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FEC MAIL CENTER



**BEFORE THE  
FEDERAL ELECTION COMMISSION**

David Benson, Executive Director  
Montana Democratic Party  
PO Box 802  
Helena, MT 59624,

Complainant,

v.

Steve Daines

Bozeman, MT 59715

Respondent.

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
2010 NOV 12 AM 10:27  
OFFICE OF GENERAL  
COUNSEL

MUR # 6430

**COMPLAINT**

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against Steve Daines for violating the Bipartisan Campaign Reform Act's strict ban on candidates spending "soft money." 2 U.S.C. § 441i(e), as described below.

**A. Facts**

Steve Daines is a businessman located in Bozeman, Montana. He was the 2008 Republican nominee for Lieutenant Governor of Montana; he was not elected. Daines is also believed to be "testing the waters" for a candidacy for the United States Senate. Newspaper accounts have reported on the speculation that he is planning to run against Senator Jon Tester;<sup>1</sup> an Internet web page already exists to draft support for his candidacy.<sup>2</sup>

At the same time, Daines has produced and aired an advertisement that promotes his candidacy and attacks Senator Tester.<sup>3</sup> Under the guise of an attack on Senator

<sup>1</sup> See "Speculation on 2012 Elections in High Gear," *Billings Gazette* (June 19, 2010), available at [http://Billingsgazette.com/news/state-and-regional/montana/article\\_e0079e4e-7c2b-11df-b753-001cc4000000.html](http://Billingsgazette.com/news/state-and-regional/montana/article_e0079e4e-7c2b-11df-b753-001cc4000000.html).

<sup>2</sup> See <http://www.facebook.com/pages/Montana-Needs-Steve-Daines-for-US-Senate/122213134489825>.

<sup>3</sup> See <http://www.youtube.com/watch?v=JZixhLKHvk>.

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Tester's vote for health care reform and a request to call Senator Tester to change his mind, the ad features Daines's picture, and a voiceover in which he says:

I'm Steve Daines, a fifth-generation Montanan, and like you, I'm disappointed with just how out of touch Max Baucus and Jon Tester are with Montana's taxpayers. They've turned a deaf ear to us on healthcare, creating a bill forcing everyone of us to buy insurance or face fines, and also forcing us to fund abortion on demand. That's just wrong, and we need to let them know it.

Throughout this distrib, Steve Daines's picture and name take up roughly half of the screen.

The advertisement states that it is paid for by Common Sense Issues. That organization's website makes clear that it is actually a corporation that claims tax exemption under section 501(c)(4) of the Internal Revenue Code.<sup>4</sup> It does not appear to place any contribution limits or source restrictions on donations,<sup>5</sup> nor is it registered with the Federal Election Commission (FEC).

## **B. Legal Analysis**

Daines is exploring a run for federal office. At the same time, he is using soft money to air an advertisement that is both an attack on his opponent, and a promotion of his own biography and beliefs. In doing so, he is attempting to have the best of both worlds: engaging in political campaign activity without having to obey the restrictions against federal candidates raising or spending soft money. This blatant disregard for federal election law cannot be permitted.

### **1. Daines is a Candidate for Federal Office**

The definition of a "candidate" is one who has raised or spent in excess of \$5,000, or given consent to another person to do so.<sup>6</sup> On information and belief, Daines has already raised or spent more than \$5,000 on his campaign to run for the United States Senate under the "testing the waters" provision, a regulatory exception that permits individuals to raise and spend limited funds "solely for the purpose of determining whether an individual should become a candidate."<sup>7</sup>

Complainant believes that Daines is going to announce his campaign imminently. It is thus possible that Daines has already willingly become a "candidate," and that within fifteen days he will file the required FEC Form 2 reflecting that fact. If not, however, then Daines is likely still attempting to take refuge under the "testing the waters" provision.

<sup>4</sup> See <http://www.commonsenseissues.com/about-us/>.

<sup>5</sup> See <https://www.commonsenseissues.com/contribute>.

<sup>6</sup> 2 U.S.C. § 431(2).

<sup>7</sup> 11 C.F.R. § 100.131(a).

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However, by airing this advertisement, Daines has forfeited any right to this exception. The "testing the waters" provision is "not applicable to individuals who have decided to become candidates."<sup>8</sup> The regulation provides examples of activity that indicate that an individual has decided to become a candidate, though they are not exclusive. Among the examples is the use of "general public political advertising to publicize his or her intention to campaign for Federal office."<sup>9</sup> Note that there is no requirement that such advertising expressly advocate his election.

It is impossible to view the Common Sense Issues advertisement as anything but a campaign ad for Daines. While roughly half of the advertisement is styled as run-of-the-mill issue advocacy, there is no reason why a grassroots lobbying communication would feature Daines's picture, voice, or biography. Those additions to the ad serve no plausible purpose in an issues ad; they are irrelevant to the purported message that viewers are to contact their senators on a legislative issue. The only plausible explanation is that this advertisement is meant to promote Daines's candidacy against Senator Tester.

As Daines is engaging in campaign activity, he is no longer eligible for the "testing the waters" exemption; he must file a Form 2 with the FEC, and he must obey the restrictions placed on federal candidates.

## **2. Daines has Spent Soft Money on Behalf of his Campaign**

Perhaps the most important provision of the Bipartisan Campaign Reform Act is the ban on federal candidates raising or spending any funds in connection with an election for federal office, unless those funds are subject to federal contribution limits, source restrictions, and reporting requirements.<sup>10</sup> This restriction is at the heart of the 2002 campaign finance reform efforts.

This restriction has been blatantly violated by Daines. He has created an ad featuring himself, with no "reasonable interpretation other than an appeal to vote for" him and against Senator Tester.<sup>11</sup> And he has aired this ad using the soft money raised by Common Sense Issues, Inc. — money raised with no regard to federal limits, source restrictions, or reporting requirements.

Daines may believe that he is not yet a "candidate" within the meaning of the law. He may believe that he is therefore able to raise and spend federally-restricted contributions to "test the waters" while at the same time waging a stealth campaign using unlimited corporate funds. But the FEC's regulations do not permit this ruse. By airing what can only be construed as a campaign ad, Daines has become a candidate, and he must abide by all the restrictions and prohibitions placed on federal candidates.

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<sup>8</sup> *Id.* § 100.131(b).

<sup>9</sup> *Id.*

<sup>10</sup> 2 U.S.C. § 441(e)(1)(A).

<sup>11</sup> See *FEC v. Wisconsin Right to Life*, 127 S. Ct. 2652, 2667 (2007).

Daines's use of soft money to promote his campaign is a core violation of the Federal Election Campaign Act. We request that he be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,



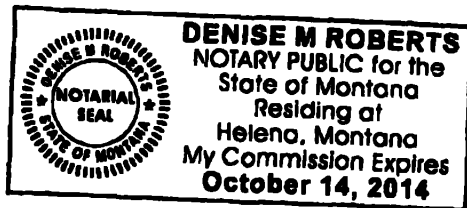
David Benson

SUBSCRIBED AND SWORN to before me this 8th day of November, 2010.

  
Notary Public

My Commission Expires:

OCTOBER 14, 2014



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