

April 7, 2016

Senator Dee Brown
Chairperson And Members
State Administration and Veterans' Affairs Interim Committee
Helena, MT

Entrusted to Sheri Scurr for Delivery to SAVA

Dear Senator Brown and Members of SAVA:

I write to follow my letter of March 9, 2016 to Senator Brown regarding information provided prior to the April 19, 2016 SAVA hearing.

Accompanying this letter are two supplemental information documents. First, I provide a copy of the jury verdict form finding in favor of the COPP in the *COPP v. Wittich* trial.

Second, I provide a copy of the bill of costs submitted in the *COPP v Wittich* trial. As the prevailing party the COPP is entitled to its costs of trial and this document lists the costs of presenting this type of case to a jury. I ask that members of the Committee pay particular attention to the string of 30 motions that the COPP had to overcome and win in order to get to trial.

I understand Montanans hold differing views of the role of community as it affects individualism. In this instance, though, I think we should be able to agree that it is now clear that the COPP acted properly under Montana's public trust doctrine (2-2-103, MCA) in dealing with the National Right to Work campaign involving selected candidates in the 2010 Republican primary elections.

Jonathan Motl

Jonathan Motl

Commissioner of Political Practices

C Sheri Scurr

FILED
BY NANCY STEEN
JUL 16 2014
District Court
Lewis and Clark County

IN THE DISTRICT COURT OF THE STATE OF MONTANA
FIRST JUDICIAL DISTRICT, 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,)

Cause No. BDV-2014-251

Plaintiff,)

vs.)

JURY VERDICT FORM

ARTHUR "ART" WITTICH,)

Defendant.)

We, the Jury in this matter, find as follows. At least eight out of the 12 jurors agree to the answer to each question:

QUESTION NO. 1: Did Defendant fail to maintain and preserve records of his campaign contributions and expenditures in his 2010 primary election, in violation of Montana campaign practice laws?

 X _____
Yes No

QUESTION NO. 2: Did Defendant accept or receive corporate contributions, including coordinated in-kind contributions, in his 2010 primary election, in violation of Montana campaign practice laws?

 X _____
Yes No

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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.

ARTHUR "ART" WITTICH,

Defendant.

Cause No. XADV-2014-251

COPP's MEMORANDUM OF COSTS

Comes now the Commissioner of Political Practices, Jonathan R. Motl,
(Commissioner) through counsel and files Memorandum of Costs in the above
captioned matter, Mont. Code Ann. §25-10-501.

On Friday, April 1, 2016, a jury found that Mr. Wittich illegally coordinated his
2010 campaign with corporations, that he failed to report and disclose those
contributions, and that Mr. Wittich failed to maintain his campaign records. Pursuant
to Mont. Code Ann. §§ 25-10-101, 25-10-102 and 28-10-201, the Commissioner is
entitled to recover certain costs from the Defendant, Mr. Wittich. Those costs are set

forth below, and supported by the Affidavit of John Heenan (attached). The Commissioner respectfully requests that the Court award those costs to be paid by Mr. Wittich.

APPEARANCE AND FILING FEES

1. Appearance Fee:	\$ 0.00 ¹
2. Filing Fees:	\$ 0.00
3. Judgement Fee	\$ 45.00
Total:	\$ 45.00

EXPENSES OF TAKING DEPOSITIONS

1. Carolin Rockvoy, December 12, 2014	\$ 572.00 ²
2. Dennis Fusaro, November 20, 2015	\$2,980.10
3. CB Pearson, November 23, 2015	\$ 531.10
4. Arthur "Art" Wittich, November 30, 2015	\$3,067.50
5. Jonathan Motl, December 1, 2015	\$1,204.70
6. John Sinrud, December 7, 2015	\$1,023.20
7. Brian Witt, March 25, 2016	\$ 930.20
Total:	\$10,308.80

MILEAGE AND TRAVEL

8. Travel from Williston, ND to Helena, MT for Carolin Rockvoy Deposition	\$ 771.30 ³
9. Travel from Billings to Alexandria Virginia for COPP's deposition of Dennis Fusaro	\$1,062.49
10. Travel from Billings to Missoula for Wittich's deposition of CB Pearson	\$ 276.00 ⁴
11. Travel from Billings to Bozeman for COPP's Deposition of Arthur "Art" Wittich	\$ 68.00

¹ Mont. Code Ann. § 25-10-405, Governmental entities not required to prepay fees—exceptions.

