



The Big Sky Country

STATE ADMINISTRATION

MONTANA HOUSE OF REPRESENTATIVES

Exhibit No. 8
Date 4/20/2015
Bill No. SR53

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March 5, 2015

Senator Dee Brown
Chairperson, Senate State Administration & Veteran Affairs Committee
Helena, MT

Re: Confirmation of John Motl-The Process is the Punishment

Dear Senator Brown:

One of the most important decisions the Montana Senate will make during the 2015 session is whether or not Jonathan Motl should be confirmed as Commissioner of Political Practices. He is not worthy to remain in that office.

Jon has a history of partisan activity, including working on campaigns for various partisan and progressive groups. Ironically, as a result of his representation of the Montana Public Research Interest Group, he was sanctioned by a prior commissioner for not following proper procedures (see pages 46-48, Griffin v. MPRIG, attached hereto as Exhibit A).

Despite (or because of?) his clear bias, he was appointed by Governor Bullock a few months after the 2013 Session ended. He quickly set out to focus on prosecuting conservative Western Tradition Partnership, and certain select candidates who may have been supported by Western Tradition Partnership. Notably, while WTP reportedly was involved in over 30 races in the 2008 and 2010 campaign cycles, Motl only filed lawsuits against 9 of the candidates, me included.

During his first few weeks in office, he told his staff that he just needed to "find the facts to fit the violations." He then went about radically changing office precedent, and course of practice (see Exhibit B, attached hereto).

Curiously, he has not yet prosecuted most of the other 20+ WTP related candidates, many of whom are currently in the legislature. In fact, when an independent complaint was filed against one of these candidates (Senator Ed Buttrey), Motl unilaterally dismissed it as a "de minimis" violation, for the exact same activities of contracting with a campaign mail house (Direct Mail, Inc.) that was owned and operated by the spouse of WTP's operator.

This proves Motl never followed the facts before making a decision to prosecute.

In the 9 filed cases, Motl's theory is that those candidates should have reported unknown "corporate contributions" from WTP, since it was incorporated. To support his case, he retained the services of one of his colleagues from his Common Cause days (C.B. Pearson) to serve as an "expert," who provided an opinion that I should have paid over \$1.00 per mail piece for my mailing, instead of the \$0.50 per piece cost that was invoiced to me, and actually paid. (*See Exhibit C, attached hereto.*) While Pearson has been involved with many liberal political campaigns, he has never operated a mail house, so his "expertise" to provide such an opinion will be challenged. I know of no single candidate or group that has paid \$1/mail piece. Do you?

By retaining Pearson for this case, and paying him over \$1,300 before the lawsuits were even filed, both Motl and Pearson are defendants in a Montana False Claims Act being litigated now in Lewis and Clark County.

Notably in my case, there was no administrative complainant. None of my opponents, or any elector from my Senate District, complained. Instead, four years after the election, Motl served as the (1) administrative complainant. He also served as the (2) sole administrative investigator, (3) the administrative judge who ruled a violation occurred, the (4) Plaintiff in the lawsuit (that was filed contemporaneously with the administrative finding-with no effort to settle), and (5) lead counsel in the case.

Incredibly, Motl has notified the court that he will be also serving not only as the (6) prime witness, but also as an (7) expert witness in one of the cases (*see Notice of Expert, attached as Exhibit D*). To add to the 7 hats he now wears, I wouldn't be surprised if Motl soon files a motion to serve as the judge, jury and executioner as well.

When I issued a discovery request to find out what documents Motl possessed to prove his case, he provided nothing showing a direct link between me or my campaign and WTP. Instead, he argued to the court that I must review 30,000 pages of general WTP documents, in his office, any page of which *may* support his case. I am now incurring additional legal fees to review these unrelated files. To date, after reviewing 4,000 pages, nothing indicates any relevance with my campaign.

Nonetheless, throughout Motl's prosecution during the last 10 months, he has made numerous statements to the press during my 2014 election, and after my victory, threatening to remove me from office. Notice the great irony of the state official charged with preventing corruption while he tries to throw an election. Of course the local newspaper prints his salacious statements.

He also inappropriately communicated with one of the 9 Defendants without their attorney present (Senator Scott Sales), and has since told the press he will use the resulting affidavit from the Sales settlement against me in my case, again reminding the press about his goal to remove me from office (*see Bozeman Daily Chronicle article dated 01/21/2015, attached hereto as Exhibit E*). As a result of this inappropriate communication with a represented party, Motl is now being investigated by the Montana Bar Office of Disciplinary Counsel.

Simply put, Motl is unfit to serve as Montana's Commissioner of Political Practices for the following reasons:

1. Ideological bias. While Motl has recently found minor violations by certain Democrats, he has not filed a single lawsuit against a Democrat on any of these cases, or made the targets hire attorneys and engage in expensive litigation. Instead, he has worked with them to find ways to comply, without penalty.
2. Due process. Motl has twisted the statutes to engage in an expensive "guilty until proven innocent" methodology. In my 30 years of practice and litigation, I have never seen a bigger abuse of legal process. But I cannot address my counter claims (which will be many) until after this lawsuit concludes, after years and tens of thousands of additional dollars.

Motl is nothing more than a political arm of the Bullock machine to attack its enemies. In his world, the Process is the Punishment. He uses the resources of the State to smear the names of public officials, force them to expend personal resources to defend themselves, and most inappropriately operate a state funded political operation. As a result of his unlimited resources, many targets will simply "settle" to avoid further financial exposure in his kangaroo court.

He in no way should be confirmed as commissioner by anyone, whether a republican, or self-respecting democrat.

Respectfully,



Representative Art Wittich

INDEX OF EXHIBITS

- Exhibit A - Griffin v. MPRIG  
Page 1, Statement of Findings (pages 41-48), and  
Conclusion (page 56)
- Exhibit B - Office of CoPP staff notes on Inconsistencies
- Exhibit C - Expert Report of C.B. Pearson
- Exhibit D - CoPP v. Miller –  
Notice to Opposing Party of the Non-Retained  
Expert Witness Status of Jonathan Motl
- Exhibit E - Bozeman Daily Chronicle Article dated January 21, 2015

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES  
STATE OF MONTANA

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|  |   |                       |
|--|---|-----------------------|
| In the Matter of the Complaint Against Mont-PIRG,  | ) |                       |
| Montana Common Cause, the League of Women          | ) | SUMMARY OF FACTS      |
| Voters of Montana and Other Entities and Political | ) | AND                   |
| Committees Supporting I-125 and I-121              | ) | STATEMENT OF FINDINGS |

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Complainant Brad Griffin, Executive Director of the Montana Restaurant Association and the Montana Retail Association, filed a complaint against Mont-PIRG, Montana Common Cause ("MCC"), the League of Women Voters of Montana ("LWVM") and other entities and political committees supporting I-125 and I-121 on October 31, 2000. Mr. Griffin's complaint alleges that Mont-PIRG, MCC, LWVM, and other entities and political committees supporting I-125 and I-121 during the 1996 election failed to properly report certain contributions and expenditures under Montana's Campaign Finance and Practices Act. Mr. Griffin's complaint contains the following basic allegations:

I. I-125 CLAIMS

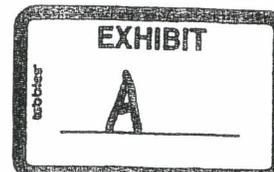
Claim 1: The initial principal political committee created to support I-125, Citizens to Qualify I-125, violated the naming and labeling statute (Section 13-37-210, Montana Code Annotated (MCA)) by failing to properly identify the economic or other special interest of a majority of its contributors.

Claim 2: The initial C-6 report filed by Citizens to Qualify I-125 failed to accurately report in-kind contributions made by Mont-PIRG, LWVM, Green Corps, the law firm of Reynolds, Motl and Sherwood, and other entities as required by Section 13-37-228(1), MCA.

Claim 3: Citizens to Qualify I-125 failed to timely file its first C-6 report. Citizens to Qualify I-125 filed its initial C-6 report on June 10, 1996. Mr. Griffin alleges the committee's initial report should have been filed on March 10, 1996 as required by Sections 13-37-226(2), 13-37-229, and 13-37-230, MCA.

