

**BEFORE THE  
FEDERAL ELECTION COMMISSION**

Jim Larson  
Montana Democrats  
P.O. Box 802  
Helena, MT 59624

Complainant,

v.

MUR # 6852

Ryan Zinke  
P.O. Box 1596  
Helena, MT 59624

Zinke for Congress  
P.O. Box 1596  
Helena, MT 59624

Lorna Kuney, Treasurer  
Zinke for Congress  
P.O. Box 1596  
Helena, MT 59624

Respondents.

**ANSWER**

Ryan Zinke, Zinke for Congress, and Lorna Kuney, Treasurer (collectively, the "Respondents") hereby file this Answer in response to the complaint of the Montana Democrats (the "Complainant") under 2 U.S.C. § 437g(a)(1) designated MUR #6852 by the Federal Elections Commission (the "Commission" or "FEC").

Simply, in order to combat Ryan Zinke's surge in the 2014 U.S. Montana Congressional election, Montana Democrats whimsically filed their exaggerated complaint. Despite their

bombastic mischaracterizations, the complaint, in reality, is a just a tired political tactic with little substance and should be promptly dismissed by the Commission.

As detailed herein, the Respondents have conducted their campaign in full compliance with and strict adherence to federal regulations and laws. As such, the Complainant has not submitted a genuine issue or controversy before the Commission; and, therefore, the Commission should exercise its discretion and dismiss this Complaint.

#### A. FACTS

Mr. Zinke filed a Statement of Candidacy with the FEC on October 21, 2013 and designated Zinke for Congress (the "Committee") as his principal campaign committee. The same day, the Committee filed a Statement of Organization with the FEC. As accurately reflected on the Committee's Year-End Report, prior to October 24, 2013, the Respondents did not receive any contributions or make any expenditures with regard to Mr. Zinke's run for the Montana Congressional seat. That date is well within the 15 day requirement of the \$5,000 threshold to file a Statement of Candidacy and the subsequent 10 day requirement for submitting a Statement of Organization. In mid-October, the Respondents began the campaign activity the Montana Democrats flippantly and loosely attempt to tether to the separate and distinct and legitimate and noble activities of an unaffiliated Super PAC. While Mr. Zinke, a decorated Navy SEAL, acknowledges his former role as honorary chair of Special Operations for America ("SOFA"), he completely rejects the Montana Democrats' assertion that "SOFA is affiliated with Mr. Zinke's campaign committee." Most unfortunate is that the Montana Democrats' irresponsible attempt of a public smearing flies in the face of the veterans and service members of our country who support SOFA, and whose very causes Mr. Zinke championed during his tenure as Chair of SOFA. Indeed, Mr. Zinke has championed those causes throughout his career.



is subject to the limits, prohibitions and reporting requirements of the federal campaign finance law.

In general, a payment for a communication is "coordinated" if it is made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee or their agents, or a political party committee or its agents. 11 CFR 109.21. To be an "agent" of a candidate, candidate's committee or political party committee for the purposes of determining whether a communication is coordinated, a person must have actual authorization, either express or implied, from a specific principal to engage in specific activities, and then engage in those activities on behalf of that specific principal. Such activities would also result in a coordinated communication if carried out directly by the candidate, authorized committee staff or a political party official. 11 CFR 109.3(a) and (b).

#### Candidate-Prepared Material

Generally, an expenditure made to distribute or republish campaign material produced or prepared by a candidate's campaign is an in-kind contribution to that candidate, and not an independent expenditure. 11 CFR 109.23. However, exceptions related to volunteer activity for party

committees and candidates may apply. For more information, consult the "Volunteer Activity" brochure.

#### Three-Prong Coordination Test

FEC regulations establish a three-prong test to determine whether a communication is coordinated. All three prongs of the test—payment, content and conduct—must be met for a communication to be deemed coordinated and thus an in-kind contribution.

#### Payment Prong

In order to satisfy the payment prong, the communication need only be paid for, in whole or in part, by someone other than a candidate, a candidate's authorized committee, a political party committee or an agent of the above.

#### Content Prong

The content prong relates to the subject matter and timing of the communication. A communication that meets any one of these four standards satisfies this part of the test:

1. A public communication that expressly advocates the election or defeat of a clearly identified candidate;
2. A communication that is an "electioneering communication" as defined in 11 CFR 100.29 (i.e. a broadcast communication that mentions a federal candidate and is distributed to the relevant electorate 30 days before the primary election or 60 days before the general election);

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3. A public communication that republishes, disseminates or distributes in whole or in part campaign materials prepared by a candidate or a candidate's campaign committee; or
  4. A public communication that is:
    - a. Made within 90 days before an election and:
      - o Refers to a clearly identified House or Senate candidate and is publicly distributed in that candidate's jurisdiction; or
      - o Refers to a political party, is coordinated with a House or Senate candidate, and is publicly distributed in that candidate's jurisdiction; or
      - o Refers to a political party, is coordinated with a political party, and is publicly distributed during a midterm election cycle
    - b. Made 120 days before a Presidential primary election through the general election and:
      - o Refers to a clearly identified Presidential or Vice Presidential candidate and is publicly distributed in a jurisdiction before the clearly identified federal candidate's election in that jurisdiction; or
      - o Refers to a party, is coordinated with a Presidential or Vice Presidential candidate, and is publicly distributed in that candidate's jurisdiction; or

- o Refers to a political party, is coordinated with a political party, and is publicly distributed during the Presidential election cycle.

