Search this disc for cases citing this section.

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