Claim 4: Citizens to Qualify I-125, Mont-PIRG and LWVM failed to report two grants totaling \$5,000 made by Mont-PIRG to LWVM for I-125 activities in September of 1996.

Claim 5: Mont-PIRF, Citizens to Qualify I-125 and its successor principal committee, League of Women Voters of Montana, Montana Common Cause, Mont-PIRG, 2030 Fund, Inc. and Citizens for I-125 ("LWVM and Others for I-125") failed to report expenditures made for the Mont-PIRF study entitled "Big Money and Montana's Ballot Campaigns." In addition, the I-125 principal committees failed to report expenditures for



A. C.B. Pearson, \$15,418.43 for serving as treasurer and manager for the I-125 campaign;

B. Jon Motl, \$12,966.11 for services provided to LWVM and Others for I-125;

C. Art Moore, Inc., Salt Lake City, Utah, \$37,990.00 for radio ads; and

D. MacWilliams, Cosgrove and Snider, Tacoma Park, Maryland, \$25,000.00 for television ads.

154. LWVM and Others for I-125 chose not to close its books and file a closing report soon after the November 1996 general election because of the on-going litigation challenging the constitutionality of I-125. Mr. Motl and Mr. Pearson believed LWVM and Others for I-125 would not have standing to be an intervener in the I-125 litigation if the committee ceased to exist and filed a closing report. LWVM and Others for I-125 continued to file C-6 reports with the Commissioner on the following dates:

A. March 11, 1997;

B. September 30, 1997;

C. March 17, 1998;

D. September 11, 1998; and

E. March 29, 1999 (closing report).

155. The C-6 reports referenced in the preceding paragraph did not include any contributions. Except for a \$64.53 payment to C.B. Pearson for reimbursement of expenses in the March 11, 1997 report, the only other expenditures were bank service charges.

156. The closing report filed by LWVM and Others for I-125 on March 29, 1999 showed a cash balance of \$108.99, but there is no indication to whom this cash balance was paid.

## VII. STATEMENT OF FINDINGS

### A. I-125 Claim 1

The allegation that Citizens to Qualify I-125 violated the naming and labeling statute (Section 13-37-210, MCA) is dismissed for the reasons set forth in Part IV, pages 7 and 8 of this decision. This allegation appears to have merit based on the failure of Citizens to Qualify I-125 to accurately disclose that FFPIR, not Mont-PIRG, contributed a significant amount of cash and in-kind services (in excess of \$15,000) to the I-125 campaign. Failure to identify the common economic interest or employer of a majority of I-125's contributors

would have been deemed a serious infraction since the I-125 proponents falsely represented that Mont-PIRG's students and members were providing the cash and in-kind contributions needed to place I-125 on the 1996 ballot; however, Mr. Griffin's naming and labeling complaint was not timely filed and enforcement action based on this claim is barred by Section 13-37-130, MCA.

#### B. I-125 Claim 2

The allegations in Claim 2 are that the initial report filed by Citizens to Qualify I-125 failed to include certain in-kind contributions by incidental political committees such as Mont-PIRG, LWVM, Green Corps, the law firm of Reynolds, Mott and Sherwood, and others. The initial investigation of this claim raised sufficient concerns to examine how key participants in the I-125 campaign reported or did not report I-125 campaign activities. As a result, this investigation was expanded to include the various groups and individuals who were coordinating their activities with the two principal I-125 committees and whether in-kind and cash contributions were accurately reported throughout the I-125 campaign.

It is first necessary to restate the general requirements for reporting in-kind contributions under Montana law and the previous decisions of the Commissioner's office. The most comprehensive description of in-kind reporting requirements was made by Commissioner Ed Argenbright in his April 30, 1998 *MCSWL Decision*, at pp.74-77, which reads, in pertinent part, as follows:

...Section 13-1-101(6)(a)(iii), MCA, includes in the definition of "contribution" the "payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee." However, "services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee..." are not a contribution (Section 13-1-101(6)(b)(i), MCA). An "individual" is defined as a "human being" and does not encompass businesses, corporations, membership associations, partnerships or clubs (Section 13-1-101(15), MCA). These unambiguous statutory definitions make it clear that an employer who pays his or her employees or independent contractors to serve on campaign steering committees, stuff campaign envelopes, write campaign brochures, conduct scientific studies for the campaign or raise campaign funds is making a reportable in-kind campaign contribution.

Not all in-kind contributions are as clear-cut as the examples cited in the preceding paragraph. Rules have been adopted by my predecessors to address more complex issues. ARM 44.10.321 was first adopted in 1976 and last amended in 1979. ARM 44.10.321(2) defines the term "in-kind contribution" to mean "the furnishing of services, property, or rights without charge or at a charge which is less than fair market value" to a candidate or political committee (third party payments of compensation to campaign

participants and individuals who volunteer their time are specifically excluded from the rule definition). Applying this definition and the statutory definitions cited in the preceding paragraph, the following rules apply:

1. Only an individual (a human being) may escape reporting an in-kind contribution by volunteering his or her time (Section 13-1-101(6)(b)(i), MCA). If the campaign-related work by a human being also involves the use of equipment (fax machines, telephones, etc.) or property (the use of office space), the fair market value of the equipment and property must be reported.

2. Entities, other than a human being, may not volunteer time and escape reporting in-kind contributions. If a business, corporation, membership association, partnership, club, union, committee, firm, or group makes an employee, officer, board member or independent contractor available for campaign-related services, the fair market value of those services must be reported by the entity as an in-kind contribution.

3. Entities, including a human being, who provided equipment or property for campaign-related activities, must report the fair market value of the equipment and property. For example, the fair market value of providing phones, FAX machines, membership lists and similar items for use in a campaign must be determined and reported.

4. ARM 44.10.513 and 44.10.533 define how in-kind contributions and expenditures must be valued and reported. These rules and the pertinent statutory definitions have been in place for 20 years!

This commissioner acknowledges that such factors as how an employee or independent contractor is paid (hourly fee v. annual salary) and when and where campaign-related work is performed may affect the amount of the in-kind contribution to be reported. However, the basic rules are that if an employee, officer, board member or independent contractor is paid by an employer or third party to perform campaign-related services, such services constitute an in-kind contribution to the candidate or political committee. Any work done at the employer's offices and any use of the employer's equipment or property must be reported as an in-kind contribution. If an employee or independent contractor writes a campaign report after work hours or films a campaign commercial on Sunday and receives no compensation from his or her employer or third party, then the services fall under the "volunteer" exception. There is no reportable in-kind contribution. Conversely, if an employee or independent contractor writes a campaign report after work hours but receives compensation (salary, overtime or comp time pay) for such services, it is a reportable in-kind contribution. If an employer's office or equipment is used for campaign activities, it is also reportable under Montana's definition of contribution. Allowing a candidate or political

committee to use office telephones, fax machines, copiers, paper and stamps for campaign purposes has substantial value to the candidate or political committee.

Based on the preceding, several entities and individuals made in-kind contributions to the I-125 campaign that should have been reported in incidental political committee C-4 reports and in C-6 reports filed by Citizens to Qualify I-125 and LWVM and Others for I-125; however, because Mr. Griffin's complaint was filed more than four (4) years after the deadline for the filing of C-4 reports by incidental political committees in 1996, enforcement action against these incidental political committees is barred under Section 13-37-130, MCA.

Enforcement action based on the failure of Citizens to Qualify I-125 and LWVM and Others for I-125 to accurately report the following cash and in-kind contributions in the September 11, 1998 and March 29, 1999 C-6 reports is not barred by Section 13-37-130, MCA:

1. Mont-PIRG and FFPIR. FFPIR should have been listed as making both cash and in-kind contributions to the I-125 principal committees.

FFPIR, not Mont-PIRG, was paying canvassers to collect signatures for I-125 in May and June of 1996. The \$1,990.30 in-kind contributions by Mont-PIRG listed in the June 10 and July 10, 1996 C-6 reports for salaries paid to canvassers and Chris Newbold should have been reported as in-kind contributions by FFPIR, not Mont-PIRG.