For communications that refer to both a party and a clearly identified federal candidate see 109.21(c)(4)(i)-(iv).

#### Conduct Prong

The conduct prong examines the interactions between the person paying for the communication and the candidate, authorized committee or political party committee, or their agents. A communication satisfies this part of the test if it meets any one of the five standards regarding the conduct of the person paying for the communication and the candidate, the candidate's committee, a political party committee or agents of the above:

1. If the communication is created, produced or distributed at the request or suggestion of the candidate, candidate's committee, a party committee or agents of the above; or the communication is created, produced or distributed at the suggestion of the person paying for the communication and the candidate, authorized committee, political party committee or agent of any of the foregoing assents to the suggestion. 11 CFR 109.21(d)(1).
2. If the candidate, the candidate's authorized committee or party committee is materially involved in decisions

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regarding the content, intended audience, means or mode of the communication, specific media outlet used, the timing or frequency or size or prominence of a communication. 11 CFR 109.21(d)(2).

3. If the communication is created, produced or distributed after one or more substantial discussions about the communication between the person paying for the communication or the employees or agents of that person and the candidate, the candidate's committee, the candidate's opponent or opponent's committee, a political party committee or agents of the above. 11 CFR 109.21(d)(3).

4. If the person paying for the communication employs a common vendor to create, produce or distribute the communication, and that vendor:

- o Is currently providing services or provided services within the previous 120 days with the candidate or party committee that puts the vendor in a position to acquire information about the campaign plans, projects, activities or needs of the candidate or political party committee; and
- o Uses or conveys information about the plans or needs of the candidate or political party, or information previously used by the vendor in serving the candidate or party, and that

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information is material to the creation, production or distribution of the communication. 11 CFR 109.21(d)(4).

5. If a person who has previously been an employee or independent contractor of a candidate's campaign committee or a party committee during the previous 120 days uses or conveys information about the plans or needs of the candidate or political party committee to the person paying for the communication, and that information is material to the creation, production or distribution of the communication. 11 CFR 109.21(d)(5).

Formal agreement or collaboration between the person paying for the communication and the candidate, authorized committee or political party committee, or their agents, is not required. 11 CFR 109.21(e)."

#### Analysis

The Complainant does not alleged or even attempt to allege that Respondents, or SOFA for that matter, have satisfied each prong of the Three-Prong Coordination Test. In fact, the Complainants altogether ignore the payment and content prongs and merely put out vaporous conjecture in their fool's errand to convince the public, by way of their Complaint to the FEC, of nefarious politicking.

With regard to the conduct prong, the Respondents represent and warrant, as follows: No public communication (11 CFR 100.26) by a Super PAC has been the result of any direct or indirect cooperation, sharing, consultation, agreement, or conducted in concert with whatsoever, or at the request or suggestion of any Respondent or his or her respective agent (if any).

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**C. CONCLUSION**

As demonstrated herein, the Respondents timely filed their Statement of Candidacy and Statement of Organization. The Respondents FEC disclosure reports are true and accurate. The Respondents have not coordinated with any Super PAC with regards to a communications paid for by a Super PAC. Therefore, we respectfully request that the Commission dismiss the Complaint, close the file, and take no further action with regard to this matter.

August 27, 2014

Respectfully Submitted,



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**AFFIDAVIT**

**COMMONWEALTH OF VIRGINIA  
COUNTY OF ALBEMARLE**

**BEFORE ME**, the undersigned Notary,

Derek Scott Miller

, on this 26<sup>th</sup> day of August, 2014,

personally appeared **Lester L. Cooper**, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

- i. I have been owner of Terry Cooper Political Research and conducting research for candidates and political committees for over thirty years.
- ii. My principal place of business is 1111 Timber Trail Drive Charlottesville, Virginia.
- iii. I am graduate of Princeton University and the University of Virginia School of Law, where I was research editor of the Virginia Law Review, a member of the National Moot Court Team and elected to the Order of the Coif.
- iv. I practiced law with the firm of Sullivan & Cromwell and held executive positions with three Fortune 500 companies before founding my firm, Terry Cooper Political Research, in 1982.
- v. I have taught political research at campaign management courses at American University's Campaign Management Institute, George Washington University's Graduate School of Political Management, the University of Florida and at training programs sponsored by political parties of Virginia, Delaware, Illinois, Michigan, Tennessee, Wisconsin, and Washington.
- vi. I have conducted research for political committees in each jurisdiction of the United States of America.
- vii. I was not hired by Zinkle for Congress, Ryan Zinke, Special Operations for America or any agent thereof for the purposes of creating, producing, or distribute any public communication by means of any broadcast, cable or satellite communication, newspaper,

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