

**BEFORE THE
FEDERAL ELECTION COMMISSION**

Frank Dixon
State Chair, Democratic Party of Oregon
232 NE 9th Ave
Portland, OR 97232,

Complainant,

v.

Monica Wehby
P.O. Box 3375
Portland, OR 97208,

Dr. Monica Wehby for U.S. Senate
P.O. Box 3375
Portland, OR 97208, and

If He Votes Like That In Salem Imagine What He Will Do In Congress
89358 Cranberry Lane
Bandon, OR 97411

Respondents.

SUPPLEMENTAL COMPLAINT

Complainant files this supplemental complaint under 2 U.S.C. § 437g(a)(1) against Monica Wehby, Dr. Monica Wehby for U.S. Senate, and If He Votes Like That In Salem Imagine What He Will Do In Congress (“If He Votes”) (collectively, “Respondents”) for violating of the Federal Election Campaign Act, as described below.

A. FACTS

On May 5, 2014, Complainant submitted a complaint (the Complaint) against Respondents, alleging, among other things, that If He Votes made illegal in-kind contributions to Dr. Monica Wehby for U.S. Senate. As described in detail in the Complaint, If He Votes has launched an advertising campaign attacking Wehby’s primary opponent in the election for

United States Senate in Oregon. The Complaint documented how Wehby's boyfriend was involved in both Wehby's campaign, and in the strategic advertising decisions of If He Votes. A copy of the Complaint is attached as Attachment A.

Additional facts have now come to light that demonstrate Miller's access to, and use of, nonpublic campaign information in his work with If He Votes. According to a recent article, in describing If He Votes's advertising:

Miller acknowledged that there is a "sidebar risk" that his advertising effort could be seen negatively because of his relationship with Wehby. But, he added, "I don't think it's that relevant outside of a group of people who pay a lot of attention to politics." *[Miller] said polling showed this risk was far outweighed by the effectiveness of the attacks he and Parks are making on Conger's voting record in the state House.* "We wouldn't have spent any money if there weren't relevant political issues that matter to voters," said Miller, citing such examples as Conger's votes to implement the Cover Oregon health insurance website and his support for the Columbia River Crossing project.¹

Subsequently, on May 8, 2014, If He Votes filed a pre-primary report with the Commission. The report did not disclose any disbursements for polling expenses; nor did it show any debt owed to any vendors for the same.

Apparently realizing that he violated the law, Miller's story has shifted. After the Complaint was filed, and Miller's conduct was questioned by the press, Miller denied playing a role in the super PAC's advertising, saying "I have had no editorial input into that whatsoever. And have no input to veto anything."² But this denial is belied by Miller's earlier statement in which he spoke on the record on behalf of the PAC, explaining the rationale for its strategy.

¹ *The Oregonian*, 4/16/2014, available at:
http://www.oregonlive.com/mapes/index.ssf/2014/04/timber_baron_andrew_miller_say.html

² *ABCNews.go.com*, 5/11/2014, available at:
<http://abcnews.go.com/US/wireStory/super-pacs-spend-big-oregon-gop-senate-primary-23673403?page=2>

B. LEGAL ARGUMENT

1. If He Votes Made, and Wehby Accepted, an Illegal In-Kind Contribution

As described in the Complaint, a public communication paid for by a third party group that contains express advocacy will be considered a coordinated communication if the candidate or party requested or suggested the ad; if the candidate or party was materially involved in decisions about it; if the candidate or party and the sponsor had substantial discussions in which information material to the ad was conveyed; or if a former candidate or party employee, consultant, or common vendor used candidate or party information in producing the ad for the sponsor. *See* 11 C.F.R. § 109.21(d).

There is now even stronger evidence that If He Votes's advertisements were illegally coordinated with Wehby. On or about April 16, Miller told *The Oregonian*³ that "polling" showed that the risk of adverse effects from the ads "was far outweighed by the effectiveness of the attacks" that he was making against Wehby's primary opponent. However, If He Votes has not disclosed making any disbursements or debt for polling services. This suggests that Miller was privy to another person's polling -- and, given his close association with the Wehby campaign, it was likely the Wehby's campaign polling. If Miller was privy to this nonpublic information about campaign plans, projects, activities and needs, and used it when making decisions about If He Votes's advertising, it would constitute a clear violation of the coordination rules.

