

RECEIVED

HENRY SWERNEY
JUDICIAL DISTRICT COURT

2015 AUG 21 A 10:29

AUG 21 2015

COMMISSIONER OF
POLITICAL PRACTICES

FILED
Spotuspk

**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.

JOEL BONIEK,

Defendant.

Cause No. XADV-2014-202

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This matter came before the Court on June 2, 2015, for hearing on the Default Judgment of Mr. Joel Boniek. Witnesses Jonathan Motl and C. B. Pearson were called, sworn and presented testimony. Exhibits 1 through 27, including subparts, were offered and accepted in evidence. Hearing memorandum on issues of evidence were offered and accepted.

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

1. The Complaint in this Matter is properly brought before this Court:

- a. An underlying sufficient facts administrative Decision (Sufficiency Decision) was made on January 14, 2014 by the plaintiff state agency, the Commissioner of Political Practices (COPP). (*Ex. 6*).
 - b. The Sufficiency Decision was sent for enforcement to, and returned by, the County Attorney of Lewis and Clark County. (*Ex. 10*).
 - c. The COPP seeks to enforce its Sufficiency Decision through a State District Court Complaint it filed on March 14, 2014. (*Ex. 1*).
 - d. There are no facts challenging the manner and method of the COPP's enforcement of its Sufficiency Decision through the District Court of the State of Montana.
2. The parties in this Matter are properly before the Court:
 - a. Mr. Boniek, the Defendant, was duly served with the Summons and Complaint in this matter on April 4, 2014.
 - b. Jonathan R. Motl, 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 December 17, 2014 the COPP presented the Court an application for Entry of Default against Mr. Boniek.
 - b. Mr. Boniek had failed to answer and defend in this matter as shown by the record on December 17, 2014.
 - c. Default was entered in this Matter on December 17, 2014.
 - d. Mr. Boniek was provided with Notice of the Entry of Default.
 4. The June 2, 2015 hearing presented evidence supporting entrance of a judgment on the Default of Mr. Boniek.

5. The default judgment hearing focused on the circumstances of a particular 2010 Montana legislative race.
 - a. Mr. Boniek (hereafter Candidate Boniek) was a 2010 candidate for the Republican nomination as the House District (HD) 61 delegate to the Montana House of Representatives. (*Sufficiency Decision, Ex. 6*).
 - b. Candidate Boniek's election was opposed another candidate, John Esp (*Sufficiency Decision, Ex. 6*).
 - c. The 2010 HD 61 Republican primary election was held on June 8, 2010. (*Sufficiency Decision, Ex. 6*).
 - d. Candidate Esp defeated Candidate Boniek in the 2010 HD 61 Republican primary by a vote of 1,512 to 1,347. (*Sufficiency Decision, Ex. 6*).
 - e. The Sufficiency Decision, Complaint and June 2, 2014 hearing evidence in this Matter raised and addressed the issue of whether there were unlawful contributions made to and accepted by Candidate Boniek in his 2010 HD 61 Republican primary election campaign.
6. At the June 2, 2015 hearing the COPP presented evidence based on:
 - a. The testimony of witnesses Commissioner Motl and C. B Pearson.
 - b. Documentary evidence from: i) an archive of 2010 HD 61 Republican primary election campaign documents assembled by the Esp family; ii) documents delivered to the COPP by Carolyn Rockvoy, a former employee of a Western Tradition Partnership (WTP); and iii) WTP documents delivered from Colorado to the COPP.
7. The District Court, upon motion, determined that the three sources of documents met the criteria of reliability and accepted the same as evidence. The District Court

further determined, upon motion, that Jonathan Motl and C. B. Pearson were witnesses who could provide opinion testimony.

8. Based on the evidence presented through documents and testimony the court hereby determines the following as to campaigns of Candidates Esp and Boniek:

- a. Candidate Esp filed 2010 HD 61 Republican primary election campaign finance reports disclosing \$8,000 in primary election contributions from 62 individuals and 7 political action committees (PACs). (*Sufficiency Decision, Exs. 6 and 4*).
- b. Candidate Boniek filed 2010 HD 61 Republican primary election campaign finance reports disclosing \$7,000 in primary election contributions from 64 individuals and 2 political action committees (PACs). (*Sufficiency Decision, Exs. 6 and 4*).
- c. Candidate Esp disclosed 2010 HD 61 Republican primary election expenses for billboards, signs, travel and newspaper ads. (*Sufficiency Decision, Ex. 6*).
- d. Candidate Boniek disclosed a single significant 2010 HD 61 Republican primary election primary expense – a direct mail campaign for which he paid Direct Mail and Communications, Inc. (*Sufficiency Decision, Exs. 6 and 4*).

