

**FILED**

SEP 17 2020

ANGIE SPARKS, Clerk of District Court  
By           JREUGERS           Deputy Clerk

**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY**

The COMMISSIONER OF POLITICAL PRACTICES FOR THE STATE OF MONTANA, through JEFFREY A. MANGAN, acting in his official capacity as the Commissioner of Political Practices,

Plaintiff,

v.

NATIONAL RIGHT TO WORK COMMITTEE, WESTERN TRADITION PARTNERSHIP (n.k.a. AMERICAN TRADITION PARTNERSHIP), DIRECT MAIL AND COMMUNICATIONS, INC., DRURY LANE CONSULTING, LLC, MONTANA CITIZENS FOR RIGHT TO WORK, and JOHN DOES, 4-20, et al.

Defendants.

Cause No. DDV-2014-351

**FINDINGS OF FACT, CONCLUSION  
OF LAW AND DEFAULT  
JUDGMENT ORDER**

This matter came before the Court on September 17, 2020, for hearing on the Default Judgment of Western Tradition Partnership n/k/a American Tradition Partnership (“WTP”), and Direct Mail and Consulting, LLC (“Direct Mail”). Witnesses Jonathan Motl, Montana’s former

Commissioner of Political Practices and CB Pearson were sworn and presented testimony.

Exhibits 1 through 6 were offered and accepted in evidence.

During the hearing, both Jonathan Motl and CB Pearson were qualified as experts based on their respective education and experience.

Based on the above evidence entered and argument made in open court and for good cause shown, the Court determines, judges and orders as follows:

## **FINDINGS OF FACT**

### **Procedural History**

1. The Complaint in this Matter is properly brought before this Court:
  - a. Eighteen underlying sufficient facts administrative decisions (Sufficiency Decisions) were issued by the Commissioner of Political Practices (“COPP”).
  - b. The sufficiency decisions include *Bonogofsky v. Western Tradition Partnership*, COPP-2010-CFP-0007; *Bonogofsky v. Assembly Action Fund*, COPP-2010-CFP-0009; *Bonogofsky v. Montana Citizens for Right to Work*, COPP-2010-CFP-0010; *Ward v. Assembly Action Fund*, COPP-2010-CFP-0006; *Washburn v. Assembly Action Fund*, 2010-COPP-CFP-0020; *Ward v. WTP now named ATP*, COPP-2010-CFP-0022; *Washburn v. WTP now named ATP*, COPP-2010-CFP-0028; *Clark v. WTP*, COPP-2010-CFP-0024; *Clark v. Assembly Action Fund*, COPP-2010-CFP-0013; *Esp v. Montana Citizens Right to Work*, COPP-2010-CFP-0026; *Commissioner v. WTP (Prouse)*, COPP 2010-CFP-0034; *Commissioner v. WTP (Wittich)*, COPP-2010-CFP-0032; *Commissioner v. WTP (Wagman)*, COPP-2010-CFP-0036, *Commissioner v. WTP (Sales)*, COPP-2010-CFP-0030; *Bonogofsky v. National Gun Owners Alliance*, COPP-2013-CFP-0008,

*Tutdvedt v. Roberts*, COPP-2012-CFP-047, *Welch v. Western Tradition Partnership*, COPP-2014-CFP-0015, *Welch v. National Right to Work*, COPP-2-14-CFP-016.

c. The Sufficiency Decisions “noticed to” the County Attorney of Lewis and Clark County pursuant to § 13-37-124(1)), MCA.

d. These Sufficiency Decisions were returned to the Commissioner by the County Attorney, thus vesting the Commissioner with authority to initiate judicial action. § 13-37-124(1).

e. There are no facts challenging the manner and method of the COPP’s enforcement of its Sufficiency Decisions through the District Court of the State of Montana.

2. The parties in this Matter are properly before the Court:

a. WTP was personally served with the Summons and the First Amended Complaint through its registered Agent Doug Lair in this matter on February 6, 2017.

b. Direct Mail was personally served with the Summons and First Amended Complaint through its registered agent Helen Fandrich in this matter on February 6, 2017.

c. Jeffrey Mangan, the Plaintiff, is the duly appointed and confirmed Commissioner of Political Practices for the State of Montana.

3. A Default has properly been entered in this Matter.

a. On September 29, 2017 the COPP presented the Court applications for Entry of Default on Liability against WTP and Direct Mail.

b. WTP and Direct Mail failed to answer and defend in this matter as shown by the record on September 29, 2017.

c. Default was entered in this Matter on September 29, 2017.

d. A Notice of Entry of Default as to Liability was filed in this matter on October 23, 2017 and it shows that WTP and Direct Mail were provided with Notice of the Entry of Default.