The amount of the canvass salaries reported for I-125 signature gathering efforts (\$1,990.30) appears reasonable. Collecting signatures for I-125 in May and June of 1996 was only an incidental part of the canvass. The primary purpose of the FFPIR canvass on behalf of Mont-PIRG was to raise money for Mont-PIRG and educate the public about Mont-PIRG's objectives and programs.

The I-125 principal committees did not accurately report other in-kind contributions by Mont-PIRG. It is clear that a major portion of the I-125 campaign was being run out of the Mont-PIRG offices. Mont-PIRG's office equipment, office space, and supplies were being used by Chris Newbold, C.B. Pearson, and others to conduct I-125 signature gathering efforts, secure endorsements, prepare campaign documents, and raise money for the I-125 campaign. Mont-PIRG pays rent to the University of Montana for its office space. The C-6 reports filed by Citizens to Qualify I-125 contain no in-kind contributions by Mont-PIRG for office space, equipment or supplies used in the I-125 campaign. LWVM and Others for I-125 listed in-kind contributions by Mont-PIRG for office equipment and supplies in its October 22, and November 1, 1996 C-6 reports, but did not report any in-kind Mont-PIRG contributions for office space used for I-125 activities. LWVM and Others for I-125 did not list any in-kind contributions from Mont-PIRG for use of Mont-PIRG's office space, equipment, and supplies during the final days of the 1996 campaign (see the November 27, 1996 C-6 report) or any subsequent C-6 report.

Some of the cash contributions made by Mont-PIRG to both principal I-125 committees were actually contributions made by FFPIR of funds it was paid as legitimate administrative expenses under the canvass agreement with Mont-PIRG. FFPIR paid a total of \$27,500 cash to Mont-PIRG for I-125 campaign activities in 1996. Mont-PIRG, in turn, contributed a total of \$27,700 cash to the I-125 principal committees (\$22,700 of this amount was contributed to Citizens to Qualify I-125). At least \$13,000 of the cash contributed to the I-125 campaign by Mont-PIRG was FFPIR cash and should have been reported as FFPIR cash contributions, not Mont-PIRG contributions.

It must be noted that the amount of cash contributed by Mont-PIRG and/or FFPIR was accurately reported by both principal I-125 committees. The inaccurate reporting of the Mont-PIRG cash contributions was limited to the source of the cash, not the amount of the cash contributed. Nevertheless, the failure of both principal I-125 committees to accurately report the source of a sizeable portion of its cash and in-kind contributions during the signature-gathering phase of the I-125 campaign is a serious violation in light of the public representations made by Citizens to Qualify I-125.

The failure to disclose both the cash and in-kind contributions made by FFPIR raises the issue of whether Mont-PIRG, FFPIR, and the two principal I-125 committees violated Section 13-37-217, MCA, which reads as follows:

**13-37-217. Contributions in name of undisclosed principal.** No person may make a contribution of his own money or of another person's money to any other person in connection with any election in any other name than that of the person who in truth supplies such money. No person may knowingly receive such a contribution or enter or cause the same to be entered in his accounts or records in another name than that of the person of whom it was actually furnished.

Chris Newbold indicates that FFPIR did not provide monthly statements to Mont-PIRG concerning the amount of money being deducted for FFPIR expenses and the remaining amount available to Mont-PIRG from canvass fund-raising (all funds collected from the Mont-PIRG canvass were deposited in a FFPIR account controlled exclusively by FFPIR). According to Mr. Newbold, Mont-PIRG knew what gross revenues were being collected in the canvass and Mont-PIRG kept requesting money from FFPIR for use in the I-125 campaign. Mont-PIRG did not know how much FFPIR was deducting for canvasser and administrative expenses. FFPIR kept wiring Mont-PIRG the cash requested. Mr. Mott states that he was not aware of FFPIR's financial contributions and that he assumed the Mont-PIRG money was Mont-PIRG's money.

I am unable to conclude that FFPIR, Mont-PIRG, and both principal I-125 committees knowingly reported FFPIR contributions as Mont-PIRG contributions based on the evidence available at this time. Mont-PIRG's gross cash canvass fund-raising in 1995 and 1996 exceeded \$53,700. Mont-PIRG's total cash and in-kind contributions to the I-125

campaign were \$31,640.81. Mr. Newbold believed that if Mont-PIRG was making requests for funds from FFPIR that exceeded the amount available to Mont-PIRG after deducting FFPIR's canvass and administrative expenses, FFPIR would have refused to transfer the funds to Mont-PIRG. FFPIR never refused to transfer the funds requested by Mont-PIRG according to Mr. Newbold.

2. Jon Motl and the law firm of Reynolds, Motl and Sherwood. Jon Motl is a partner in the law firm of Reynolds, Motl and Sherwood. In 1996, Reynolds, Motl and Sherwood was a general partnership. Since 1997, the firm has been a professional limited liability partnership. A separate partnership owns the building where the law firm's offices are located.

Members of the law firm share office overhead and expenses the same today as they did in 1996. Mr. Motl keeps all revenue received and pays 40% of his gross revenue to the building partnership to pay employee, equipment and office expenses. If Mr. Motl volunteers his time, he does not receive income or a subsidy from his partners. When Mr. Motl is paid an hourly or contingent fee for his services, Mr. Motl pays his office expenses out of these payments.

Mr. Motl volunteered his services to Citizens to Qualify I-125. Section 13-1-101(6)(b)(i), MCA, clearly excludes such individual volunteer efforts from the reporting requirements of the Act and rules. Before Mr. Motl began billing LWVM and Others for I-125 for his services on October 3, 1996 there is no evidence that Mr. Motl received compensation for his I-125 services from his partners, a client, Citizens to Qualify I-125, or any other person.

Mr. Motl was paid for services provided to LWVM and Others for I-125. Mr. Motl billed LWVM and Others for I-125 at one-half his normal rate, \$50 per hour rather than \$100 per hour (Summary of Fact 112). ARM 44.10.321(1) defines an "in-kind contribution" as the "furnishing of services, property or rights without charge or at a charge which is less than fair market value to a person, candidate, or political committee for the purpose of supporting or opposing a ... ballot issue..." (see ARM 44.10.323(2) for a similar definition of "in-kind expenditure"). Because Mr. Motl provided both volunteer and compensated services to the I-125 principal committee, it is necessary to reconcile the definition of in-kind contribution in ARM 44.10.231(2) with the volunteer exemption in Section 13-1-101(6)(b)(i), MCA.

A lawyer, an accountant, or an individual who stuffs envelopes may volunteer time to a political committee, and such volunteer time is not reportable under Section 13-1-101(6)(b)(i), MCA. This statutory exemption applies to "services provided without compensation by individuals volunteering all or a portion of their time...." In Mr. Motl's case, he volunteered his services without compensation to Citizens to Qualify I-125 and those volunteer services were not a reportable in-kind contribution; however, once Mr. Motl began receiving compensation for his services by LWVM and Others for I-125, the principal committee and Mr. Motl were obligated to report the total fair market value of Mr. Motl's services as contributions to the I-125 campaign. The fair market value of Mr. Motl's services to LWVM and Others for I-125 was, by Mr. Motl's own admission, \$100 per hour,

not his discounted billing rate of \$50 per hour. LWVM and Others for I-125 timely and accurately reported \$10,430 paid to Mr. Motl at his discounted billing rate of \$50 per hour. Neither Mr. Motl nor LWVM and Others for I-125 reported the discounted value of the services provided by Mr. Motl as an in-kind contribution under ARM 44.10.321(2). LWVM and Others for I-125 should have reported an additional \$10,430 as the full fair market value of Mr. Motl's services to the I-125 campaign.

Both principal I-125 committees also failed to report the value of Mr. Motl's office expenses, including office space, as an in-kind contribution. Only the volunteer time of a human being is not reportable under Montana's campaign finance laws and rules (see April 30, 1998 MCSWL Decision cited on pages 42-44 of this decision). If a business partnership makes office space, equipment, and supplies available to a political committee at less than fair market value, the political committee must report the fair market value of that office space, equipment, and supplies even if the space and equipment is being used by campaign volunteers (see Section 13-1-101(6)(a)(i), MCA, ARM 44.10.321, 44.10.323, 44.10.513 and 44.10.533). Similarly, Mr. Motl, as an individual, has the obligation to report the fair market value of any business equipment, business office space, or office supplies used in campaign activities.