9. Based on the evidence presented through documents and testimony the court generally determines the following as to the respective Candidates Esp and Boniek 2010 HD 61 Republican primary election campaign activity:

- a. The campaign expenses and activity disclosed by Candidate Esp reflected the actual campaign activity supporting Candidate Esp or opposing Candidate Boniek.

- b. The direct mail campaign expenses and activity disclosed by Candidate Boniek did not reflect the true extent or nature of actual direct mail campaign activity supporting Candidate Boniek or opposing Candidate Esp.
- c. That two corporations, Western Tradition Partnership and Direct Mail and Communications, Inc., engaged in extensive unreported and undisclosed campaign activity supporting Candidate Boniek or opposing Candidate Esp. (*Commissioner Motl testimony*).

10. Based on the evidence presented through documents and testimony the court determines that WTP engaged in a largely unreported and undisclosed overall direct mail four part election campaign in the 2010 HD 61 Republican primary election that involved:

- a. surveys;
- b. candidate letters;
- c. attack letters based on the survey results; and
- d. attack flyers.

The four part direct mail WTP election campaign are shown by Exhibits 11 and 12, WTP's internal campaign and fundraising plans. The campaign was carried out by a print shop and mail house that advertised its printers and staff could carry out a "shock and awe electoral bombing campaign". (*Ex. 13*).

11. Based on the evidence presented through documents and testimony the Court determines that WTP carried out such a largely unreported and undisclosed four part direct mail campaign in favor of Candidate Boniek and against Candidate Esp in the 2010 HD 61 Republican primary election. This direct mail campaign consisted of:

- a. Seven candidate letters signed by and promoting Candidate Boniek. Those 7 letters consisted of 2 initial letters, 4 issue focused letters and 1 closing letter. (*Exs. 14, 16, and 21 and Commissioner Motl testimony*).
- b. An 8th candidate letter (the Wife letter) promoting Candidate Boniek and signed by Candidate Boniek's wife. (*Ex. 14, Ex. 21 and Commissioner Motl testimony*).
- c. Survey forms mailed to Candidates Boniek and Esp by several corporations. (*Exs. 16 and 22 and Commissioner Motl testimony*).
- d. Ten Letters from corporations attacking Candidate Esp and promoting Candidate Boniek based on the survey results. (*Exs. 16 and 23 and Commissioner Motl testimony*).
- e. Three glossy postcards from corporations attacking Candidate Esp. (*Exs. 16 and 24 and Commissioner Motl testimony*).

12. Based on the evidence presented through documents and testimony the Court's detailed analysis of WTP's 2010 HD 61 Republican primary election direct mail campaign (and Candidate Boniek's involvement in that campaign) starts with the surveys mailed to Candidates Boniek and Esp:

- a. Candidate Esp kept copies of the survey mailings sent to him during the 2010 HD 61 election. Those mailings show surveys sent by five corporate entities: National Pro-life Alliance (*Ex. 22a*), National League of Taxpayers (*Ex. 22b*), Western Tradition Partnership (*Ex. 22c*), National Gun Owners Alliance (*Ex. 22d*), and Montana Citizens for Right To Work (*Ex. 23a*). The Commissioner testified that he was able to locate copies of some of these same survey documents in the WTP files.

- b. As to these survey documents, the Court determines as a matter of fact:
- i) That the 5 corporate entities identified in this paragraph are not-for-profit corporations (*Sufficiency Decision, Ex. 6*);
 - ii) That the surveys used by the 5 not-for-profit corporations were part of the WTP 2010 HD 61 direct mail campaign.
 - iii) That each of the 5 not-for-profit corporations through its affiliation with WTP acted as an agent of, or in concert with, Candidate Boniek.
- c. The Commissioner did not seek and the Court does not assess any monetary penalty against Candidate Boniek based on the costs associated with the printing and mailing of the five survey documents to Candidate Esp.