² Mont. Code Ann. § 25-10-201(3) provides for costs that are allowable including "the expenses of taking depositions..." *See also Springer v. Becker*, 284 Mont. 267, 277, 949 P.2d 641 (1997).

³ Mont. Code Ann. § 25-10-201(1) provides for cost that are allowable include "the legal fees of witnesses, including mileage..." Mileage from Willison, ND to Helena, MT is 506 miles x \$0.575 = \$290.95, the price above is the cost of the airfare paid by the COPP.

⁴ "...the award of counsel's mileage costs is left to the broad discretion of the District Court to determine whether these costs are "reasonable and necessary expenses...according to the course and practice of the court..." *Springer v. Becker*, 284 Mont. 267, 278, 949 P.2d 641 (1997).

12. Travel from Bozeman to Helena for Wittich's deposition of Jonathan Motl	\$ 55.77
13. Travel from Billings to Kalispell for COPP's Deposition of John Sinrud	\$ 495.64
14. Travel from Anaconda to Bozeman for COPP's Deposition of Brian Witt	\$ 62.10
15. Travel from Billings to Anaconda and back For Motions hearing	\$ 285.20
16. Travel from Billings to Anaconda and back For final pretrial conference	\$ 285.20
17. Travel from Billings to Helena and back For trial	\$ 273.70
18. John Esp mileage (136 miles @ \$0.575/mile)	\$ 78.20
19. Sarah Anderson witness travel	\$1,113.00
20. Andrew O'Neill witness travel	\$ 634.20
21. Shawn Moran mileage (84 miles @ \$0.575/mile)	\$ 48.30
Total:	\$5,509.10

REASONABLE AND NECESSARY EXPENSES

22. Expenses for printing paper for a hearing or trial	\$638.00
23. Expenses for postage incurred	\$ 66.76
24. Costs of consulting on ISP language, access to WTP server, converting and accessing Smart simple campaign documents	\$1,156.75
25. Wells Fargo Subpoena Costs	\$ 298.00
26. Verizon Wireless Subpoena Costs	\$ 194.00
27. Locate and attempt to serve LeFers	\$ 243.00
28. Filing fees in WA for O'Neill and Green Subpoenas	\$ 302.49
29. Locate and serve O'Neill and Green	\$ 575.00
30. Service of Subpoena on John Sinrud	\$ 125.00
31. Service of Subpoena on Dennis Fusaro	\$ 120.00
32. CB Pearson deposition time	\$ 800.00 ⁵
33. Dennis Fusaro expenses	\$1,631.08
34. Quantum Grafix (Wade Larson) expenses for <u>Running Trial Director during the trial</u>	\$7,702.15
Total:	\$13,852.23

COST OF MOTION

35. Wittich's Motion to Dismiss for Lack of Subject Matter Jurisdiction (ROAs 6, 7, 22, 24, 26). Denied by Court Order dated 07/07/2014 (ROA 67).	\$10.00 ⁶
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⁵ Mont. R. Civ. P. 26(b)(4)(C).