Mr. Motl's services to the I-125 campaign were an integral part of virtually all I-125 campaign activities. Mr. Motl's correspondence on behalf of I-125 was written on Reynolds, Motl and Sherwood stationery and involved the use of office space, office equipment, and office supplies. The only in-kind contribution reported by Citizens to Qualify I-125 from the Reynolds, Motl and Sherwood law firm was the \$97.50 for "staff time, copying and phone" reported in the June 10, 1996 report. Citizens to Qualify I-125 should also have reported the fair market value of office space, equipment, and supplies used by Mr. Motl in his I-125 campaign activities.<sup>5</sup> LWVM and Others for I-125 should have reported as in-kind contributions from the Reynolds, Motl and Sherwood law firm the fair market value of the office space, equipment and supplies used in the I-125 campaign. LWVM and Others for I-125 only reported in-kind contributions from the Reynolds, Motl and Sherwood law firm for copying and postage costs.

Mr. Motl has urged a broad interpretation of the volunteer time exemption to include the use of business office space, equipment, and supplies by volunteers in a political campaign. I must agree with my predecessor and conclude that the volunteer time exemption in 13-1-101(6)(b)(i), MCA, does not allow a business, corporation, partnership, association, or an individual to donate office space, equipment and supplies to political campaigns unless the fair market value of such space, equipment and supplies is properly reported. To interpret the Act and rules as suggested by Mr. Motl would not result in full disclosure of campaign finances and would, in turn, encourage the corporate behavior Mr.

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<sup>5</sup> Enforcement action against the Reynolds, Motl, Sherwood law firm for failure to report these expenditures in a C-4 incidental political committee report is barred for the reasons stated on pages 6-8 of this decision.

Motl sought to restrict in I-125. Offices with computers, telephones, fax machines, copiers, computer disks, paper, desks, workstations, and furniture have great value to political campaigns. Montana law requires that the fair market value of such office space, equipment and supplies be accurately and timely reported.

The preceding conclusion is also a matter of equity. The public legislative debates about the reporting of cash and in-kind contributions has centered on the notion that there should be full disclosure of both the money and the services, property, and equipment used in political campaigns. A political committee able to raise substantial cash contributions must report expenditures made for personnel, office space, office equipment, and office supplies. It is fundamentally unfair and contrary to every notion of full disclosure to allow political committees that raise less cash to escape reporting the fair market value of office space, office equipment, and office supplies made available to campaign personnel by the employers or businesses for whom campaign officials work. The principal I-125 committees chose not to spend their cash contributions on office space, equipment, and supplies for a campaign headquarters. That choice does not excuse the I-125 proponents from reporting as in-kind contributions the fair market value of office space, equipment, and supplies provided by businesses or employers.

3. Green Corps. The issue of whether any of the payments made by Green Corps to C.B. Pearson for the EOS class were reportable as I-125 in-kind contributions is discussed on pages 58 and 59 of this decision (Claim 6).

4. Mont-PIRF. The issue of whether the Mont-PIRF study "Big Money in Montana's Ballot Campaigns" was a reportable I-125 campaign expenditure is discussed on pages 56-58 of this decision (Claim 5).

5. LWVM. LWVM is a Montana nonprofit corporation, first incorporated in 1985. LWVM's President and other members volunteered their time for a number of I-125 activities. League members were not reimbursed for their participation in the I-125 campaign.

The League spent a total of \$5,802.70 on its activities in 1996-97. LWVM reimbursed Ms. Seekins \$460.95 in 1996-97 for expenses as President but there is no evidence that any of the reimbursement was for I-125 activities. Ms. Seekins' participation in the preparation of arguments for I-125 in the Secretary of State's Voter Information Pamphlet is not a reportable activity (see the June 20, 2000 Chamber Decision, at pp. 52 and 53). Although LWVM endorsed I-125 and its name was featured prominently in the name of the second principal committee (LWVM and Others for I-125), such a public endorsement was not a reportable in-kind contribution.

6. MTLA. The Montana Trial Lawyers Association, through its Executive Director, was actively coordinating its I-125 activities with Jon Motl. Russ Hill, MTLA's Executive Director, was funneling information obtained from the political committees opposing I-125 to Mr. Motl. Mr. Hill was also submitting MTLA press releases for review by Mr. Motl before the press releases were issued. Mr. Hill was even writing proposed radio commercials for

### VIII. CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is substantial evidence to conclude that Citizens to Qualify I-125, LWVM and Others for I-125, and the individual treasurer and committee members for these principal I-125 committees violated Montana's campaign finance reporting and disclosure laws and that a civil penalty action under Section 13-37-128, MCA, is warranted.

DATED this \_\_\_\_\_ day of August, 2002.

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Linda L. Vaughey  
Commissioner of Political Practices

Inconsistencies – (prior to Commissioner Motl compared to Motl actions)

- Commissioner of Political Practices (hereafter "COPP") never initiated complaints
- COPP refused to investigate informal complaints
- Commissioner proposes an "apology" as part of the penalty (SAVA Hearing of 12-10-13)
- Commissioner was never directly involved with investigations
- Investigation files were confidential and only available after compliance with COPP policy on requesting access which included a right to know analysis for privacy purposes<sup>1</sup>
- COPP never worked specifically to create a legal "precedent" to justify its actions
- Commissioner never "re-opened" a decision for the purpose of expanding the original allegations of a complaint
- Consistently held speech was not express advocacy if it was susceptible to any other interpretation
- Never targeted candidates for using a common vendor
- For purposes of pursuing a penalty when a violation was found, the matter was referred to the county attorney in the county where the respondent (or violator) resided. If the violation was by a ballot committee, the matter was referred to the county of origin for the ballot committee.
- The Commissioner never solicited complaints
- The Commissioner has refrained from making personal judgments about activities – most recently Motl noted a school board's efforts on a bond issue were "diligently" educational
- Never retained the services of an expert witness prior to issuing a decision the Commissioner anticipated would result in litigation
- Never paid an expert witness "stand-by" fees in anticipation of litigation
- Complaints were handled in the order they were received. This changed somewhat when Commissioner Hensley came into the office in that she preferred to address easy complaints quickly; however, addressed more complex complaints in the order they were received. That practice continued with Commissioners Gallik and Murry.
- Never charged candidates for copies of documents from their own campaign file
- Never charged a fee for electronic copies of documents
- Never investigated complaints based on hearsay (See March 2012 dismissal of *Swingley v. Dutton* compared to October 2013 decision on *Wells v. Lambert*)

<sup>1</sup> COPP - Office Management Policy Number 2.2 - Confidentiality of Investigative Documents - Adopted

EXHIBIT

B

Expert Report of C.B. Pearson  
COPP v. Wittich

Charles B. (C.B.) Pearson is hereby identified as a Rule 26(a)(2)(B) witness in the matter of *COPP v. Wittich* No. BDV-2014-251 1<sup>st</sup> Judicial District, Lewis and Clark County.

The required expert witness information is set out below.

1. My resume is attached to this report. That resume lists my qualifications.
2. I have listed Montana campaign practice publications in my resume. In addition, I have: written a number of newspaper opinions, testimony and other public documents on the topics of campaign finance; run (and won) several campaigns on public policy issues, including ballot issues; and, I have conducted hundreds of trainings for nonprofit organizations and their staff on the key steps to winning public policy issues, including passing ballot issues. As part of my professional work I regularly use or cause to be used a variety of campaigning tools, including the use of direct mail campaigning.
3. I was engaged as an expert, including any necessary testimony at trial/deposition, in the following cases:

*Coutts v McCulloch* Cause No. DV-10-295 Twentieth Judicial District, Lake County. Testified on whether the signature gathering and signature filing involved in Initiative 164 was properly carried out, such that impropriety or fraud was not involved. Testified at trial.

Engaged by : James Reynolds, Jonathan Motl, Attorneys at Law  
Opposed by : Terance Perry, Attorney at Law  
Date : 2010  
Scope : Deposition and trial testimony

*Kelly v McCullough* No CV-08-25-BU-SHE US District Court, District of Montana, Butte division, American Civil Liberties Union Foundation. Testimony solicited on the issue of whether the signature requirements for independent candidate qualification for ballot were onerous. Did not testify.