4. In the Court's entry of default, the court accepted as true the facts alleged by the Commissioner in the First Amended Complaint.

### **Factual Background**

5. The named defendants engaged in 2010 campaign activity in Montana elections, including, but not limited to the following 2010 Montana elections: Matt Charlton, House District 2; Jerry O'Neill, House District 3; Derek Skees, House District 04; Alan Doane, House District 38; Lee Randall, House District 39; James Knox, House District 47; Daniel Kennedy, House District 57; Joel Boniek, House District 61; Terry Bannan, House District 68; Ronald Murray, House District 68; Mike Miller, House District 84; Richard Stamey, House District 89; Wesley Prouse, Senate District 23; Pat Wagman, Senate District 31; and Arthur "Art" Wittich, Senate District 35.

6. The Commissioner reached Decisions finding sufficient facts to show campaign practice violations by a candidate in the 2010 elections named in the preceding paragraphs: *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-0023; *Bonogofsky v. Boniek*, COPP-2010-CFP-027; *Bonogofsky v. Wittich*, COPP-2010-CFP-0031; *Bonogofsky v. Prouse*, COPP-2010-CFP-0033; *Bonogofsky v. Wagman*, COPP-2010-CFP-0035; and *Tutvedt v. Roberts*, COPP-2014-CFP-0047.

7. Subsequent to the Sufficiency Decisions identified in the preceding paragraph, the Commissioner filed separate enforcement actions in District Court against the candidates and their treasurers for illegal campaign practices. *COPP v. Miller*, Lewis and Clark County, Cause No. BDV-2014-62; *COPP v. Murray*, Lewis and Clark County, Cause No. BDV-2014-170; *COPP v. Bannan*, Lewis and Clark County, Cause No. CDV-2014-178; *COPP v. Boniek*, Lewis and Clark County, Cause No. ADV 2014-202; *COPP v. Kennedy*, Lewis and Clark County, Cause No. BDV-2014-234; *COPP v. Prouse*, Lewis and Clark County, Cause No. 2014-250; *COPP v. Wittich*, Lewis and Clark County, Cause No. BDV 2014-251; and *COPP v. Wagman*, Lewis and Clark County, Cause No. 2014-267.

8. The enforcement actions listed in the preceding paragraph each include allegations of campaign practice violations based on the candidate's acceptance of unreported and undisclosed contributions (including illegal contribution by a corporation) to their candidate campaign, in violation of Montana's Campaign Finance and Practices laws, Title 13, MCA, Chapter 35 and 37, and the associated Administrative Rules of Montana.

9. Each of the candidate Sufficiency Decisions listed above, involved the Defendants. The Commissioner also made Sufficiency Decisions as to the involvement of the named defendants herein listed in the Sufficiency Decisions identified in paragraph 1.b.

10. Each of the candidate and third-party entity Sufficiency Decisions listed in paragraph 1.b. involved the named Defendants. The Commissioner also made sufficiency of facts Decisions as to the involvement of the named Defendants in this matter in those Decisions listed above.

11. WTP and Direct Mail were participants in the 2010 Montana election cycle and were required to comply with Montana Campaign Finance and Practices Laws, Title 13, MCA, Chapter 35 and 37, and associated Administrative Rules of Montana, *see* Mont. Code Ann.

12. For each of the candidates identified in Paragraph 5, WTP and Direct Mail provided in-kind corporate contributions.

13. The in-kind contributions to the candidates were in the form of election advice, mailings, website development, and targeted voter information. The services and contributions came from a series of entities, including from National Pro-Life Alliance, National League of Taxpayers, National Gun Owners Alliance, Western Tradition Partnership, and Montana Citizens for Right to Work.

14. WTP and Direct Mail referred to the services and contributions from the various entities to the candidates as “the Works”.

15. “the Works” specifically included a series of mailers and letters from various entities. The letters included surveys, slicks and radio advertisements from National Pro-Life Alliance, National League of Taxpayers, National Gun Owners Alliance, Western Tradition Partnership, and Montana Citizens for Right to Work. A “wife” letter, which was ostensibly from the candidate’s wife, was also sent on behalf of the candidate. WTP and Direct Mail did not charge, or undercharged, the candidates for the mailers and letters.

16. The defendants sent out attack mailers criticizing each of the named candidates’ opponents. The attack mailers were sent free of charge or at a reduced cost.

17. The letters and attack mailers appeared to be from different entities, but they were coordinated and directed by WTP and Direct Mail.