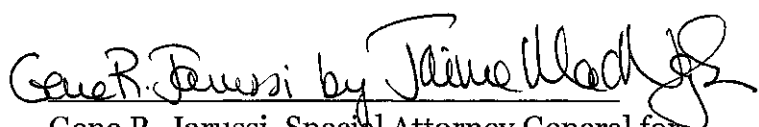
36. Counter-Defendant Jonathan Motl's Motion to Dismiss Pursuant to M.R.Civ. P. 12(b)(6) (ROAs 28, 29, 35, 36, 52, 54, 62, 66, 79, 81). Granted by Order on Motions to Dismiss, dated 08/26/2014 (ROA 109). \$10.00
37. Third Party Defendants Tutdvedt, Murray, and Motl's Motion to Dismiss Pursuant to M.R.Civ.P. 12(b)(6) (ROAs 33, 34, 37, 38, 52, 54, 61, 65, 80, 82). Granted by Order on Motions to Dismiss, dated 08/26/2014 (ROA 109). \$10.00
38. Counterdefendant Jonathan Motl's and Third Party Defendant Bruce Tutvedt, Jim Murry, and Jonathan Motl's Motion to Stay Discovery (ROAs 56, 57, 68, 85). Stipulated Order to Stay Discovery dated 7/28/14, (ROA 86). \$ 10.00
39. Wittich's Motion to Compel (69, 70, 71, 72, 83, 90, 91, 94, 95). Denied, Order on Discovery Issues, dated 12/5/14 (ROA 151). \$ 10.00
40. Wittich's Motion for Leave to File First Amended Counterclaims and First Amended Third Party Complaint (ROAs 96, 97, 103, 104, 115, 116, 117). Denied by Order on Motion to Amend Third-Party Complaint, dated 10/6/14, (ROA 130). \$ 10.00
41. Commissioner's First Motion for a Protective Order as to Method and Means of Production of Documents (ROAs 110, 111, 118, 121, 126). Granted Order on Discovery Issues, dated 12/5/14 (ROA 151). \$ 10.00
42. Commissioner's Second Motion for a Protective Order as to Documents Withheld Under Claims of Privilege (ROAs 112, 113, 119, 120, 129). Granted Order on Discovery issues Dated 12/5/14 (ROA 151). \$ 10.00
43. Wittich's Motion for Rule 54(b) Certification (ROAs 124, 125, 127, 128, 132, 133). Denied by Order on Various Motions dated 12/17/14 (ROA 155). \$ 10.00
44. Wittich's Motion to Strike C.B. Pearson's report (ROAs 141, 142, 150, 154). Denied by Order on Various Motions dated 12/17/14 (ROA 155). \$ 10.00
45. Wittich's Motion in Limine to Preclude C.B. Peason's Testimony (139, 140, 145, 147, 149, 153). Denied by Order on Various Motions dated 12/17/14 (ROA 155). \$ 10.00
46. Commissioner's Motion to Compel (ROAs 159, 160, 164, 165, 166). Granted by Order on Motion to Compel, dated 8/31/15 (ROA 176). \$ 10.00

⁶ Mont. Code Ann. § 25-10-202 provides, "Whenever a motion is sustained or overruled, the losing party must pay to the other \$10 as costs. If a motion is withdrawn before the hearing, it must be considered overruled."

47. Wittich's Motion to Quash Subpoena (ROAs 167-170, 171, 175, 181). Denied by Order on Various Motions dated 10/20/15 (ROA 204). \$ 10.00
48. Wittich's Motion to Quash Subpoenas (Verizon) (ROAs 177, 178, 182, 191, 198). Denied by Order on Various Motions dated 10/20/15 (ROA 204). \$ 10.00
49. Commissioner's Second Motion to Compel, Rule 37(a) MRCivP (ROAs 179, 180, 184, 190, 196). Granted by Order on Various Motions dated 10/20/15 (ROA 204). \$ 10.00
50. Wittich's Motion for Leave to Answer Amended Answer (187, 188, 192, 193, 197, 202, 203). Denied in part by Order on Various Motions, dated 10/20/15 (ROA 204). \$ 10.00
51. Commissioner's Motion for Protective Order Re: 79 "Requests for Production", Rule 27, MRCivP (ROAs 207, 208, 220, 222, 225, 232). Granted by Order dated 12/11/15 (ROA 241). \$ 10.00
52. Wittich's Motion to Compel Discovery Compliance (ROAs 209-213, 220, 222, 225). Denied by Order dated 12/11/15 (ROA 241). \$ 10.00
53. COPP's Motion to Strike the Defendant's Expert Witness Disclosure and Exclude Testimony Thereon (226, 227, 238, 239). Granted by the Order Granting COPP's Motion to Exclude Dr. Saldin (ROA 414). \$ 10.00
54. COPP's Motion for Partial Summary Judgment (ROAs 247, 248, 277, 287, 289). Granted by Order Granting in Part and Denying in Part the COPP's Motion for Partial Summary Judgment, dated 3/18/16 (ROA 413). \$ 10.00
55. COPP's Motion for Leave to File Supplemental Expert Witness Disclosures (ROAs 249, 250, 282, 283). Granted by Combined Order Denying Wittich's Motion for Rule 37 Sanctions and Granting the COPP's Motion to File Supplemental Expert Witness Disclosure, dated 3/18/16 (ROA 415). \$ 10.00
56. Wittich's Motion to Dismiss Under Rule 12(b)(1) for Subject Matter Jurisdiction (ROAs 252, 254, 262, 273, 320). Denied by Order Denying Motion to Dismiss dated 3/9/2016, (ROA 386). \$ 10.00
57. Wittich's Motion for Rule 37 Sanctions (ROAs 251, 253, 255, 281). Denied by Combined Order Denying Wittich's Motion for Rule 37 Sanctions and Granting the COPP's Motion to File Supplemental Expert Witness Disclosure, dated 3/18/16 (ROA 415). \$ 10.00
58. Wittich's Motion for Summary Judgment (ROAs 263, 264, 274, 293, 307). Denied by Order Denying Wittich's Motion for Summary Judgment and Wittich's Motion to Strike Testimony of Green, O'Neill,