Engaged by : An ACLU lawyer out of Georgia  
Opposed by : Montana attorney general  
Date : 2008  
Scope : Expert advice and opinion.



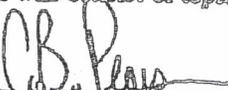
Montana Chamber of Commerce vs Argenbright and I-125 Proponents  
Committee No. CV 97-6-H-CCL, US District Court, District of Montana,  
Helena division. National Voting Rights Institute. Defend I-125 -  
Corporate Ban On Ballot Issue Contributions. Testified at trial.

Engaged by : Brenda Wright, Jonathan Motl, Attorneys at Law  
Opposed by : Stanley Kalaczyc, Attorney at Law  
Date : 1998  
Scope : Deposition and trial testimony

Montana Right to Life et. al. vs Eddelman et al. No. CV 96-165-BLC-JDS  
US District Court, District of Montana, Billings Division. State of  
Montana Attorney General's Office. Defend I-118 - Montana's Candidate  
and PAC Contribution Limits Law. Testified at trial.

Engaged by : Sarah Bond, Montana Attorney General  
Opposed by : James Bopp, Attorney at Law  
Date : 1997  
Scope : Deposition and trial testimony

4. I am paid in this case \$125 per hour for preparation work and \$200 per hour for testimony at trial or deposition.
5. My statement of opinions, the reasons for them and the facts or data I considered are set out below.
6. I have informed that I may be potentially named as an expert witness by the COPP in 9 pending legal matters, all filed in the 1<sup>st</sup> Judicial District, Lewis and Clark County: *COPP v. Miller*, Cause CDV-2014-62; *COPP v. Murray*, Cause BDV-2014-170; *COPP v. Bannan*, Cause CDV 2014-178; *COPP v. Boniek*, Cause ADV-2014-202; *COPP v. Kennedy*, Cause BDV-2014-234; *COPP v. Prouse*, Cause DDV-2014-250; *COPP v. Wittich*, Cause CDV-2014-251; *COPP v. Wagman*, Cause DDV-2014-267; and *COPP v. Sales*, Cause DDV-2014-283. To date I have worked on expert reports in *COPP v. Miller*, Cause CDV-2014-62 and *COPP v. Wittich*, Cause CDV-2014-251.
7. I have also submitted an expert report in the matter of *COPP v. Miller* No. BDV-2014-62.
8. The exhibits I intend to use at trial will consist of copies of documents I have used to form this opinion.

  
\_\_\_\_\_  
C. B. Pearson  
8 July 2014  
\_\_\_\_\_  
Date

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I reviewed the following in preparation of this opinion:

All documents produced by disk by the COPP in its third supplemental response to Wittich's first discovery in the Matter of *COPP v. Wittich* No. BDV-2014-251;

The Esp family document archive in the form preserved by the Esp family;

Portions of the WTP document boxes stored at COPP offices.

The scheduling order in the *COPP v. Miller* matter;

The Sufficiency Decisions in: *Bonogofsky v. Kennedy*, COPP 2010-CFP-015; *Washburn v. Murray*, COPP 2010-CFP-019; *Ward v. Miller*, COPP 2010-CFP-021; *Clark v. Bannan*, COPP 2010-CFP-023; *Bonogofsky v. Bontek*, COPP-2010-CFP-027; *Bonogofsky v. Wittich*, COPP-2010-CFP-031; *Madin v. Sales*, COPP-2010-CFP-029; *Bonogofsky v. Prouse*, COPP-2010-CFP-033, and *Bonogofsky v. Wagman*, COPP-2010-CFP-035.;

The Sufficiency Decision and Court's Order in the *Graybill v. WTP* matter; and,

The hard-copy Bates numbered documents produced for each of the above listed sufficiency Decisions, as well as the Sufficiency Decisions and hard-copy Bates numbered documents in *Ponte v. Buttrey* and *Madin v. Burnett*.

When I use Document or Documents in my report I mean all of the above listed information. I base the following expert report on my review of the Documents, my experience, my education and the knowledge gained during my career. I have noted any specific Document I relied on in my succeeding statements.

The nine 2010 WTP-supported candidates involved in the 1<sup>st</sup> Judicial District cases, including candidate Wittich, I have listed above were all candidates in Republican primary elections. The Sufficiency Decision prepared by the Commissioner in regard to each of the nine candidates identified Western Tradition Partnership (WTP) and its associated entities/people as providing resources and services to the candidates. Based on my review of the Sufficiency Decisions and any Document further identified I value the resources and services provided by WTP and its affiliates to candidate Wittich as follows:

### Candidate Wittich

The Wittich sufficiency Decision (hereafter SD), at pages 10 through 21, identifies and discusses seven letters prepared for Candidate Wittich by WTP, acting through Direct Mail. I reviewed the Wittich Documents on the discovery disks listed above as well as the hard copy Documents in the COPP office and at this time I have identified 6 separate letter forms (while there may have been 2 intro letters both were in the same form) produced for Candidate Wittich. I am addressing the letters in the order I believe they were sent to voters:

Letter 1 is titled "Monday Morning". The Monday Morning letter is 4 pages in length, printed with three colors (red, blue and black) of ink front and back on two pages of white paper stock. The letter has a two color (red and blue) masthead and it is imprinted with a blue "Art" signature.<sup>1</sup> The letter is accompanied by a survey and fundraising flyer (printed front and back on yellow paper stock) along with a pre-printed return envelope. (BSWITT0048-0055). The "Monday Morning" letter is the Candidate Wittich letter that Direct Mail calls an "Intro" letter because it includes the survey and fundraising flyer. The Direct Mail ledger for Candidate Wittich (BSWITT0001) states that 4,500 copies of the intro letter were "done." I know from the review of the Sufficiency Decisions and the Documents that "done" means: the letter plus flyer were written, printed, folded; a mailing list was generated; an envelope was addressed; a stamp was added; and, the flyer letter and return envelope were stuffed into the addressed/stamped envelope which was then mailed. I will call this treatment of developing a mailing list, determining the targets for the mailing, writing and editing, printing, addressing, folding, stamping, stuffing, and mailing the "Complete Mailing."

Based upon my knowledge and experience in using direct mail techniques to execute a Complete Mailing for elections, I know there are multiple steps that need to be taken for a Complete Mailing to be effective and to bring about the desired result. The first step is to carefully define the universe of voters who will receive the mail pieces. This step is costly, as shown by the discussion in the Jake Eaton memo produced in another 2010 candidate campaign. (COPP-BUTT-0001-0004). WTP's internal fundraising plan for the 2010 elections (COPPKen735-740) sought money specifically for developing such a voter ID'd issue-based list for 2010 Montana legislative races.

Targeting the correct voters (usually persuadable voters) is essential to success. Success means that a campaign does not waste money or time, two factors every campaign wants to control tightly. In my opinion, targeting must have been completed by WTP in each of the 6 letters for which Complete Mailing was provided

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<sup>1</sup> The WTP files include the master signature page of "Art" signatures made by candidate Wittich, with one of the "Art" signatures selected and cut out and used as the blue ink "Art" signature printed on each of the 6 candidate Wittich letters prepared and sent by WTP/Direct Mail.

to candidate Wittich. That targeting is shown by the specific number of identified households in the Direct Mail "Master Candidate Folder" for candidate Wittich. BSWTPWITT0001. I have separately addressed the other steps (printing, postage, handling and mailing) necessary to carry out a Complete Mailing. Because I am not assigning complete value to the targeting work, I am providing, below, a conservative opinion of the true value of the Complete Mailing.

By deduction and/or by opinion, as stated below, I value the 2010 cost of the Complete Mailing of the intro letter as follows:

21.5 cents Postage charge: This charge involves a vendor purchase and then resale to the candidate of a bulk US postal stamp or a charge to a bulk permit stamp. In candidate Wittich's case Direct Mail used an actual stamp (a bulk purchase "Patriotic Banner" stamp) that it placed on each Complete Mailing letter it made for Candidate Wittich. I reached the 21.5 cents postage cost as a split of bulk postage charges on two Direct Mail itemized bills to candidates [24 cents to a 2010 candidate (COPPBUTT0006) and 19 cents to a 2011 candidate (COPP-KITT-009)]. Another Montana 2010 campaign mailing vendor billed 27 cents a mailed piece (COPPBURN0002). I note that Direct Mail generally did not itemize its bills but instead charged a single price for a Completely Mailed letter.