Miller's *post hoc* denials that he engaged in prohibited coordination do not help him. These statements were made only after the original Complaint was filed, and Miller was put on notice that his conduct was under scrutiny. His prior statements, in which he professed to speak

³ *The Oregonian*, 4/16/2014, available at:
http://www.oregonlive.com/mapes/index.ssf/2014/04/timber_baron_andrew_miller_say.html

on behalf of If He Votes and explain its strategic decisions, are far more probative of his actual involvement with the PAC. And the fact that he contributed the use of a billboard in-kind to If He Votes further demonstrates his involvement in decisions regarding the manner and means of the PAC's advertising.

2. If He Votes May Have Failed to Report an In-Kind Contribution

In addition, the Act requires that political committees disclose all of their receipts to the Commission, including in-kind contributions. *See* 2 U.S.C. § 434(b); 11 C.F.R. § 104.3(a). Moreover, when a political committee accepts or uses poll results that are paid for by another person, a portion of the value of the poll is treated as an in-kind contribution to the committee. 11 C.F.R. § 106.4(b).

As described above, Miller stated on the public record that political polling indicated that If He Votes's advertising would be effective -- yet, If He Votes has not, to date, disclosed any disbursements or debts for polling. Thus, it appears that If He Votes accepted and used polling paid for by another person, and failed to report this polling as an in-kind contribution, in violation of the Act.

REQUESTED ACTION

There is compelling evidence that Respondents have violated the Federal Election Campaign Act. We respectfully request the Commission to investigate these violations. Should the Commission determine that Respondents have violated FECA, we request that Respondents

be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,



Frank Dixon

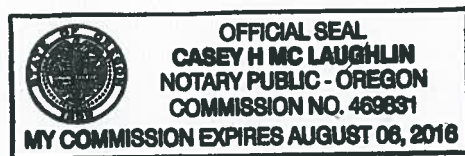
State Chair, Democratic Party of Oregon

SUBSCRIBED AND SWORN to before me this 14th day of May, 2014.

Casey H McLaughlin
Notary Public

My Commission Expires:

August 06, 2016



Attachment A

See attached

**BEFORE THE
FEDERAL ELECTION COMMISSION**

Frank Dixon
State Chair, Democratic Party of Oregon
232 NE 9th Ave
Portland, OR 97232,

Complainant,

v.

Monica Wehby
P.O. Box 3375
Portland, OR 97208,

Dr. Monica Wehby for U.S. Senate
P.O. Box 3375
Portland, OR 97208, and

If He Votes Like That In Salem Imagine What He Will Do In Congress
89358 Cranberry Lane
Bandon, OR 97411

Respondents.

COMPLAINT

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against Monica Wehby, Dr. Monica Wehby for U.S. Senate, and If He Votes Like That In Salem Imagine What He Will Do In Congress (“If He Votes”) (collectively, “Respondents”) for multiple violations of the Federal Election Campaign Act, as described below.

A. FACTS

Monica Wehby is a candidate for the United States Senate in Oregon. Dr. Monica Wehby for U.S. Senate is her principal campaign committee. Wehby is currently engaged in a primary for the Republican party nomination with Oregon State Representative Jason Conger.

If He Votes is an independent expenditure-only political committee that is registered with the Commission. On March 5, 2014, it filed a statement of organization with the Commission, representing that it intends to raise funds in unlimited amounts and that it would not use those funds to make contributions or coordinated communications. If He Votes has dedicated itself to sponsoring billboard and radio advertising attacking Conger.¹ A photograph of the billboard advertisement is attached as Exhibit A; a transcript of the radio advertisement is attached as Exhibit B.