and Hofer, dated 3/9/16 (ROA 389).	\$ 10.00
59. Wittich's Motion to Strike Testimony of Green, O'Neill and Hofer (ROAs 285, 286, 305, 306, 316, 346, 359). Denied by Order Denying Wittich's Motion for Summary Judgment and Wittich's Motion to Strike Testimony of Green, O'Neill, and Hofer, dated 3/9/16 (ROA 389).	\$ 10.00
60. COPP's Motions in Limine (295, 296, 335, 338, 344). Granted by the Order Granting the COPP's Motion In Limine, dated 3/18/16 (ROA 417).	\$ 10.00
61. Wittich's Alternative Motion to Dismiss, or in Limine, Re Spoliation of Evidence (298, 299, 308, 309, 332, 337, 369, 371). Denied by Order Denying Wittich's Motion Regarding Spoliation of Evidence, dated 3/8/16 (ROA 393).	\$ 10.00
62. Wittich's Motion in Limine to Exclude Motl (300, 314, 315, 321, 348, 357). Denied by Order Denying Wittich's Motion to Exclude Motl, dated 3/9/16 (ROA 388).	\$ 10.00
63. Wittich's Motion in Limine to Exclude Pearson (301, 304, 312, 313, 317, 341, 352). Denied by Order Denying Wittich's Motion to Exclude Pearson, dated 3/9/16 (ROA 387).	\$ 10.00
64. Wittich's Motion in Limine to Preclude Four Categories of Evidence (302, 303, 310, 311, 322, 347, 358). Denied in part by Order Granting in Part and Denying in Part Wittich's Motion in Limine on Four Categories of Evidence (ROA 390).	\$ 10.00
Total:	\$300.00
 GRAND TOTAL:	 \$30,015.13

DATED this 6th day of April, 2016.


 Gene R. Jarussi, Special Attorney General for
 Commissioner of Political Practices


CERTIFICATE OF SERVICE

I hereby certify that I have served in the manner noted a true and correct copy of the foregoing on counsel of record at the addresses listed below this 6th of April, 2016.

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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.

ARTHUR "ART" WITTICH,

Defendant.