13. The Court now turns to the second level of WTP involvement, that of the Candidate letters. Based on the evidence presented through documents and testimony the Court determines:

- a. That Candidate Boniek reported and disclosed a portion (roughly the printing and postage) of the costs of the 8 candidate letters described in subparagraphs 11(a) and (b). (*Commissioner Motl and Pearson testimony*).
- b. There were two corporations (WTP and Direct Mail) involved in the production of the 8 candidate letters and the Court determines the following as to those two corporations:
 - i) Western Tradition Partnership was a not-for-profit corporation organized under the laws of Colorado, and was also registered in 2010 with the Montana Secretary of State. (*Sufficiency Decision, Ex. 6*).

ii) Direct Mail and Communications, Inc. was a for-profit corporation organized in 2010 under the laws of Colorado, and was also registered in 2010 with the Montana Secretary of State. (*Sufficiency Decision, Ex. 6*).

iii) WTP developed a direct mail campaign plan for electing certain candidates in Montana's 2010 Republican primary election. (*Commissioner Motl testimony, Ex. 11*).

iv) WTP solicited money to fund its direct mail campaigns in 2010 targeted republican primary elections. (*Commissioner Motl testimony, Ex. 12*).

v) WTP's principal staffer was Christian LeFer (*Commissioner testimony, Ex. 15*). Christian LeFer was married to Allison LeFer, the President of Direct Mail. (*Commissioner Motl testimony, Sufficiency Decision, Ex. 6*).

vi) Christian LeFer contacted Candidate Esp early in the 2010 Republican primary election, seeking his withdrawal so that Candidate Boniek would have the HD 61 Republican nomination. (*Ex. 17*).

vii) There was agency in fact between WTP and Direct Mail such that the two corporations were one and the same. (*Commissioner Motl testimony, Sufficiency Decision, Ex. 6*).

viii) Direct Mail described itself as a "grassroots direct mail fortress" carrying out "shock and awe electoral bombing campaigns." (*Commissioner Motl testimony, Ex. 13*).

14. Based on the evidence presented through documents and testimony the Court determines WTP engaged Direct Mail to print all 8 Candidate Boniek campaign letters

(Ex. 14) and that WTP and Direct Mail performed far more services than printing and posting the 8 candidate letters:

- a. WTP wrote the 8 candidate letters with minimal editorial assistance from Boniek's campaign manager; (*Commissioner Motl testimony*).
- b. WTP assembled a targeted mailing list of 2010 HD 61 Republican primary voters for each of the 8 candidate letters and determined the date that the candidate letters would be mailed; (*Commissioner Motl testimony*).
- c. WTP secured a model Joel Boniek signature from Candidate Boniek and Direct Mail scanned that image into its printers; (*Commissioner Motl testimony, Ex. 20*).
- d. Direct Mail printed the candidate letters, imprinted the Joel Boniek signature, folded and stuffed the letters into an envelope, addressed the envelope according to the correct mailing list and mailed the letters. Some letters, such as the Wife letter, required a first class stamp and hand addressing. Most letters were mailed using a pre-cancelled bulk rate postage stamp. Each letter was mailed to a different list of HD 61 Republican primary election voters. (*Commissioner Motl testimony, Ex. 16*).

15. Based on the evidence presented through documents and testimony the Court determines the following as to Candidate Boniek:

- a. That Candidate Boniek had minimal in-person involvement in his 2010 HD 61 Republican primary election campaign, being generally represented by his campaign manager Edward Soady. (*Soady Deposition*).

- b. That Mr. Soady's personal involvement in Candidate Boniek's HD 61 direct mail campaign was minimal primarily consisting of editing some of the 8 candidate letters prepared by WTP and Direct Mail. (*Commissioner Motl testimony*).
- c. That Candidate's Boniek's limited direct mail campaign activity consisted of providing his signature to Direct Mail and whatever involvement his wife had in preparation of the Wife letter. (*Commissioner Motl testimony*).
- d. That Candidate Boniek had personal knowledge of the full range of WTP's 2010 direct mail campaigning activity including:
- i) Past experience in an HD 61 election as Candidate Boniek was elected to the Montana legislature in 2008 with the backing and assistance of WTP comparable to that of 2010 (*Commissioner Motl testimony, quoting Rockvoy Deposition*);
 - ii) Boniek knew that WTP's direct mail campaign was Candidate Boniek's only real campaign activity as Christian LeFer asserted that WTP "elected" Boniek in 2008 (*Ex. 18*);
 - iii) Candidate Boniek's relationship with WTP went beyond the HD 61 election as he worked out of the LeFer house in early 2010 assisting WTP on election tasks that included driving a truck loaded with election direct mail from Montana to a mailing house in Illinois (*Commissioner Motl testimony, Rockvoy Deposition*);
 - iv) Candidate Boniek allowed and cooperated in the 2010 WTP direct mail election activity as he provided general campaigning authority, including his signature, to WTP such that Commissioner Motl

testified WTP was Candidate Boniek's "invisible campaign manager in complete charge";

- vii) Candidate Boniek's direct mail campaign, carried out by WTP and Direct Mail, was his only significant campaign activity to the point that he was not even present in Montana for most of his 2010 HD 61 Republican primary election campaign.