So far, one donor, Andrew Miller, has donated \$30,950 to If He Votes; \$25,000 in monetary contributions, and \$5,950 in billboard advertising as an in-kind contribution. Miller has also involved in the PAC's strategic decision-making. According to a recent article,

Miller acknowledged that there is a "sidebar risk" that his advertising effort could be seen negatively because of his relationship with Wehby. But, he added, "I don't think it's that relevant outside of a group of people who pay a lot of attention to politics." [Miller] said polling showed this risk was far outweighed by the effectiveness of the attacks he and Parks are making on Conger's voting record in the state House. "We wouldn't have spent any money if there weren't relevant political issues that matter to voters," said Miller, citing such examples as Conger's votes to implement the Cover Oregon health insurance website and his support for the Columbia River Crossing project.²

According to public sources, Miller is "romantically linked to" Wehby; the two have been dating for over a year.³ Miller has also helped Wehby with her fundraising and has hosted at least one fundraiser for Wehby.⁴ A copy of the invitation to that fundraiser is attached as Exhibit C.

¹ *The Oregonian*, 4/15/14, available at http://www.oregonlive.com/mapes/index.ssf/2014/04/andrew_miller_friend_of_monica.html.

² *The Oregonian*, 4/16/14, available at http://www.oregonlive.com/mapes/index.ssf/2014/04/timber_baron_andrew_miller_say.html.

³ *Id.*; see also *The Oregonian*, 10/30/13, available at http://www.oregonlive.com/politics/index.ssf/2013/10/top_oregon_gop_donor_andrew_mi.html.

⁴ *The Oregonian*, 4/16/14.

B. LEGAL ARGUMENT:

1. Legal Background

The Federal Election Campaign Act limits the amount of money that any person may contribute to Federal candidates and political committees. 2 U.S.C. § 441a(a). It is illegal for anybody to contribute, and for any candidate to receive, contributions to candidates in excess of \$2,600 per election. *Id.* And though the law permits independent expenditure-only PACs to make independent communications in connection with federal elections, these organizations are prohibited from making contributions to candidates, including coordinated communications. *See* FEC Advisory Opinion 2010-11. A public communication paid for by a third party group that contains express advocacy will be considered a coordinated communication if the candidate or party requested or suggested the ad; if the candidate or party was materially involved in decisions about it; if the candidate or party and the sponsor had substantial discussions in which information material to the ad was conveyed; or if a former candidate or party employee, consultant, or common vendor used candidate or party information in producing the ad for the sponsor. *See* 11 C.F.R. § 109.21(d).

2. If He Votes Made, and Wehby Accepted, an Illegal In-Kind Contribution

Based on the publicly available information, there is strong evidence that If He Votes's advertisements were illegally coordinated with Wehby. Public reports shows that Miller has been intimately involved in the strategic decision-making of If He Votes. He has spoken on the public record as a representative of the PAC. He has also donated billboard advertising space, showing his involvement in decisions regarding the time, place, and manner of the PAC's advertisements.

At the same time, Miller appears to have been intimately involved in the Wehby campaign. He is Wehby's boyfriend and has been involved in her campaign's fundraising, hosting a fundraising event for the campaign, suggesting that he is an "agent" of the campaign. It is implausible that, in the course of his involvement with Wehby and the campaign, he has not been exposed to nonpublic information about the campaign's nonpublic plans, projects, activities or needs. Accordingly, there is substantial evidence If He Votes knowingly made, and Wehby knowingly accepted, prohibited and excessive contributions.

3. The Advertisement Violates the Act's Disclaimer Requirements

In addition, If He Votes's radio advertisement violates the Act's Disclaimer Requirements. Any public communication that is sponsored by a political committee other than a candidate's authorized committee and that is authorized by a candidate must clearly state that the communication is paid for by the political committee and authorized by the candidate. 2 U.S.C. § 441d(a)(2). And any public communication sponsored by a political committee and that is not authorized by a candidate must contain a disclaimer that states the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication. *Id.* § 441d(a)(3).

The radio advertisement identified that it was "paid for" by If He Votes and that it was "not authorized by any candidate or candidate's committee," but it did not contain an address, phone number or World Wide Web address for the PAC. Assuming that the advertisement was, in fact, a coordinated communication, the disclaimer should have indicated that it was authorized by Wehby. And, even if the advertisement was truly an independent communication, it still violated the Act, by failing to include the PAC's address, phone number, or World Wide Web address.