Cause No. XADV-2014-251

**AFFIDAVIT OF JOHN HEENAN IN
SUPPORT OF COPP's
MEMORANDUM OF COSTS**

STATE OF MONTANA)
 :
County of Yellowstone)

Comes now the undersigned, John Heenan, having been duly sworn, and verifies that to the best of his knowledge and belief, the items claimed herein as costs are correct and that the disbursements have been necessarily incurred in this action:

1. The following legal fees of witnesses, including mileage, were incurred in this matter:

- Andrew O'Neill: Actual airfare expenses of \$634.20

- Sarah Anderson Arnold: Actual airfare expenses of \$1,113.00

- Shawn Moran: Reimbursable witness mileage of \$48.30 (84 miles @\$0.575 cents per mile)

- John Esp: Reimbursable witness mileage of \$78.20 (136 miles @\$0.575 cents per mile)

2. The following expenses of taking depositions were incurred in this matter:

- Carolin Rockvoy, December 12, 2014, \$572.00

- Dennis Fusaro, November 20, 2015, \$2,980.10

- CB Pearson, November 23, 2015, \$531.10

- Arthur "Art" Wittich, November 30, 2015, \$3,067.50

- Jonathan Motl, December 1, 2015, \$1,204.70

- John Sinrud, December 7, 2015, \$1,023.20

- Brian Witt, March 25, 2016, \$930.20

3. The following expenses of printing paper for a hearing or trial were incurred: \$638.00.

4. The following expenses of postage were incurred: \$66.76

5. The following expenses were incurred in the issuing of subpoenas and service of process:

- John Sinrud deposition subpoena service: \$125.00

- Verizon subpoena service: \$97.00

- Wells Fargo subpoena documents: \$298.00

- Locate and attempt to serve LeFers: \$243.00

- Costs of consulting on ISP language, access to WTP server, converting and accessing documents: \$1,156.75

- Dennis Fusaro subpoena service: \$120.00
- CB Pearson deposition time: \$800.00
- Andrew O'Neill/Nolan Green subpoena service: \$997.49 (actual expenses, not attorney time)


6. The following mileage and travel were incurred:

- Travel from Billings to Alexandria Virginia for COPP's deposition of Dennis Fusaro: \$1,062.49
- Travel from Billings to Helena for Wittich's deposition of CB Pearson: \$276 (480 miles x \$0.575/mile)
- Travel from Billings to Bozeman for COPP's Deposition of Arthur "Art" Wittich: \$68 (144 x \$0.575/mile)
- Travel from Bozeman to Helena for Wittich's deposition of Jonathan Motl: \$55.77 (97 x \$0.575/mile)
- Travel from Billings to Kalispell for COPP's Deposition of John Sinrud: \$495.64 (862 miles x \$0.575/mile)
- Travel from Anaconda to Bozeman for COPP's Deposition of Brian Witt: \$62.10 (108 miles x \$0.575/mile)
- Travel from Billings to Anaconda and back for motions hearing: \$285.20 (496 miles x \$0.575/mile)
- Travel from Billings to Anaconda and back for final pretrial conference: \$285.20 (496 miles x \$0.575/mile)
- Travel from Billings to Helena and back for trial: \$273.70 (476 miles x \$0.575/mile)

7. Other reasonable and necessary expenses of \$7,702.15 were incurred through use of Quantum Grafix (Wade Larson) to run Trial Director.

FURTHER AFFIANT SAYETH NOT.

DATED this 6TH day of April, 2016.




John Heenan, Special Attorney General for
Commissioner of Political Practices

STATE OF MONTANA)
 :
County of Yellowstone)

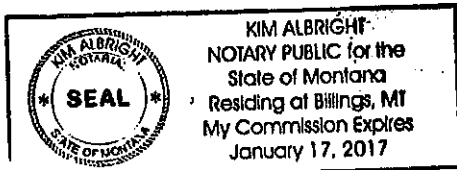
John Heenan, being first duly sworn, deposes and says:

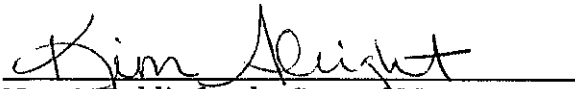
That he is the person named in the above-entitled Affidavit, that he has read the foregoing and knows the contents thereof, and that the matters and things therein stated are true to the best of his own knowledge.



John Heenan

SUBSCRIBED AND SWORN to before me this 6 day of April, 2016.





Notary Public for the State of Montana,
Residing at Yellowstone County, Montana
My Commission expires: 1-17-17