10.5 cents charge for three sheets of paper at 3.5 cents each. Again, this is a vendor purchase of paper resold to a candidate using the paper. I split the Direct Mail campaign paper cost charges (COPP-BUTT-007 @.03 and COPP-MILL-0044 @.04) and used a charge of 3.5 cents per sheet of paper.

15 cents (7.5 cents each) for two envelopes. Again this is a vendor purchase and resale to a candidate of material (envelopes). There are two 2010 campaign charges for envelopes in the COPP records (COPPBUTT0011@.0775, including printing and COPPBURN0002@.06). I used my own knowledge of envelope costs to pick the 7.5 cent amount.

2 cents for the Candidate Wittich intro letter preparation (\$100 divided by 4,500 letters). Direct Mail prepared intro letters for a number of 2010 legislative candidates (WTP records in general for candidates). WTP prepared Candidate Wittich's intro letter by adapting language from a "master letter" word scheme, using a standard format (underlining, PS use and transition words such as "you see"), shaping the letter for masthead insertion and printing Candidate Wittich's signature using a scanned "Art" signature received from the candidate. In my opinion the least amount of time WTP would need to invest to prepare the intro letter is 2 hours at \$50 per hour for a total of \$100. The candidate Wittich intro letter was printed at 4,500 copies making the per letter cost of this charge 2 cents a letter. Comparable letter preparation charges for candidates appeared elsewhere in 2010 election materials at \$110 (COPPBURN002) and \$150 (COPPBUTT0005).

24 cents to print 6 page passes (4 pages intro letter plus 2 pages of survey/fundraiser flyer). The fixed costs are the ink (three colors) and the machine depreciation. In my opinion a conservative charge was 4 cents for each of the six page passes for a total of 24 cents to print. There are comparable printing cost records for 2010 candidate campaigns (COPPBURN002) \$1.11 for paper and printing, two passes, one page) and there are records showing a greater charge (COPPKenn678) \$1.60 for paper and printing, two passes, one page).

29 cents for the handling part of the Complete Mailing.<sup>3</sup> By this I include: identifying the voters mailed to, import the identified voters as an address list, address a letter to each voter on the list, place stamp, insert material, seal envelope, prepare for bulk mail and deliver the bulk mailing to the appropriate postal facility. The 29 cents charge I have assigned covers all these tasks. Other 2010 candidate documents show campaigns charging this amount for doing less (COPPBURN002). I note that the Jake Eaton memo (COPPBUTT0001-0004) assigned considerable expense just to developing the voter address lists. Further, WTP focused its third party fundraising on securing money so that it could carry out this task (COPPKEN00735-740).

For the above reasons it is my opinion that the Complete Mailing of the Candidate Wittich intro letters involved \$1.02 of actual charges per letter, as described above. Candidate Wittich was, however, only billed \$.50 for each intro letter by Direct Mail. In my opinion, the additional 52 cents of charges necessary for the Complete Mailing of a candidate Wittich intro letter was covered by WTP with the money it fundraised to support its 2010 candidate campaign activities. (See Wittich sufficiency Decision).

I note that \$1.02 Complete Mailing amount I have described above is consistent with the 2010 campaign charges of *desumo strategies* [charges of \$.615 per piece (4,500 piece mailing) plus \$200 for shipping (.045) and \$150 design (.03) for a total of .069 per piece] (COPPBUTT0005) and of Jake Eaton [complete mailing cost of 72.5 cents for a 4,500 piece mailing (COPPBUTT0002)]. While these costs are lower per piece they do not include the cost of identifying the targeted voter households. Eaton proposal separately lists \$9,000 as the money necessary to carry out voter ID phone calls and polling in order to identify the voter lists that would then be mailed to. When those costs are factored in, the cost of the direct mail in the Eaton or *desumo strategies* proposals reaches or exceeds the \$1.02 Complete Mailing charges set out in my opinion for the candidate Wittich intro letter.

<sup>3</sup> Direct Mail's charges incurred to the point of handling are 73 cents, based on the opinions and observations I set out above. To the point of handling, Direct Mail supplied postage (.216), supplied 3 sheets of paper (.105), supplied 3 envelopes (.15), wrote/aid out the intro letter with survey/fundraiser (.02) and printed 6 pages of material (.24).

Letters 2 through 5 are called "issue" letters by WTP/Direct Mail. These four candidate Wittich letters are titled, respectively, "Monday Morning", "Wednesday Morning", "Thursday Morning", and "Friday Morning." The letters address the separate issues of taxes/right to work, guns, life, and taxes/right to work, respectively. Each letter is two pages in length printed on one side (thereby using two sheets of paper) and each has the three-color Wittich for Senate masthead with the scanned, blue ink "Art" signature. I looked at the original letters in the WTP files but copies of these letters are at B3WTPWITT0005-0089.

Based on my review of these records in my observation/opinion the Complete Mailing cost of four issue ID'd letters sent by Direct Mail on behalf of the Wittich 2010 campaign is as follows:

21.5 cents Postage cost: See above analysis.

7.0 cents for two sheets of paper. See above analysis.

7.5 cents for one envelope. See above analysis.

8.0 cents to print two pages. See above analysis.

8.0 cents for the letter preparation (\$200 divided by 2,596 letters). The issue letters prepared for each candidate have the same overall format (the masthead is the candidate name, the salutation is "Dear Friend" and the signature line is a candidate name block). The letter content and length, however, varies according to candidate and I have assigned \$50 per letter for the cost of adapting the master letter for use by candidate Wittich.

29 cents import address list, address letter, place stamp, insert material, seal envelope, prepare for bulk mail and mail.

23 cents for list development (\$600 divided by 2,596 letters). The issue mailing lists average 650 addresses for each Wittich Issue ID'd letter. Each mailing list is so specific that it had to be developed and the cost of a small mailing list development is too large to allow it to be part of the 29 cent mail handling costs, as I did in regard to the candidate Wittich intro and final letters. In my opinion, the issue ID'd mailing lists for candidate Wittich were created by matching the mailing list for an associated advocacy group (which likely also sent a companion attack letter on the opposing candidate) to the voter file for the legislative district. This took some work and the cost I have assigned is \$150 (3 hours at \$50 per hour) per Issue ID'd letter mailing list. I have applied the charge four times even though the Monday Morning and Friday Morning letters have the same text because standard mailing practice means that the letters were sent to separate mailing lists.

Based on the above reasoning it is my opinion that the Complete Mailing charges for the Wittich campaign issue letters is \$1.04 per letter. I note that smaller runs of campaign pieces generally cost more per piece than larger runs. The *desumo* price quote for a 600 piece mail is \$1.50 per piece (including shipping and design) while the Eaton quote rises per piece as volume drops but does not go as low as a

600 piece number (COPPBU0001-0005). Candidate Kennedy was charged 80 cents a letter just for the paper and printing costs of 150 copies of a fundraising letter (COPPKENN678).

Direct Mail went against the normal business pattern when it charged less for Candidate Wittich's low volume issue ID'd letter Complete Mailing (45 cents per mailing) than it did for a seven times greater in volume Candidate Kennedy intro letter Complete Mailing (50 cents per mailing). In my opinion, Direct Mail's billing reflects the fact that Direct Mail was just charging its actual costs of material without charging for staff time, depreciation, or profit, all factors that would, in a normal arms-length transaction, be included in the charges. In my opinion these missing charges were covered by WTP non-candidate resources raised by WTP through its fundraising.

