

**BEFORE THE  
KENTUCKY REGISTRY OF ELECTION FINANCE**

**REPUBLICAN PARTY OF KENTUCKY**

**COMPLAINANT**

**V.**

**BLUEGRASS FREEDOM FUND  
AND  
BESHEAR/MONGIARDO CAMPAIGN**

**RESPONDENTS**

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**COMPLAINT**

Comes the Republican Party of Kentucky (RPK) and for its Complaint against the Bluegrass Freedom Fund (BFF) and the Beshear/Mongiardo Campaign (Beshear Campaign), hereby states the following:

The BFF engaged in express advocacy in its television advertisements aiding Steve Beshear's candidacy, resulting in independent expenditures which did not comply with Kentucky campaign reporting requirements. Moreover, the BFF and the Beshear Campaign violated Kentucky campaign finance laws by engaging in cooperation, coordination, or consultation, resulting in prohibited contributions made to the BFF and prohibited expenditures made by the BFF in contravention and circumvention of state campaign contribution limits. In short, as explained below, the BFF was simply a front-organization used to thwart Kentucky's statutory campaign contribution limits and supplement the Beshear Campaign.

**I. JURISDICTION**

- A. This complaint is filed with the Kentucky Registry of Election Finance (KREF) in accordance with the provisions of 32 KAR 2:030 in the belief that the BFF and the

Beshear Campaign violated the provisions of the Kentucky Campaign Finance Regulations, as amended, KRS 121.005, *et seq.*

- B. The BFF's address is 974 Breckenridge Lane #156, Louisville, Kentucky 40207.
- C. According to the BFF's website, [www.bluegrassfreedom.org](http://www.bluegrassfreedom.org), the BFF is an independent political organization falling under Section 527 of the Internal Revenue Code.
- D. The Beshear Campaign's physical address is 106C St. James Court Frankfort, Kentucky 40601. The Beshear Campaign's mailing address is Post Office Box 4227 Frankfort, Kentucky 40604.

## **II. BFF'S TELEVISION ADVERTISEMENTS ATTACKING ERNIE FLETCHER'S CHARACTER WERE THE FUNCTIONAL EQUIVALENT OF EXPRESS ADVOCACY, RESULTING IN INDEPENDENT EXPENDITURES WHICH DID NOT COMPLY WITH KENTUCKY CAMPAIGN REPORTING REQUIREMENTS.**

### **A. Legal Standard and Relevant Kentucky Statutes**

- 1. The U.S. Supreme Court has provided guidance regarding how to determine whether television advertisements are the functional equivalent of express advocacy and, therefore, not barred under the First Amendment from regulation by the government. In *Federal Election Commission v. Wisconsin Right to Life ("WRTL")* 127 S.Ct. 2652 (2007), Chief Justice Roberts issued the principal opinion in which he articulated the functional-equivalent of express advocacy standard, as follows:

“[A] court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate” because:

(a) The ad “content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter.”

(b) The ads “**do not mention an election, candidacy, political party, or challenger;**” and

(c) The ads “**do not take a position on a candidate’s character, qualifications, or fitness for office.**” *WRTL* [insert cite p. 16 of slip. Op.] (Emphasis added.)

2. An advertisement which expressly advocates the election or defeat of a clearly identified candidate or slate of candidates, even if made without the coordination, consultation, or cooperation with any candidate, slate of candidates or campaign committee, is an “independent expenditure.” KRS 121.015(12).

3. KRS 121. 150(1) states that “Any person making an independent expenditure shall report these expenditures when the expenditures by that person exceed five hundred dollars (\$500) in the aggregate in any one (1) election, on a form provided or using a format approved by the registry and shall sign a statement on the form, under penalty of perjury, that the expenditure was an actual independent expenditure and that there was no prior communication with the campaign on whose behalf it was made.”

4. Any person who knowingly violates the provisions of KRS 121.150 shall, for each offense, be guilty of a Class D felony. KRS 121.990(3).

B. BFF’S television advertisement entitled “Lessons” constituted the functional equivalent of express advocacy because it mentioned then-Governor Ernie Fletcher by name and took a position on his character, and should therefore be viewed as an “independent expenditure” which failed to comply with the reporting requirements mandated by Kentucky law.

1. The script of BFF’s television advertisement, which is entitled “Lessons,” is as follows:

Announcer: "We teach our children right from wrong, that actions have consequences.

"But what lessons do our public officials teach? Ernie Fletcher was indicted for criminal conspiracy.

"Twenty -eight of his appointees and aides were indicted on 85 counts — 23 of them felonies. Fletcher pardoned 27 of them.

"If our children know right from wrong, shouldn't Kentucky's government officials?