4. If He Votes May Have Failed to Properly Report the Advertisement

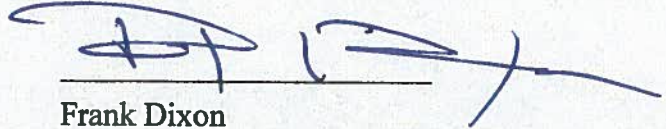
Lastly, even if the advertisements were truly independent of Webby -- and the facts above suggest that it was not -- If He Votes violated the Act's reporting requirements. The law requires that any person, including a political committee, that makes independent expenditures aggregating \$10,000 or more at any time up to and including the 20th day before the date of an election must file a report describing the expenditures within 48 hours of the advertisement's public distribution. 2 U.S.C. § 434(g)(2). If He Votes reported making a disbursement for billboard advertising worth \$5,950 on March 19, 2014 -- and, on information and belief, the billboard was posted publicly in early March. Moreover, If He Votes began airing radio advertising on or around April 9, 2014. Assuming that the cost of that radio advertising exceeded \$4,050, and that both the billboard and radio advertising were conducted as independent expenditures, If He Votes would have been required to file an independent expenditure report. But as of the date of filing, the public records indicate that If He Votes did not file the required report.

C. REQUESTED ACTION

As we have shown, there is substantial evidence that Respondents have violated the Federal Election Campaign Act. We respectfully request the Commission to investigate these violations. Should the Commission determine that Respondents have violated FECA, we request

that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

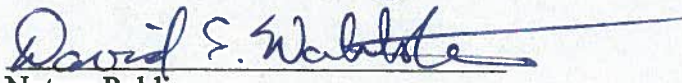
Sincerely,



Frank Dixon

State Chair, Democratic Party of Oregon

SUBSCRIBED AND SWORN to before me this 5th day of May, 2014.



Notary Public

My Commission Expires:

