

VT SUPERIOR COURT
WASHINGTON UNIT
STATE OF VERMONT

SUPERIOR COURT
Washington Unit

2013 APR 12 A 10:50 CIVIL DIVISION
Proposed Order Docket No. 762-12-11 Wncv

STATE OF VERMONT,
Plaintiff

v.

REPUBLICAN GOVERNORS
ASSOCIATION and BRIAN DUBIE,
Defendants

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2013 APR 19 A 9:56
FILED
ORDER
VT SUPERIOR COURT
WASHINGTON UNIT
CIVIL DIVISION

STIPULATED JUDGMENT ORDER

By and through their undersigned counsel, Plaintiff State of Vermont (the "State"), Defendant Republican Governors Association (the "RGA"), and Defendant Brian Dubie ("Dubie"), hereby stipulate and agree that the Court enter the following Judgment Order in the above-captioned matter:

WHEREAS, the State filed this action against the RGA and Dubie alleging violations of Vermont's campaign finance laws and now agrees to forego appeal of the Court's dismissal of Count I of the Complaint in this action (the "Complaint"); and

WHEREAS, the Court has previously found that Dubie is responsible for the actions of his campaign staff in their efforts to secure his election to the office of Governor of the State of Vermont, that the obligation to follow the law rests with the candidate, and that, if the required actions are not taken, it is the candidate who actually violates the law, even if the candidate was not involved in or aware of a possible violation; and

WHEREAS, at all times material hereto, the RGA attempted in good faith to comply with Vermont's campaign finance laws and now wishes to resolve this matter without further litigation; and

WHEREAS, at all times material hereto, Dubie and the staff of his campaign committee attempted in good faith to comply with Vermont's campaign finance laws and Dubie now wishes to resolve this matter without further litigation; and

WHEREAS, the State, the RGA, and Dubie, agree that the following facts are true and accurate:

1. Defendant Brian Dubie was a Republican candidate for Governor of the State of Vermont in the 2010 general election (the "Election"). The members of Dubie's gubernatorial campaign staff and their agents are collectively referred to herein as the "Dubie Campaign."
2. The Dubie Campaign conducted confidential polls on July 13-14, September 20-21, and on a daily basis from October 10 to 31, 2010.
3. The RGA solicited the results of this confidential polling from the Dubie Campaign for the purpose of gleaning information the RGA could use as one of the factors in its determination of the content, timing, frequency, audience, and/or media outlets for its radio and television advertisements relating to the Election identified in the Complaint (the "Advertisements").
4. In response to the RGA's request, the Dubie Campaign gave the RGA the results of this polling and knew, or should have known and failed to ascertain, that the RGA might use the polling results as one of the factors in determining the content, timing, frequency, audience, and/or media outlets for the Advertisements.
5. The value of the Advertisements was in excess of \$6,000.00.

6. The Court may find that the Advertisements were “related expenditures” pursuant to 17 V.S.A. § 2809 and, accordingly, that the RGA made contributions to the Dubie Campaign that exceeded the \$6,000 contribution limit established by 17 V.S.A. § 2805(b), as amended by 1987 Vt. Acts & Resolves 263, § 3 (Adj. Sess.).

7. The Court may find that the Advertisements were “related expenditures” pursuant to 17 V.S.A. § 2809 and, accordingly, that the Dubie Campaign, acting on behalf of Dubie, accepted contributions from the RGA that exceeded the \$6,000 contribution limit established by 17 V.S.A. § 2805(b), as amended by 1987 Vt. Acts & Resolves 263, § 3 (Adj. Sess.).

8. The RGA did not file any campaign finance reports with the Vermont Secretary of State’s office pursuant to 17 V.S.A. §§ 2803 and 2811 reporting receipt of a contribution of polling data from the Dubie Campaign. The RGA reported the receipt of the polling data as contributions on its publicly available Form 8872, which it filed with the Internal Revenue Service.

9. The Dubie Campaign, acting on behalf of Dubie, did not report the receipt of the in-kind contributions of the Advertisements on his campaign finance reports filed with the Secretary of State’s office relating to the Election pursuant to 17 V.S.A. §§ 2803 and 2811.

WHEREFORE, as agreed by the State, the RGA, and Dubie, the Court hereby orders that judgment in this action shall be entered as follows:

A. Any claim against the RGA and Dubie set forth in Count I of the Complaint is hereby dismissed with prejudice;

B. The Court hereby enters judgment in favor of the State against the RGA with respect to the claims set forth in Counts II through V of the Complaint for violations of 17 V.S.A. §§ 2803, 2811, and 2805(b), as enacted by 1997 Vt. Acts & Resolves 64;

C. The Court hereby enters judgment in favor of the State against Dubie with respect to the claims set forth in Counts II through V of the Complaint for violations of 17 V.S.A. §§ 2803, 2811, and 2805(b), as amended by 1987 Vt. Acts & Resolves 263, § 3 (Adj. Sess.);

D. The Court hereby assesses a civil penalty against the RGA to be paid to the State within 30 days of the entry of this Stipulated Judgment Order in the amount of \$30,000 with respect to the claims set forth in Counts II through V of the Complaint;

E. The Court hereby assesses a civil penalty against Dubie to be paid to the State within 30 days of the entry of this Stipulated Judgment Order in the amount of \$10,000 with respect to the claims set forth in Counts II through V of the Complaint;

F. Dubie shall make a contribution of \$10,000 to the Vermont Food Bank within 30 days of the entry of this Stipulated Judgment Order;

G. The RGA and Dubie accept that the State's position going forward is that a candidate who gives private, contemporaneous polling data to a political committee facilitates related expenditures by the political committee within the meaning of 17 V.S.A. § 2809 if that political committee uses the polling data to materially influence the content, audience, timing, frequency, duration, or media outlet of candidate advertising;


H. The RGA shall work with the State in good faith to ascertain the information that should be provided on reports to be filed with the Vermont Secretary of State for its Election activity, and shall file the same within 30 days of the entry of this Stipulated Judgment Order;

I. Dubie shall file corrected campaign finance reports with the Secretary of State's office showing the receipt of the Advertisements and file the reports within 30 days of the entry of this Stipulated Judgment Order; and

J. Nothing in this Order shall preclude the State in the future from enforcing the \$2,000.00 limit set forth in 17 V.S.A. § 2805(a) on contributions to political committees that make expenditures to support or oppose candidates in Vermont when the contribution comes from a candidate.

K. In the event the Vermont campaign finance statutes are amended, the amended laws will supersede any inconsistent requirements contained in this Stipulated Judgment Order.

Dated at Burlington, Vermont this 16 day of April 2013.



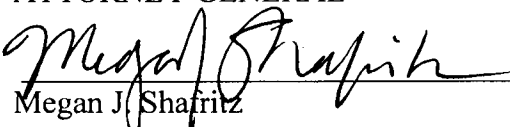
Hon. Geoffrey W. Crawford
Superior Judge, Specially Assigned

Dated in Montpelier, Vermont this 11^m day of April 2013.

STATE OF VERMONT

WILLIAM H. SORRELL
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By:



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Dated in Burlington, Vermont this 10th day of April 2013.

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Dated in _____ this ____ day of April 2013.

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Dated in Burlington, Vermont this ____ day of April 2013.

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Dated in Charlotte, Vermont this 9th day of April 2013.

DiGENOVA & TOENSING LLP

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