The 6<sup>th</sup> letter is what WTP/Direct Mail identified as a "final" letter. The Direct Mail Candidate Wittich ledger for the 2010 campaign lists a charge of \$.45 per letter for 4,979 Candidate Wittich final letters. I located the final letter in the WTP files [B8WTPWTT0026-0030] in the COPP office and in the document disk. It is dated "June 4, 2010" and, despite being sent out very close to the June 8, 2010 primary voting day, was mailed with the bulk mail banner stamp. The letter is four pages in length but was double sided printed so it involved use of two sheets of paper and one envelope. Based on my review of these records and on my experience, it is my observation/opinion the Complete Mailing cost of the candidate Wittich final letter is as follows:

- 21.5 cents Postage cost: See above analysis.
- 7.0 cents for two sheets of paper. See above analysis.
- 7.5 cents for one envelope. See above analysis.
- 16.0 cents to print four pages. See above analysis.
- 2.0 cents for the letter preparation (\$100 divided by 4,979 letters). See above analysis for intro letter.
- 29 cents for Complete Mailing, see intro letter.

Based on the above reasoning it is my opinion that the Complete Mailing cost of the Wittich final letter is \$.83 per letter. The difference in cost between the final and intro letter is because the intro letter involved more material (one more sheet of paper and another envelope) and more printing (6 pages rather than 4). The comparison to charges by other vendors is the same as made in the intro letter, above.

Attack Letters: The WTP records included portions of a letter from WTP supporting candidate Wittich and attacking his primary opponent, Shawn Moran, along with "survey results" favoring candidate Wittich (B2WTT0019-0027). The letter has "SD35" imprinted on it. I know from reading the sufficiency Decisions

that WTP routinely sends two of these attack letters on behalf of candidates who received Complete Mailing services. I further know that WTP planned use of surveys and attack letters for 2010 primary election candidates. (COPP Ken 785-740) This WTP attack letter is signed by WTP director of governmental affairs, Daniel Fuchs. The letter is 4 pages in length and is accompanied by a two page survey, return form. I value the attack letters as follows:

21.5 cents postage cost: See above analysis

10.6 cents for 3 sheets of paper. See above analysis.

7.6 cents for one envelope. See above analysis.

24 cents to print 6 page pages and the envelope. See above analysis

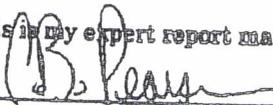
29 cents to insert material, address, seal envelope and mail. See above analysis

8 cents for the cost of writing letter text (\$100 divided by 1,300 letters). I used the reasoning set out in the intro letter analysis (see above) because WTP would have adjusted a master letter for use in favor of candidate Wittich and against his opponent. The 1,300 letters is based on a mailing to the tax and tax/RTW lists.

Based on the above in my opinion the charges incurred for the Complete Mailing of one attack letter is \$1.005 per letter. This amount is conservative as it does not include a charge for the purchase by WTP of any mailing lists.

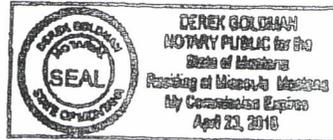
There is no discovery schedule in this matter and depositions have not been taken. I reserve my right to adjust this opinion based on additional information.

This is my expert report made this 8<sup>th</sup> day of October, 2014.

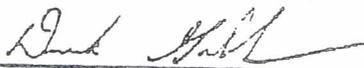


C. B. Pearson

State of Montana )  
S:S )  
County of Missoula )



On this 8<sup>th</sup> day of October, 2014, before me, a notary public, personally appeared C.B. Pearson, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

  
Notary Public for the State of Montana

## Charles Bernard (C.B.) Pearson, 2<sup>nd</sup>

### Expert Witness

Charles Bernard (C.B.) Pearson, II  
5141 Elk Ridge Road  
Missoula, Montana 59802  
406-544-0032 (Mobile)  
406-549-2848 (Work)  
[cbpearson@mrs.com](mailto:cbpearson@mrs.com)  
Twitter: [cbinmontana](#)

Forty-year public interest career, numerous policy and public policy election campaigns in Montana and the West. National trainer, lecturer and expert on public involvement strategies and public health policy. Thirty-two-year history of campaign finance reform advocacy in Montana. Recognized expert on the initiative process. Numerous news stories, opinion pieces and training materials on public policy campaigns.

### Education

|                                 |  |
|---------------------------------|--|
| Randolph Macon College          | 1972-1974, History & Political Science |
| University of Northern Colorado | B.A., 1978, Interdisciplinary Studies  |
| University of Montana           | M.S. 1996, Environmental Studies       |

### RELEVANT QUALIFICATIONS

#### Expert Witness

*Covits vs. McCulloch* Cause No. DV-10-295 Twentieth Judicial District, Lake County. Testified on whether the signature gathering and signature filing involved in Initiative 164 was properly carried out, such that impropriety or fraud was not involved. Testified at trial.

*Kelly vs. McCullough* No CV-08-25-BU-SHE US District Court, District of Montana, Butte division, American Civil Liberties Union Foundation. Testimony solicited on the issue of whether the signature requirements for independent candidate qualification for ballot were onerous. Did not testify.

*Montana Chamber of Commerce vs. Argenbright and I-125 Proponents* Committee No. CV 97-6-H-CCL, US District Court, District of Montana, Helena division. National Voting Rights Institute. Defend I-125 - Corporate Ban On Ballot Issue Contributions. Testified at trial.

Montana Right to Life et. al. vs. Eddelman et al. No. CV 96-165-BLG-JDS US District Court, District of Montana, Billings Division, State of Montana Attorney General's Office. Defend 1-118 - Montana's Candidate and PAC Contribution Limits Law. Testified at trial.

Political Reform Research Reports

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*Big Money and Montana's Ballot Campaigns - A Study of Campaign Contributions to Montana's Ballot Elections from 1982 to 1994.* 1996. With Hilary Doyseher.

*Gaining Influence - A Special Common Cause/Montana Study on PAC Contributions to the 1990 Montana Legislative Candidates Including Candidate and PAC Use of the In-kind Loophole.* 1991. With Marguerite Burns and John McCarthy.

*"For the People..." - A Common Cause/Montana Report on the Necessity of Reform in Montana Politics.* 1990. A comprehensive look at reform of campaign contributions laws, lobbying reporting laws, and ethics laws in Montana.

*Campaign Contributions to the 1988 Montana Legislative Races: The Effect of Montana's PAC Limit Law.* 1989. With Terri McBride.

*A Common Cause/Montana Study On: Out-of-State Contributions to the 1980 Campaign Against Initiative 87 - The Bottle Bill.* 1988.

Mill Levy, Initiative and Referendum Experience

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2014 Senior Strategist for North Dakotans for Clean Water, Wildlife and Parks, Yes on Measure Five - Constitutional Amendment to dedicate 5% of existing oil and gas taxes for conservation. Petition drive and Fall campaign.

2014 Senior Strategist for Citizens for Parks and Trail - Advocates for the passage of a \$42 million Missoula County Parks and Trails Bond. Fall Campaign

2013 Senior Strategist for Friends of Mountain Line - Advocates for a Mill Levy Increase to Expand Bus Service for the Missoula Urban Transit District. Fall Campaign

2012 Campaign Manager and Senior Strategist - Initiative-166 - Corporations are Not People; Money is Not Speech. Petition drive and Fall campaign.

2010 Campaign Manager - Initiative 164 - 400% Interest Is Too High - Cap the Rate Campaign. Petition drive and Fall campaign.

2009 Campaign Manager - Initiative 159 - In-Home Care Petition Drive. Petition drive completed but initiative withdrawn by sponsors.

2004 Campaign Manager - Initiative 149 - Tobacco Tax Increase. Petition drive and Fall campaign.

2004 Campaign Manager - Helium Smokefree Policy Referendum. June primary campaign.

2002 Campaign Manager - Initiative 146 - Fund Tobacco Prevention Program, CHIP and Insurance. Petition drive and Fall campaign.

Campaign Co-Manager - Constitutional Referendum - CA 35 - Establish Trust with Tobacco Settlement Dollars - Petition drive (initial petition) and Fall campaign.

1996 Campaign Manager - Initiative 125 - Prohibit Corporate Funding of Ballot Issues - Petition drive and Fall campaign.

1994 Campaign Manager - Initiative 120 - Prohibit Corporate Funding of Ballot Issues Petition Drive - failed to make it on ballot - short of signatures.