16. Based on the evidence presented through documents and testimony the Court determines that as a matter of fact agency and/or action in concert existed between Direct Mail and WTP and, in turn, between Candidate Boniek and WTP/Direct Mail as to the 8 candidate letters. That agency and/or acting in concert relationship led to the following activity:

- a. WTP, through its independent fundraising, had funds available to spend on the Boniek 2010 HD 61 Republican primary election campaign and it did so through its direct mail campaign activity. (*Ex. 12 (particularly 12c) and Commissioner Motl testimony*).
- b. Candidate Boniek knew that the 2010 HD 61 direct mail campaign organized by WTP on his behalf was far more extensive than the printing and postage costs he paid for the 8 candidate letters;
- c. As to the additional costs of the 8 candidate letters, C. B. Pearson was presented to and accepted by the Court as an expert (*Exs. 25 and 26*) on the unreported and disclosed costs of the eight 2010 HD 61 Republican primary election Candidate Boniek campaign letters prepared by WTP and mailed by Direct Mail.

d. Based on the evidence presented through documents and testimony the Court determines as follows as to the 8 Candidate Boniek 2010 HD 61 Republican primary election candidate campaign letters:

- i) That Direct Mail's work on the two Candidate Boniek initial letters, including mailing list provision, letter writing and mail piece handling, involved unreported and undisclosed costs of at least \$832.00 that were covered by WTP.
 - ii) That Direct Mail's work on four Candidate Boniek issue letters, including mailing list provision, letter writing and mail piece handling, involved at least \$908.00 of cost coverage by WTP.
 - iii) That Direct Mail's work on Candidate Boniek's Wife letter, including mailing list provision, letter writing and mail piece handling, involved unreported and undisclosed costs of at least \$939.40 of cost coverage by WTP.
 - iv) That Direct Mail's work on the Candidate Boniek final letter, including mailing list provision, letter writing and mail piece handling, involved unreported and undisclosed costs at least \$444.00 of cost coverage by WTP.
 - v) That the total unreported and undisclosed additional costs of the eight candidate letters was at least \$3,123.40.
- e. That the \$3,123.40 unreported and undisclosed direct mail costs provided to Candidate Boniek for his 2010 HD 61 campaign came from a corporation, WTP, acting in concert with another corporation, Direct Mail, and as an agent for or in concert with Candidate Boniek.

17. The Court now turns to the third, or attack letters, portion of the WTP 2010 HD 61 Republican primary election campaign. WTP's internal plan described an extensive attack letter campaign as "letters...sent to tens of thousands of likely voters and issue-ID lists...", (*Ex. 11*). Based on the evidence presented through documents and testimony the Court determines the following as to the 2010 HD 61 Republican primary election:

- a. WTP's direct mail goal was to mount a sufficient direct mail campaign to deliver the needed votes (1,500 votes) to Candidate Boniek's 2010 HD 61 Republican primary election campaign. (*Commissioner Motl testimony*).
- b. As part of that direct mail campaign WTP planned a targeted "issue ID'd" attack letters campaign to 1,539 voters (*Ex. 14*);
- c. The four issues that WTP identified (or ID'd) for HD 2010 Republican primary voters for were "gun", "life", "tax" and "government/right to work." (*Commissioner Motl testimony, Trans, pp. 29, 30*).
 - i) The Court viewed copies of survey based attack letters mailed in the 2010 HD 61 Republican primary election. Those attack letters were signed by Montana Citizens for Right To Work (*Exs. 23a and d*), National Gun Owner's Alliance (*Exs. 23b and f*), National Pro Life Association (*Ex. 23c*), Western Tradition Partnership (*Ex. 23e*); and Lair/Faw (*Ex. 23g*).
 - ii) In addition, the National League of Taxpayers sent a survey (these Findings) and survey based attack letters.
- d. The Court determines that the "Life" issue ID-d letters were sent by the National Pro Life Association and the "guns" issued ID-d letters were sent by the National Gun Owner's Alliance.