18. WTP and Direct Mail also assisted the candidates in creating websites. In Wittich’s case, for example, WTP and Direct Mail created the website for Wittich and charged him nothing for the services.

19. WTP and Direct Mail further provided campaign advice and information on voters. The voter information is also known as “walk lists” which help identify voters by their political leanings, and beliefs. These walk lists were provided free of charge.

20. In all, WTP and Direct Mail provided campaign advice and direction, mailers, website development and voter information without charge, or at a steeply reduced costs.

21. WTP and Direct Mail facilitated the various mailing and other services between the entities like National Pro-Life Alliance, National League of Taxpayers, National Gun Owners Alliance, Western Tradition Partnership, and Montana Citizens for Right to Work. These interactions were a coordinated effort to influence Montana’s 2010 and 2012 election cycles.

22. The various entities coordinated all of the services and contributions, such that they were acting in concert and in agency of one another such that they were essentially one organization engaging in a common scheme to influence Montana’s 2010 and 2012 election cycles.

23. WTP and Direct Mail’s coordinated services, to the extent they were not paid for, constituted in-kind contributions to the candidates.

24. The value of these contributions is best determined by looking at the value determined by the Jury in the Wittich trial. There, the jury found, and the Montana Supreme Court upheld, the services and contributions, in the form of “the Works” package, from WTP and Direct Mail to were valued at \$19,599. This value is appropriately applied to the following candidate campaigns: Matt Charlton, House District 2; Jerry O’Neill, House District 3; Derek Skees, House District 04; Alan Doane House District 38; Lee Randall, House District 39; James Knox, House District 47; Daniel Kennedy, House district 57; Terry Bannan, House District 68; Ronald Murray, House District 68; Mike Miller, House District 84; Richard Stamey, House District 89; Pat Wagman, Senate District 31; and Arthur “Art” Wittich, Senate District 35.

25. Judge Pinski previously determined the value of the contributions in Joel Boniek's campaign for House District 61 at \$9,060.40. This is the amount of illegal corporate contributions that the Commissioner was able to establish that Mr. Boniek received at the time of the hearing. Subsequently, more information came to light, and based on Mr. Motl's testimony, WTP and Direct Mail provided in-kind contributions valued at \$19,599 to Mr. Boniek. So the Court will not adopt the value that Judge Pinski relied on.

26. Judge Reynolds previously determined the value of the contributions in Wesley Prouse's campaign for Senate District 23 at \$9,101. This is the amount of illegal corporate contributions that the Commissioner was able to establish that Mr. Prouse received at the time of the hearing. Subsequently, more information came to light, and based on Mr. Motl's testimony, WTP and Direct Mail provided in-kind contributions valued at \$19,599 to Mr. Prouse. So the Court will not adopt the value that Judge Reynolds relied on.

27. In all, 15 candidates received in-kind contributions from WTP and Direct Mail valued at \$19,599.

28. In total, WTP and Direct Mail provided in-kind contributions valued at \$293,985.00 to the 15 candidates identified above.

29. Neither WTP nor Direct Mail reported any of these in-kind contributions to the Montana Commissioner of Political Practices.

30. At the time WTP and Direct Mail made these contributions, both entities were corporations prohibited from making contributions to political candidates.

31. WTP and Direct Mail did not keep records of their corporate contributions and did not provide them to the Commissioner of Political Practices upon his request.



32. At all times during the 2010 and 2012 election cycles as related to the named candidates, WTP and Direct Mail worked together, in concert to make the in-kind contributions to the named candidates. They worked in coordination, and as agents for one another, and a number of other entities to such an extent that they were acting as one entity or organization.

### **CONCLUSIONS OF LAW**

Based on the above Findings of Fact, the Conclusions of Law of this Court are as follows:

1. Findings of Fact that also constitute Conclusions of Law are incorporated in the Conclusions of Law by Reference. Likewise, Conclusions of Law that also constitute Findings of Fact are incorporated into the Findings of Fact by reference.
2. The Commissioner duly issued Sufficiency Decisions, referred the Sufficiency Decisions to a County Attorney, accepted the return of the Sufficiency Decisions from the County Attorney and duly filed the civil complaint in this Matter.
3. This Court having before it a duly handled and filed matter is afforded and has jurisdiction of this Matter under Montana law, specifically the Mont. Const. art. VII, §4 and Mont. Code Ann. §§ 3-5-302(1)(b), 13-37-113, 13-37-124 and 13-37-128 (2010).
4. WTP and Direct mail were duly served, defaulted and noticed for the default judgment hearing.
5. A default judgment hearing was duly held in this Matter with these conclusions of law issuing from evidence presented at the hearing.
6. Corporations are prohibited from making contributions to candidates for public office. § 13-35-227, MCA (2010). This prohibition includes in-kind contributions. § 13-1-101(9), MCA (2010); Admin. R. Mont. 44.10.323 (Oct. 8, 1999); Admin. R. Mont. 44.10.513 (Dec. 25, 1977).

