

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

BEFORE THE
FEDERAL ELECTION COMMISSION

2012 OCT 31 AM 11:31

OFFICE

2012 OCT 25 11:1:25

Preston Elliott
Montanans for Tester
PO Box 3171
Billings, MT 59103

SENSITIVE

Complainant,

v.

Dennis Rehberg
4401 US Highway 3
Billings, MT 59106

Montanans for Rehberg
PO Box 1597
Helena, MT 59624

MUR # 6674

Respondents.

COMPLAINT

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against Dennis Rehberg and Montanans for Rehberg ("Respondents") requesting that the Federal Election Commission (the "Commission") investigate violations of the Federal Election Campaign Act. As described below, Respondents have accepted excessive in-kind contributions in violation of 2 U.S.C. § 441a(a)(1):

A. FACTUAL ALLEGATIONS

Congressman Dennis Rehberg is a candidate for the United States Senate from the state of Montana. He will be a candidate in the general election, to be held on November 6, 2012. Montanans for Rehberg is his principal campaign committee.

10444041
Respondents conducted a bus tour as part of their campaign strategy this fall. According to Respondents' Facebook page, the bus tour was conducted during at least seven days in the month of September and covered over 3,700 miles in Montana. The bus used throughout this tour was a 1999 Prevost Entertainer luxury bus. Respondents have continued to use this bus to travel throughout the state in the month of October.

According to an interview with Yellowstone Public Radio on October 9, 2012, the bus is owned by Ted Beck, a campaign donor. When Beck was first asked about the bus he affirmed that he was donating the bus to Respondents for use as part of the campaign. He further noted that Respondents were not paying him for any expenses associated with the bus, including most of the fuel, finally noting that he "provides everything" to the campaign. In the same interview, a campaign spokesperson for Respondents claimed that this was a misunderstanding and told Yellowstone Public Radio that Respondents would pay fair market value for the use of the bus and any other expenses associated with the use of the bus, including fuel. See Yellowstone Public Radio Interview, *available at* <http://ypr-pc.streamguys.net/podcast/news/12/10/09bus.mp3>.

However, the subsequent report filed with the Commission by Respondents does little to support Respondents' claim. While Respondents did report having received an in-kind contribution of \$2,440 from both Beck and his wife for "transportation for bus tour," the reported contributions are equal to only a fraction of the fair market value of a luxury bus that was used by the campaign for at least seven days and covered 3,700 miles. See Montanans for Rehberg, October Quarterly Report, filed October 15, 2012. According to USA Bus Charter, this model of luxury bus rents for \$2,000 per day, totaling \$14,000 for seven days. In addition, fuel for this model of luxury bus typically costs well over \$600 for each fill up, and the bus itself generally gets approximately 6.65 miles per gallon. As the average cost of diesel fuel in Montana is \$4.18,

the cost per mile for this type of bus is approximately \$0.64, and the fair market value for the cost of fuel for at least the 3700 miles traveled on the bus tour in September is over \$2300. And this does not include the additional fuel required for the continued use of the luxury bus throughout the month of October. The fair market value for the use of the bus and the associated expenses is therefore far above the \$4,880 in-kind contribution reported by Respondents, and well in excess of the contribution limits under federal campaign finance law.

B. LEGAL ANALYSIS

The Federal Election Campaign Act (the "Act") limits the amount of money that any person may contribute to Federal candidates and political committee. 2 U.S.C. § 441a(a). It is illegal for any individual to contribute, and for any candidate to receive, contributions in excess of \$2,500 per election. *Id.* § 441a(a)(1). Further, a candidate committee may not receive an in-kind contribution for any election other than the immediately pending one. *See* 11 C.F.R. §§ 102.9(e), 104.13(a).

The Act defines "contribution" broadly to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A). Under Commission rules, "the provision of goods or services without charge or at a charge that is less than the usual and normal charge . . . is a contribution." 11 C.F.R. § 100.52(d). The "usual and normal charge" for goods is the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. *Id.*

Under the facts presented in the Yellowstone Public Radio interview and Respondents' FEC reports, it is clear that Respondents received an excessive in-kind contribution. The FEC reports do not indicate that Respondents have made any payments for the use of the bus or for

any associated expenses. The report does not include a payment to Beck or to anyone else for the use of the bus, nor does it include disbursements for travel that could account for the more than \$2300 of fuel that is necessary to travel the 3700 miles around the state in a luxury bus. Absent such payments, the costs must be considered in-kind contributions to the campaign from the individuals who are responsible for them. In this case, as Beck owns the bus and confirmed that he was paying for most of the fuel, these costs must be considered in-kind contributions from Beck.

While Respondents did report receiving an in-kind contribution of \$2,440 from both Beck and his wife, it is clear that the amount does not accurately reflect the fair market value for the cost of the bus and the associated expenses. This model bus typically rents for \$2,000 per day, meaning that the fair market value for the use of the bus must be at least \$14,000 for the month of September. In addition, fuel for this model of bus typically costs well over \$600 for each fill up, and the bus itself generally gets approximately 6.65 miles per gallon. As the average cost of diesel fuel in Montana is \$4.18, the cost per mile for this type of bus is approximately \$0.64. The fair market value for the cost of fuel for the more than 3700 miles traveled on the bus tour in September alone is more than \$2300. Thus, the fair market value for the use of the bus and the associated expenses is far above the \$4,880 in-kind contribution from the Becks reported by Respondents, and well in excess of the \$2500 per election contribution limit.

C. REQUESTED ACTION

For the reasons described above, we respectfully urge the Commission to investigate whether Respondents have violated FECA by accepting massive in-kind contributions, well in

excess of the federal limits. We further request that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,

1404444041
SUBSCRIBED AND SWORN to before me this 18 day of October, 2012.

B. Sather
Notary Public

My Commission Expires:

6/9/2016