1/16/2015

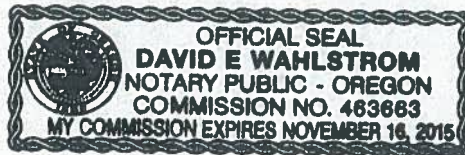


Exhibit A

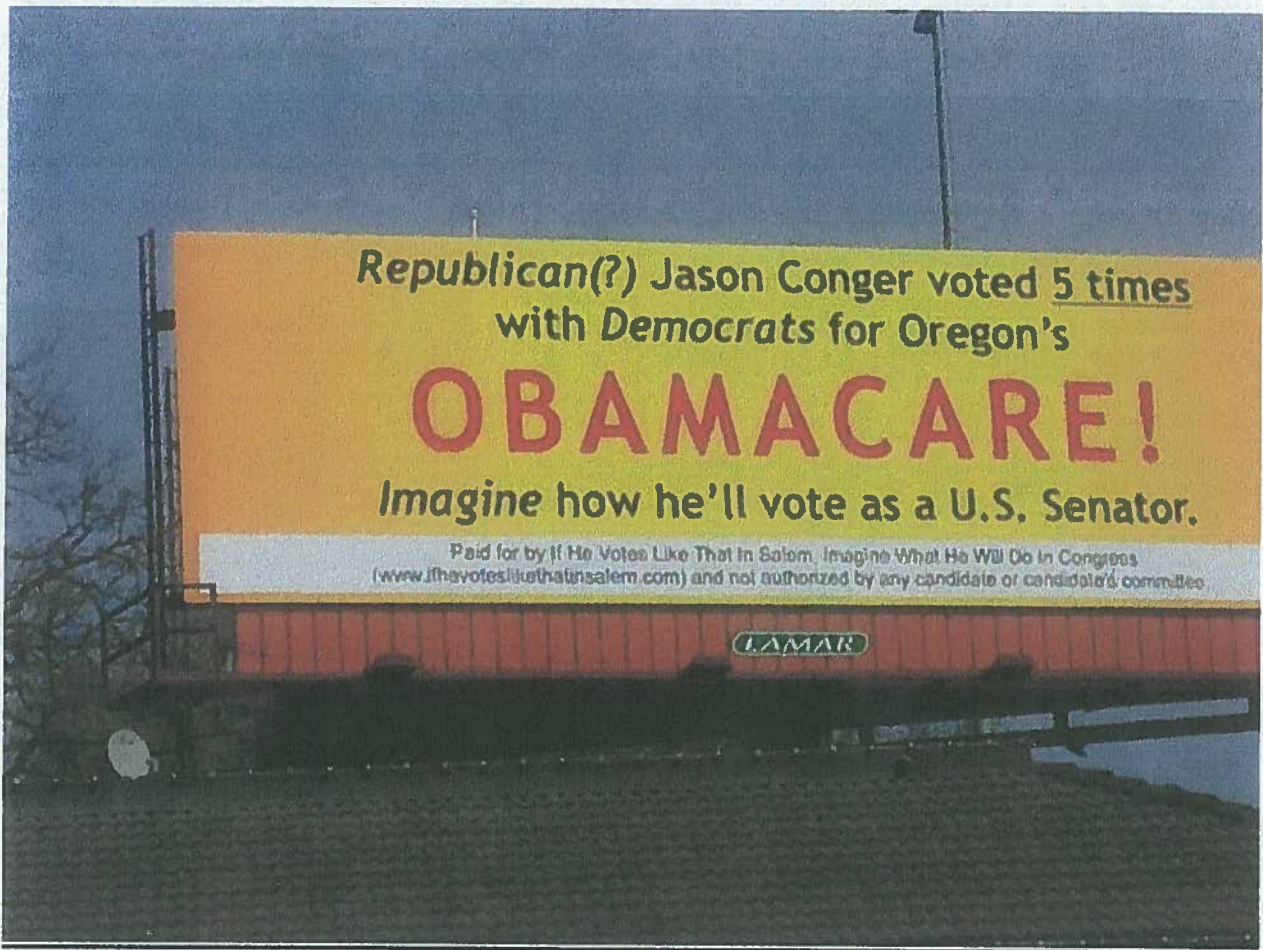


Exhibit B

“Republican Jason Conger voted with Democrats for Oregon’s Obamacare. Not once or twice, or three or four times, Republican Jason Conger voted five times with Democrats for Oregon’s Obamacare. Republican Jason Conger also voted with Democrats for the boondoggle I-5 light rail bridge. You know, the one that promised astronomical costs, coupled with high tolls for working people, but no traffic relief. And Republican Jason Conger voted with Democrats to put the government into the hotel business, competing with private enterprise. Jason ... Republicans don’t like it when you vote that way. So now we’re gonna vote ‘no’ on Jason Conger!

“Paid for by If He Votes Like That in Salem, Imagine How He Will Vote in Congress. Not authorized by any candidate or candidate’s committee.”

Exhibit C

See Attached.

DR. MONICA
Wehby
U.S. SENATE

DEBBIE AND JOHN DANDONA
DR. BOB DANNENHOFFER
PHIL FOGG, JR.
ALAN FOLKMAN
MARY AND FRANK GILL
BOBSY AND LEO GRAHAM
ALLISON AND MARTY KEHOE
BRUCE KERR
CRAIG KEST
JUNE AND BILL LATTIN
AMBASSADOR WILLIAM MCCORMICK
DRS. SELMA AND BUD PIERCE
MIMI AND DOUG MCCASLIN
DR. GREG MCCOY
KATHY McDONALD
→ ANDREW MILLER
RICK MILLER
JOE OPSAHL
RICK SOHN
GORDON SONDLAND
CARLENE AND BRIAN SONNENBERG
SUSAN AND TOM STEWART
LARRY TOKARSKI
GAYLE AND DICK WITHNELL
KELLY AND JIM YOUNG

INVITE YOU TO ATTEND A *KICK OFF TO VICTORY* EVENT BENEFITING

DR. MONICA WEHBY
CANDIDATE FOR U.S. SENATE

WEDNESDAY, APRIL 30TH
5:30PM

AT THE HOME OF ALLISON AND MARTY KEHOE
11627 SW SUMMERVILLE AVENUE
PORTLAND

\$250 MINIMUM DONATION PER PERSON

RSVP TO TIFFANY GRABENHORST AT TIFFANY@TGFUNDRAISING.COM OR AT 503.224.5489

PAID FOR BY DR. MONICA WEHBY FOR U.S. SENATE

REPLY TO DR. MONICA WEHBY EVENT • WEDNESDAY, APRIL 30TH

☐ YES, I/WE WOULD LIKE TO ATTEND THE EVENT AT THE HOME OF ALLISON AND MARTY KEHOE

ENCLOSED IS MY CONTRIBUTION OF \$ _____ (*\$250 PER PERSON*).

