

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA *ex rel.*  
MAC WARNER, Secretary of State

Plaintiff,

v.

SHALE ENERGY ALLIANCE, INC.,  
a Delaware Corporation,

Defendant.

Civil Action No. 18-C-162  
Jason A. Wharton, Judge

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ORDER GRANTING PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT  
AND  
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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On the 9<sup>th</sup> day of March, 2020, came the Plaintiff, State of West Virginia ex rel. Mac Warner, Secretary of State, by counsel, Tom Lampman, Esq. and Curtis Capehart, Esq., and came Defendant Shale Energy Alliance, Inc., by counsel, Andrew Skeens Esq. and David Hendrickson, Esq., for a duly noticed hearing on cross Motions for Summary Judgment.

The issue remaining before the Court in the Motions for Summary Judgment is whether Shale Energy Alliance, Inc. is a political action committee in the State of West Virginia.

**FINDINGS OF FACT**

1. Defendant, Shale Energy Alliance, Inc. ("SEA") was first incorporated in the State of Delaware in 2015, and registered to do business in West Virginia later that year.
2. Since its inception, SEA has described its "mission or most significant activities" as twofold: (1) to conduct "public education campaigns" related to a range of "public

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policy issues” including “oil and natural gas development” and “taxation and labor issues;” and (2) to “[a]dvocate for candidates seeking public office whose views align with the organization’s priorities.”

3. SEA pursues these goals through various avenues, including advertising that touts the benefits of shale energy, educating the industry about salient political developments, and “legislative receptions” designed to get “representatives from natural gas suppliers, delegates, legislators, right into the same rooms so they can talk to each other.”
4. Almost as soon as SEA was registered to do business in the West Virginia it devoted a significant portion of its time and resources to influencing the outcome of West Virginia elections.
5. SEA disclosed 13 distinct expenditures, totaling more than \$24,000, advocating “for” ten different candidates in the 2016 primary election.
6. SEA’s disclosures indicate that it was given \$13,000 specifically for the purpose of making the expenditures in question.
7. SEA’s IRS-990 form for 2016 reveals a further \$50,000 in contributions from SEA to two other groups.
8. Each of these groups reported SEA’s contribution consistent with contributions given to fund communications that expressly advocated for or against candidates.
9. SEA spent or contributed over \$74,000 to expressly advocate for or against candidates in West Virginia’s 2016 election which accounted for over 54% of SEA’s total expenditures for 2016.
10. SEA commissioned a \$20,000 video expressly advocating against the election of a specific candidate, and aired this ad in 468 distinct “spots” in the two weeks preceding the 2018 primary.

11. Also during the 2018 primary, SEA made eighteen distinct expenditures for mailing campaigns, some expressly advocating against a candidate and others expressly advocating for a different candidate. While some of SEA's mail pieces were focused on SEA's avowed interest areas—natural gas, oil, and taxes—others appealed to voters on issues as diverse as the "Second Amendment" and "fight[ing] the opioid crisis."
12. SEA purchased an ad in a local newspaper before the 2018 primary expressly advocating "Vote to keep [a candidate] in office."
13. SEA's 2018 primary election advocacy campaign cost \$77,178.22.
14. SEA financed an extensive campaign of television, mail, print, and internet advertising that expressly advocated for and against nine different candidates for office in the 2018 election.
15. The direct cost of the advertisements for the 2018 election was over \$156,000.
16. SEA did not initially report its expenditures to the Secretary, register as a political action committee ("PAC"), or file the detailed financial statements required of PACs under the Election Code.
17. The Secretary's office received a complaint about SEA, and determined that SEA had not registered as a political action committee and had not disclosed any of its expenditures.
18. The Secretary's office informed SEA of its violations and assisted SEA with coming into partial compliance.
19. SEA filed disclosure forms for its primary cycle independent expenditures.
20. SEA did not agree that it was required to register as a PAC, did not agree that it was required to file the detailed transaction reports required from PACs, and did not pay the penalties associated with its delinquent filings.

21. SEA spent nearly \$79,000 on direct mail during the 2018 general election, advocating on behalf of seven distinct candidates.
22. SEA spent a further \$10,500 to commission four public opinion polls, using the findings therefrom to calibrate the messages in its mailings.
23. SEA admits the polls were done to facilitate SEA's political activity.
24. SEA's general election mailers provided links to SEA's own websites dedicated to specific candidates.
25. SEA did not disclose these 2018 general election advertisements to the Secretary until it received a second cease and desist letter.
26. The grand total for SEA's advertising, mailing, and polling, in the 2018 election was \$166,661.25.
27. SEA's total expenditures for 2018 was \$332,108. Expenditures aimed at influencing West Virginia elections in 2018 accounted for more than half of that total.