7. WTP and Direct Mail are corporations under Montana Law. *See, e.g., Comm'r of Political Practices for Mont. v. Wittich*, 2017 MT 210, ¶ 77, 388 Mont. 347, 372, 400 P.3d 735, 753; *see e.g. W. Tradition P'ship v. AG*, 2011 MT 328, ¶ 7, 363 Mont. 220, 224, 271 P.3d 1, 4 *overruled on other grounds*.

8. WTP and Direct Mail made a total of \$293,985.00 of in-kind contributions to the 15 candidates identified above. WTP and Direct Mail's contributions to the 15 candidates were illegal corporate contributions in violation of § 13-35-227, MCA (2010).

9. A person, which includes a corporation, who makes a contribution in violation of § 13-35-227, MCA (2010) is liable in a civil action for an amount up to \$500 or three times the amount of the unlawful contribution, whichever is greater. §§ 13-37-128(1), (2), MCA (2010). Here, the unlawful contribution of \$293,985.00 is greater than \$500, so the appropriate penalty is three times the unlawful contribution. *Id.*

10. WTP and Direct mail were required to register, file, disclose, and report all 2010 election cycle campaign activities with the Montana Commissioner of Political Practices. § 13-37-225, MCA; Admin. R. Mont. 44.10.513 (Dec. 25, 1977).

11. Corporate contributions, including paid personal services, whether legal or not, are not excused from such reporting obligations. § 13-37-225, MCA.

12. WTP and Direct Mail failed to report their corporate contributions as required under § 13-37-225, MCA. Accordingly, WTP and Direct Mail violated § 13-37-225, MCA.

13. A person, which includes a corporation, who intentionally or negligently violates any provision of any of the reporting provisions of Title 13, Chapter 37, is liable in a civil action for an amount up to \$500 or three times the amount of the unlawful contribution, whichever is

greater. §§ 13-37-128(1) MCA. Here, the unlawful contribution of \$293,985.00 is greater than \$500, so the appropriate penalty is three times the unlawful contribution. *Id.*

14. WTP and Direct Mail were obligated to preserve a detailed record of their campaign activity, contributions, expenditures, and accounts for a period of four (4) years. §§ 13-37-208, -231, MCA; Admin. R. Mont. 44.10.401 et seq. (Oct. 12, 2001).

15. WTP and Direct Mail were also required to produce their campaign records to the Commissioner of Political Practices pursuant to §§ 13-37-111(b), (c), MCA.

16. WTP and Direct Mail failed to maintain, or at least produce, their campaign records for the 2010 election cycle in violation of § 13-37-208, MCA.

17. A person, which includes a corporation, who intentionally or negligently violates any provision of any of the reporting provisions of Title 13, Chapter 37, is liable in a civil action for an amount up to \$500 or three times the amount of the unlawful contribution, whichever is greater. §§ 13-37-128(1) MCA. Here, each entity failed to maintain their records, so they are liable for \$500 each.

18. WTP and Direct Mail “acted in concert” and/or as “agent of the other” as defined in § 27-1-703(3), MCA. *See also, Sloan v. Fauque*, 239 Mont. 383, 386, 783 P.3d 895 (1989).

19.

## JUDGMENT

Therefore, the Court hereby DECREES and ORDERS that:

1. The Court enters a civil penalty judgment against WTP and Direct Mail, jointly and severally, in the amount of \$881,955.00, which is three times the amount of illegal corporate contributions made by WTP and Direct Mail. §§ 13-37-128 and 129, MCA;

2. The Court enters a separate and further civil penalty judgment against WTP and Direct Mail, jointly and severally, in the amount of \$881,955.00, which is three times the amount of illegal corporate contributions made by WTP and Direct Mail
3. The Court enters a further and separate civil penalty judgment against WTP for \$500 for its failure to maintain records. § 13-37-128, MCA.
4. The Court enters a further and separate civil penalty judgment against Direct Mail for \$500 for its failure to maintain records. § 13-37-128, MCA.

DATED this 17<sup>th</sup> day of September, 2020.

**JAMES P. REYNOLDS**

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Hon. James Reynolds  
District Court Judge

cc. Jaime MacNaughton  
Rob Farris-Olsen  
Quentin Rhoades  
Anita Milanovich