ATTENDEES: _____

☐ NO, I AM UNABLE ATTEND, BUT ENCLOSED IS A CONTRIBUTION OF \$ _____.

PLEASE MAKE YOUR CHECK PAYABLE AND SEND TO:

DR. MONICA WEHBY FOR U.S. SENATE — PO Box 3375 — PORTLAND, OR 97208

OR SCAN/EMAIL TO: TIFFANY@TGFUNDRAISING.COM OR FAX COMPLETED FORM TO 801.443.4455

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

HOME PHONE _____ WORK PHONE _____

E-MAIL _____

CONTRIBUTOR INFO

THIS CONTRIBUTION IS MADE BY CHECK OR CREDIT CARD FROM MY PERSONAL FUNDS AND IS NOT DRAWN ON AN ACCOUNT MAINTAINED BY A CORPORATE ENTITY. I AM A U.S. CITIZEN OR PERMANENT RESIDENT AND THIS CONTRIBUTION WILL NOT BE REIMBURSED BY ANOTHER PERSON.

SIGNATURE _____

FOR A CONTRIBUTION FROM A JOINT ACCOUNT TO BE ATTRIBUTED TO TWO INDIVIDUALS, BOTH MUST SIGN THIS FORM, INDICATING AGREEMENT WITH THE ABOVE STATEMENT.

JOINT CONTRIBUTOR SIGNATURE _____

FEDERAL LAW REQUIRES US TO COLLECT AND REPORT THE NAME, MAILING ADDRESS, OCCUPATION, AND NAME OF EMPLOYER OF EACH CONTRIBUTOR WHOSE CONTRIBUTIONS AGGREGATE IN EXCESS OF \$200 IN A CALENDAR YEAR OR ELECTION CYCLE. PLEASE COMPLETE THE FOLLOWING:

OCCUPATION _____ EMPLOYER _____

JOINT CONTRIBUTOR OCCUPATION _____ JOINT CONTRIBUTOR
EMPLOYER _____

CREDIT CARD REPLY

PLEASE CHARGE MY CONTRIBUTION OF \$ _____ TO MY CREDIT CARD.

☐ VISA ☐ MASTERCARD ☐ AMEX ☐ DISCOVER

ACCOUNT NUMBER _____ EXPIRATION DATE _____

NAME ON CARD _____ SIGNATURE _____

THE MAXIMUM CONTRIBUTION AN INDIVIDUAL MAY MAKE TO DR. MONICA WEHBY FOR U.S. SENATE IS \$5,200 (\$2,600 TO THE PRIMARY ELECTION; \$2,600 TO THE GENERAL ELECTION). A COUPLE MAY CONTRIBUTE UP TO \$10,400 FROM A JOINT ACCOUNT AS LONG BOTH INDIVIDUALS SIGN THE CHECK OR SIGN ABOVE (\$5,200 TO THE PRIMARY ELECTION / \$5,200 TO THE GENERAL ELECTION).

A MULTICANDIDATE FEDERAL PAC MAY CONTRIBUTE UP TO \$10,000 (\$5,000 TO THE PRIMARY ELECTION; \$5,000 TO THE GENERAL ELECTION).

CONTRIBUTIONS TO DR. WEHBY FOR U.S. SENATE CAMPAIGN ARE NOT DEDUCTIBLE FOR FEDERAL INCOME TAX PURPOSES. CONTRIBUTIONS FROM CORPORATIONS, FOREIGN NATIONALS AND FEDERAL GOVERNMENT CONTRACTORS ARE PROHIBITED. FEDERAL LAW REQUIRES US TO USE OUR BEST EFFORTS TO COLLECT AND REPORT THE NAME, MAILING ADDRESS, OCCUPATION AND NAME OF EMPLOYER FOR EACH INDIVIDUAL WHOSE CONTRIBUTIONS EXCEED \$200 IN AN ELECTION CYCLE.

PAID FOR BY DR. MONICA WEHBY FOR U.S. SENATE