### **CONCLUSIONS OF LAW**

In granting Defendants' Motions for Summary Judgment, the Court makes the following conclusions of law:

1. Summary judgment is proper where 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' W. Va. R. Civ. P. 56(c). Summary judgment should be granted "when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Syl. pt. 3, *Aetna Cas. & Sur. Co. v. Fed. Ins. Co. of New York*, 148 W.

Va. 160, 133 S.E.2d 770 (1963). Rule 56 of the West Virginia Rules of Civil Procedure is designed to effect a prompt disposition of controversies on their merits without resort to a lengthy trial, if there essentially "is no real dispute as to salient facts" or if it only involves a question of law. *Hanks v. Beckley Newspapers corp.*, 153 W. Va. 834, 836-37, 172 S.E.2d 816, 817 (1970).

2. "The circuit court's function at the summary stage is not to weigh the evidence and determine the truth of the matter, but is to determine whether there is a genuine issue for trial." Syl. Pt. 4, *Gooch v. West Virginia Dep't of Pub. Safety*, 195 W. Va. 357, 465 S.E.2d 628 (1995); syl. pt. 3, *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994). A genuine issue does not arise for purposes of summary judgment unless there is sufficient evidence favoring the nonmoving party for a reasonable jury to return a verdict for that party. Syl. Pt. 5, *Kelly v. City of Williamson*, 221 W. Va. 506, 655 S.E.2d 528 (2007); syl. Pt. 5, *Jividen v. Law*, 194 W. Va. 705, 461 S.E.2d 451 (1995). The nonmoving party cannot create a genuine issue of material fact through mere speculation or building of one inference upon another. *Crum v. Equity Inns, Inc.*, 224 W. Va. 246, 254, 685 S.E.2d 219, 227 (2009).

3. The West Virginia Supreme Court of Appeals has explained that "a material fact is one that has the capacity to sway the outcome of the litigation under the applicable law." *Hawkins v. U. S. sports Ass'n*, 219 W. Va. 275, 278, 633 S.E.2d 31, 34 (2006). "[T]he party opposing summary judgment must satisfy the burden of proof by offering more than a mere 'scintilla of evidence,' and must produce evidence sufficient for a reasonable jury to find in a nonmoving party's favor." *Terra Firma co. v. Morgan*, 223 W. Va. 329, 333, 674 S.E.2d 190, 194 (2008).

4. Upon a properly supported motion for summary judgment the burden shifts to the nonmoving party:

If the moving party makes a properly supported motion for summary judgment and can show by affirmative evidence that there is no genuine issue of a material fact, the burden of production shifts to the nonmoving party who must either (1) rehabilitate the evidence attacked by the moving party, (2) produce additional evidence showing the existence of a genuine issue for trial, or (3) submit an affidavit explaining why further discovery is necessary . . . syl, Pt. 4, *Reed v. Orme*, 221 W. Va. 337, 655 S.E.2d 83 (2007); syl. Pt. 3, *Williams*, 194 W. Va. At 56, 459 S.E.2d at 333.

5. In this case, the Court concludes that Plaintiff is entitled to summary judgment as the undisputed material facts demonstrate that Shale Energy Alliance, Inc. is a political action committee.

6. A political action committee is distinct from other groups that “influence the election or defeat” of candidates based on one feature: whether it is “organized” for that purpose. W. Va. Code § 3-8-1a(21) (2018)<sup>1</sup>

7. The Election Code does not define what it means to be “organized,” so courts must give this term its ordinary and plain meaning. See Syl. pt. 1, *Miners in Gen. Grp. v. Hix*, 123 W. Va. 637, 17 S.E.2d 810 (1941), *overruled on other grounds by Lee-Norse Co. v. Rutledge*, 170 W. Va. 162, 291 S.E.2d 477 (1982) (“In the absence of any definition of the intended meaning of words or terms used in a legislative enactment, they will, in the interpretation of the act, be given their common, ordinary and accepted meaning in the connection in which they are used.”)

8. The relevant definition listed in Merriam-Webster’s Collegiate Dictionary defines

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<sup>1</sup> As this action was initiated in response to advertisements made in the 2018 election, this Order reflects a decision made under the 2018 version of the Election Code. Many of the relevant provisions were amended in 2019. See SB 622, 2019 Reg. Sess., *enrolled at* 2019 W. Va. Acts ch. 102.

“organized” as “having a formal organization to coordinate and carry out activities.” *Organized*, *Merriam-Webster Collegiate Dictionary* (11th Ed. 2003).