1994 Campaign Manager - Initiative 116 - Limit Campaign Contribution Amounts - petition drive and Fall campaign.

1990 Campaign Manager - CA-29 - (Common Cause) - Annual Legislative Session - Fall campaign.

1988 Campaign Manager - Initiative 113 (Common Cause) - Beverage Container Deposit - petition drive and Fall campaign.

#### Montana Legislative Experience

1989 - Lobbyist for Common Cause/Montana.

1991 - Lobbyist for Common Cause/Montana.

2001 - Grassroots Lobbying Campaign Manager for the American Lung Association.

2003 - Grassroots Lobbying Campaign Manager for the American Cancer Society.

2005 - Grassroots Lobbying Campaign Manager for Protect Montana Kids - a coalition of American Cancer Society, American Lung Association and the American Heart Association.

2013 - Lobbyist for Stand with Montanans - campaign finance reform bills.

### Work Experiences

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- Senior Vice-President, Montana Office Director M+R 1999 - current.
- Green Corps - Environmental Organizing Semester - University of Montana 1993 - 1998.
- Pearson & Associates, 1994 - 1998.
- Clark Fork Coalition, 1992 - 1994.
- Common Cause/Montana 1988 - 1992.
- Fund for Public Interest Research 1986 - 1988.
- California Public Interest Research Group - 1985 - 1986.
- Montana Public Interest Research Group - 1982 - 1985.
- Ralph Nader - 1980 - 1982.
- Colorado Public Interest Research Group 1975 - 1980.

### Awards

- Campaigns and Elections, Top 10 Most Influential in Montana 2013.
- Who's Who Among America's Teachers, 1998.
- Who's Who Among America's High School Students, 1972.

### Non Profits Boards

- Montana Nonprofit Association
- Montana Public Interest Research Foundation
- Common Cause Montana

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DEC 02 2014

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MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

The COMMISSIONER OF POLITICAL  
PRACTICES FOR THE STATE OF  
MONTANA, through JONATHAN R.  
MOTL, acting in his official capacity as  
the Commissioner of Political  
Practices,

Plaintiff,

v.

RICHARD M. "MIKE" MILLER, and  
JOANNE MILLER,

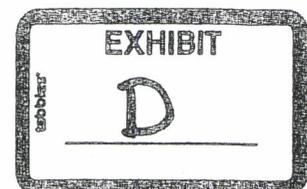
Defendants.

Cause No. BDV-2014-62

NOTICE TO OPPOSING PARTY OF  
THE NON-RETAINED EXPERT  
WITNESS STATUS OF JONATHAN  
MOTL

(This Notice is NOT filed with the  
Court. It is prepared and sent in this  
format for ease of identification and  
future court filing by the parties.)

Comes now the office of the Commissioner of Political Practices (COPP)  
and sends this Notice to the opposing party of the non-retained expert witness  
status of Jonathan Motl.



Mr. Motl is the Commissioner of Political Practices of the State of Montana. As the Commissioner of Political Practices Mr. Motl conducted the evidentiary examination that led to the issuance of a Decision by the COPP determining sufficient facts existed to justify civil prosecution of Mr. Miller for campaign practice violations. Mr. Motl signed the sufficiency Decision as Commissioner.

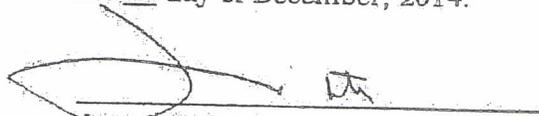
The COPP hereby provides notice that Mr. Motl is a hybrid expert witness with personal knowledge of the facts in this matter and with expertise sufficient to allow him to make expert opinions. This disclosure is made consistent with the current Montana hybrid expert witness standards are defined in *Norris v. Fritz* 2012 MT 27, ¶¶ 21, 22, 364 Mont. 63 ¶¶ 21, 22:

The rule's limited application supports the idea that the purpose underlying expert disclosure simply does not apply to non-retained experts. The M. R. Civ. P. 26(b)(4) disclosures and pre-trial depositions provide a party's only access to an adversarial, retained expert's identity and opinions. A retained expert's identity could remain unknown and his opinions unattainable until the expert disclosure deadline within a scheduling order. [citations omitted].

In contrast, a non-retained expert's role in the factual scenario makes his identity well known to both parties and his opinions more readily available. A non-retained expert typically will be a hybrid witness. This witness possesses personal knowledge of factual events relevant to the case. He also possesses specialized training that allows him to formulate expert opinions regarding those factual events. His involvement usually stems from his profession thereby making his expertise obvious. His opinions largely are ascertainable, therefore, and useful to any party who seeks them.

Mr. Motl is the Commissioner of Political Practices. The subject matter on which Mr. Motl will testify is that of Mr. Miller's 2010 campaign practices as set out in that certain sufficiency Decision published by the COPP in regard to Mr. Miller's 2010 campaign for public office. Mr. Motl has knowledge of the facts of 2010 candidate (including Mr. Miller) relationships with Western Tradition Partnership and its affiliated groups as shown by: the sufficiency Decisions signed by Mr. Motl in regard to 2010 candidates for public office, including Mr. Miller; the 2010 campaign practices documents in the possession of the COPP; and by depositions taken of witnesses with knowledge about 2010 campaigns. Mr. Motl will present opinions relative to Mr. Miller's 2010 campaign practice activities, as based on the factual sources listed above and consistent with the language of the sufficiency Decision issued in this Matter.

Respectfully submitted this 1<sup>st</sup> day of December, 2014.



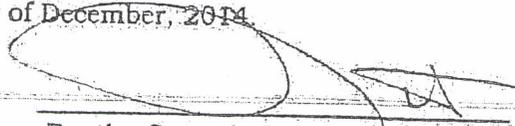
Jonathan Motl  
Attorney for the Commissioner of Political  
Practices

**CERTIFICATE OF SERVICE**

I certify that I mailed a true copy of the foregoing, via regular mail, to the following:

James Brown  
The James Brown Law Office  
30 South Ewing, Suite 100  
Helena, MT 59604-4893

Dated this 1<sup>st</sup> day of December, 2014.



For the Commissioner of Political Practices

# BOZEMAN DAILY CHRONICLE

## Art Wittich gets 2016 jury trial in political practices case

By TROY CARTER, Chronicle Staff Writer

Posted: Wednesday, January 21, 2015 5:45 pm

A judge in Helena has set a date for the trial of a Republican Bozeman legislator charged with violating the state's political campaign laws during the 2010 primary election.

Lewis and Clark County District Judge Jeffrey Sherlock will hold a five-day jury trial Feb. 22, 2016, in the political practice case against state Rep. Art Wittich, R-Bozeman.

Commissioner of Political Practices Jonathan Motl said he would be the primary witness against Wittich.

Motl also indicated that Bozeman Republican Sen. Scott Sales' settlement agreement on a similar charge would be part of his testimony against Wittich.

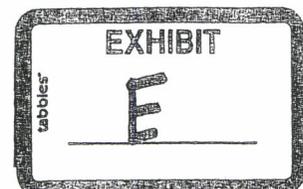
If he proves the case, Motl will ask the judge to remove Wittich from office.

Wittich has denied any wrongdoing and said that Motl is using his position to unfairly target conservatives, including himself. Wittich said that he believes he will prevail in court.

The case stems from Billings Republican Debra Bonogofsky's complaint against her 2010 primary opponent, former Republican Rep. Dan Kennedy. During the run-up to the election, Western Tradition Partnership, a nonprofit corporation, attacked her as a radical environmentalist while supporting Kennedy.

Bonogofsky filed a political practices complaint against Kennedy. With her permission, Motl extended the complaint to other Western Tradition Partnership-supported candidates, including Wittich.

In 2014, Motl issued political practices decisions from his office laying out evidence that Wittich and eight other Republican candidates had violated campaign law by working with



Direct Mail and Communications, a printing company in Livingston.

Using three boxes of Western Tradition Partnership's internal documents found in Colorado, Motl found that Direct Mail and Communications was part and parcel of the nonprofit corporation.

Since 1912, Montana law has banned corporations from making contributions to candidates.

An elected official has not been removed from office since 1940. That year the Supreme Court upheld the removal of Cascade County Sheriff Guy Palagi.

During his 1938 re-election campaign, Palagi, a Republican, used public funds to buy kegs of beer, tobacco plugs, pencils, and sewing kits that his deputies distributed to voters.