

Testimony of  
Gregory MacDonald  
President / CEO  
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RE: SB 390 "Clean Campaign Act"

Mr. Chairman, members of the committee. My name is Greg MacDonald. I am the President and CEO of the Montana Broadcasters Association. As such, my job is to represent the interests of the 135 radio stations and 23 television stations in Montana.

While no one who listened to the radio or watched television during the last election cycle will argue that many campaign ads were downright negative, Senate Bill 390, as currently written, will do little to counter the trend.

Section 3 of SB 390 is particularly troublesome. Section 315 of the Communications Act is the Federal Law that addresses political advertising. A copy of which is appended to my written remarks. That Act specifically prohibits any radio or television station from editing or altering any advertisement purchased by a legally qualified candidate for any political office or any advertisement purchased by an authorized committee of that candidate. Further, a station may not even require that a candidate provide text or a copy of the spot before airing, putting the "media obligation" section into direct conflict with Federal Law.

Also under Section 315, broadcast stations must already afford equal opportunities to purchase time to any candidate for any elective office once it has accepted advertising for any other candidate for that same office. And, while we'd love to be able to sell that time to candidates at "prevailing rates," unfortunately Federal Law requires that it be sold at the "lowest unit rate" for the time class, which is determined by the rate charged the biggest buyers of time. Because stations are specifically prohibited from censoring any candidate ad, they are indemnified from any legal action resulting from libel or slanderous language in those ads.

Third party political advertisers, PACs, party organizations and other groups are not afforded the same "right to air time and lowest unit charge privileges;" however, they represent another problem which is not adequately addressed by this legislation. Not surprisingly, these organizations are where most of the negative campaign rhetoric originates, as opposed to the advertising done by the candidates themselves. It is only on

very rare occasions that these “attack ads” as they have commonly come to be called, actually are proven to contain false information. . Under Federal Law, broadcast stations are under no obligation to carry any advertisements from anyone other than legally qualified candidates. Codifying such a requirement would not likely stand judicial scrutiny and, in the unlikely event that it did, would only contribute to an already unpleasant problem and add to the “he said, she said” syndrome that so many of those spots fall into. By requiring a station to carry a response ad that could conceivably contain false information without a similar indemnification, you are placing that station in serious legal and financial jeopardy.

A better solution would be to require third party political advertisers to submit their spots for review by the Commissioner of Political Practices office. That office, which I understand has two full-time lawyers, would review the language of the spots, rule on the truthfulness of the advertising within a reasonable time, say 24 hours, and put their stamp of approval on the material. This would end the blizzard of phone calls and faxes demanding that spots be “pulled off the air” that plague our broadcasters every time a third party ad airs.

Clearly the Commissioner of Political Practices is in a much better position to review and rule on complaints than the manager of a radio station in Malta or Libby. The criteria of such a review should be quite simple-- not whether the ad is negative or a quote “attack” ad—rather, is the information contained in the ad true? That should be the only criteria for approval or disapproval and it should come from the Commissioner of Political Practices, not by a lawyer hired by a broadcaster who has been threatened by another lawyer representing an alleged aggrieved party.

I’d be happy to answer any questions and my contact information is included at the bottom of this testimony should any of you have questions at a later date.

Thank you for your time.

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**Section 315 [47 USC §315]. Facilities for Candidates for Public Office**

(a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: Provided, that such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed under this subsection upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any --

(1) bona fide newscast,

(2) bona fide news interview,

(3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or

(4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto), shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

(b) Charges. --

(1) In general. -- The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed --

(A) subject to paragraph (2), during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and

(B) at any other time, the charges made for comparable use of such station by other users thereof.

(2) Content of Broadcasts-

(A) In General. -- In the case of a candidate for Federal office, such candidate shall not be entitled to receive the rate under paragraph (1)(A) for the use of any broadcasting station unless the candidate provides written certification to the broadcast station that the candidate (and any authorized committee of the candidate) shall not make any direct reference to another candidate for the same office, in any broadcast using the rights and conditions of access under this Act, unless such reference meets the requirements of subparagraph (C) or (D).

(B) Limitation on Charges. -- If a candidate for Federal office (or any authorized committee of such candidate) makes a reference described in subparagraph (A) in any broadcast that does not meet the requirements of subparagraph (C) or (D), such candidate shall not be entitled to receive the rate under paragraph (1)(A) for such broadcast or any other broadcast during any portion of the 45-day and 60-day periods described in paragraph (1)(A), that occur on or after the date of such broadcast, for election to such office.

(C) Television Broadcasts. -- A candidate meets the requirements of this subparagraph if, in the case of a television broadcast, at the end of such broadcast there appears simultaneously, for a period no less than 4 seconds--

(i) a clearly identifiable photographic or similar image of the candidate; and

(ii) a clearly readable printed statement, identifying the candidate and stating that the candidate has approved the broadcast and that the candidate's authorized committee paid for the broadcast.

(D) Radio Broadcasts. -- A candidate meets the requirements of this subparagraph if, in the case of a radio broadcast, the broadcast includes a personal audio statement by the candidate that identifies the candidate, the office the candidate is seeking, and indicates that the candidate has approved the broadcast.

(E) Certification. -- Certifications under this section shall be provided and certified as accurate by the candidate (or any authorized committee of the candidate) at the time of purchase.

(F) Definitions. -- For purposes of this paragraph, the terms "authorized committee" and "Federal office" have the meanings given such terms by Section 301 of the Federal Election Campaign Act of 1971 (2 USC 431).

(c) For the purposes of this section:

(1) The term "broadcasting station" includes a community antenna television system; and

(2) The terms "licensee" and "station licensee" when used with respect to a community antenna television system, mean the operator of such system.

(d) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

(e) Political Record. --

(1) In General. -- A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that--

(A) is made by or on behalf of a legally qualified candidate for public office; or

(B) communicates a message relating to any political matter of national importance, including--

- (i) a legally qualified candidate;
- (ii) any election to Federal office; or
- (iii) a national legislative issue of public importance.

(2) Contents of Record. -- A record maintained under paragraph (1) shall contain information regarding--

(A) whether the request to purchase broadcast time is accepted or rejected by the licensee;

(B) the rate charged for the broadcast time;

(C) the date and time on which the communication is aired;

(D) the class of time that is purchased;

(E) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

(F) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

(G) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

(3) Time to Maintain File. -- The information required under this subsection shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years.