9. Since the year it was formed SEA has described “advocate[ing] for candidates seeking public office” as one of its “most significant activities.”

10. In each election cycle since its creation, SEA has directed a majority of its annual expenditures towards advocating for and against candidates in West Virginia.

11. SEA “makes the decision to support or oppose a particular politician” in “strategy sessions,” involving both leadership and “government affairs support resources.”

12. The Election Code expressly contemplates the possibility that an entity organized for non-electoral purposes can *also* be organized for the purpose of influencing elections.

13. The Election Code includes “membership organizations” as a type of political action committee. W. Va. Code § 3-8-1a(21)(B) (2018). Membership organizations “use[] a majority of [their] membership dues for purposes other than political purposes,” W. Va. Code § 3-8-1a(18) (2018). Such groups no doubt devote much of their time and organization to non-political purposes, yet the Election Code recognizes they are *also* “organized . . . for the purpose” of advocating for and against candidates. W. Va. Code § 3-8-1a(21) (2018). Taken together, these related provisions indicate that the Legislature did not conceive of “organization . . . for [a] purpose” as mutually exclusive with organization for an additional, even wholly non-political, purpose. See *W. Va. Health Care Cost Rev. Auth. v. Boone Mem. Hosp.*, 196 W. Va. 326, 338, 472 S.E.2d 411, 423 (1996) (“It is a fundamental principle of statutory construction that the meaning of a word cannot be determined in isolation, but it must be drawn from the context in which it is used.”); Syl. pt. 7, *Miller v. Wood*, 229 W. Va. 545, 729 S.E.2d 867 (2012) (“[S]tatutes which have a common purpose will be regarded in *para materia* to assure recognition and implementation of the legislative intent.” (quoting Syl. pt. 5, *Fruehauf Corp. v. Huntington*

*Moving & Storage Co.*, 159 W. Va. 14, 217 S.E.2d 907 (1975)).

14. It is a well-established canon of judicial interpretation that courts should not add to the text of the statute through interpretation. *See* Syl. Pt. 11, *Brooke B. v. Ray*, 230 W.Va. 355, 738 S.E.2d 21 (2013) (“It is not for [courts] arbitrarily to read into a statute that which it does not say. Just as courts are not to eliminate through judicial interpretation words that were purposely included, we are obliged not to add to statutes something the Legislature purposely omitted.”); Syl. Pt. 1, *Consumer Advocate Division v. Pub. Serv. Comm’n*, 182 W. Va. 152, 386 S.E.2d 650 (1989) (“A statute, or an administrative rule, may not, under the guise of ‘interpretation,’ be modified, revised, amended or rewritten.”).

15. If the Legislature had intended the Election Code to capture only political action committees organized for the “sole purpose” of supporting or opposing candidates, then it would have included the word “sole” as it did in other statutes. *See, e.g.*, W. Va. Code § 60-8-2 (defining a “private wine bed and breakfast” as “any business with the *sole purpose* of providing” lodging, meals, etc. and defining a “private wine spa” similarly)

16. SEA has consistently devoted more than half of its election-year expenditures to expressly advocating for and against candidates in West Virginia elections. It is staffed, directed, and supported by a network of communications professionals, pollsters, and government affairs consultants. This network works together to organize multifaceted multimedia campaigns advocating for and against multiple candidates every election year.

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the Court finds that Shale Energy Alliance, Inc. is “organized for the purpose of supporting or opposing one or more candidates” in West Virginia elections, and it is required to register as a Political Action Committee. Therefore, the Plaintiff’s Motion of Summary Judgment is



GRANTED. Additionally, for the reasons set forth herein, Defendant's Motion for Summary Judgment is DENIED.

The Clerk of this Court is ORDERED to provide copies of this Order to all counsel of record.

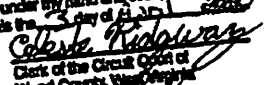
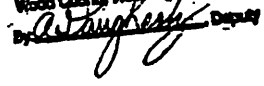
ENTER:

  
JASON A. WHARTON, JUDGE

COUNTY OF WOOD, TO-WIT:

I, CELESTE RIDGWAY, Clerk of the Circuit Court of Wood County, West Virginia, hereby certify that the foregoing is a true and complete copy of an order entered in said Court, on the 2 day of April, 2020 as fully as the same appears to file of record.

Given under my hand and seal of said Circuit Court, this the 3 day of April, 2020

  
Celeste Ridgway  
Clerk of the Circuit Court of  
Wood County, West Virginia  
By  Deputy