- i) The National Gun Owner's Alliance and National Pro Life Association were Virginia based non-profit corporations.
(Commissioner Motl testimony, Trans, p. 43).
- e. The Court determines that the "tax" issue ID-d letters were sent by the National League of Taxpayers and Montana Citizens for Right to Work.
 - i) The National League of Taxpayers and Montana Citizens for Right to Work were Montana based not-for-profit groups. *(Sufficiency Decision, Ex. 6).*
- f. The Court determines that WTP worked in concert with four above identified non-profit organizations as follows:
 - i) Each of the 4 organizations twice mailed to its specific share of the ID'd list. This meant that the entire Issue ID'd list was mailed to twice through the combined efforts of the non-profits resulting in the mailing of 3,078 attack letters.
 - ii) A Candidate Boniek issued ID'd letter was timed for mailing at the same time and to the same mailing list as the issue ID'd letter from the organizations. *(Ex. 16)*. For example, the Esp family archive shows that a National Pro-life Alliance action gram was mailed to HD 61 voters on May 29, 2010 while a Joel Boniek letter against abortion was mailed to HD 61 voters on May 30, 2010. *(Ex. 16)*.
 - iii) In addition, WTP itself sent a single attack letter on the taxes/government issue to half of the issue ID'd list.

- iv) The Court determines that at least 3,848 (2 ½ times 1,539) attack letters were prepared and mailed as part of the WTP direct mail campaign on behalf of Candidate Boniek.

18. Based on the evidence presented through documents and testimony the Court determines that as a matter of fact agency and/or action in concert existed between Direct Mail and WTP and, in turn, between Candidate Boniek and WTP/Direct Mail as to the attack letters. That agency and/or acting in concert relationship led to the following activity:

- a. WTP, through its independent fundraising, had funds available to spend on the Boniek 2010 HD 61 Republican primary election campaign and it did so through its direct mail campaign activity. (*Ex. 12 (particularly 12c) and Commissioner Motl testimony*).
- b. Candidate Boniek knew that the 2010 HD 61 direct mail campaign organized by WTP on his behalf was far more extensive than the printing and postage costs he paid for the 8 candidate letters.
- c. Candidate Boniek's relationship with the non-profit organizations carrying out the attack letter direct mail campaign was described as uniformly by the non-profits: "complete opposition to the union bosses..." (Montana Citizens for Right to Work, *Ex. 23a*; "... 100% in favor of your fun owner's rights..." (National Gun Owners Alliance, *Exs. 23b, f*); "...100% pro-life stance..." (National Pro-Life Alliance, *Ex. 23c*); and "...100% opposition to radical environmentalists..." (WTP, *Ex. 23e*). WTP bragged generally that those candidates that it supported "...rode into office in 100% support of WTP's responsible development agenda", *Ex. 11, p.3*.

- d. As to the additional costs of the attack letters, C. B. Pearson was presented to and accepted by the Court as an expert (*Exs. 25 and 26*) on the unreported and disclosed costs of the 2010 HD 61 Republican primary election attack letters prepared by WTP and mailed by Direct Mail . Pearson testified to a cost of \$1.04 per attack letter.
- e. Based on the evidence presented through documents and testimony the Court determines as follows as to the 2010 HD 61 Republican primary election attack letters:
- i) That the work on the attack letters, including mailing list provision, letter writing and mail piece handling, involved unreported and undisclosed costs of at least \$1.04 per letter that was covered by WTP or one of the affiliated corporations.
 - ii) That the work by the corporations on the 3,848 attack letters, including mailing list provision, letter writing and mail piece handling, involved at least \$4,002.00 of cost coverage by WTP and the affiliated corporations.
 - iii) That the total unreported and undisclosed additional costs of the attack letters was at least \$4,002.00.
- f. That the \$4,002 of unreported and undisclosed direct mail costs provided to Candidate Boniek for his 2010 HD 61 campaign came from a corporation, WTP, acting in concert with other corporations and as an agent for or in concert with Candidate Boniek.

19. The Court now turns to the fourth part of the WTP direct mail campaign for HD 61, that of attack Flyers. WTP internal plan described an extensive such attack flyer

campaign with "...glossy postcards sent to tens of thousands of likely voters and issue-ID lists..." (Ex. 11). Based on the evidence presented through documents and testimony the court the Court determines the following as to the 2010 HD 61 Republican primary election:

- a. That there were at least three attack flyers: a Sportsmans Rights PAC (mailed with 44 cent stamp) attacking Esp on the Second Amendment (Ex. 24a); an Assembly Action Fund Flyer attacking Esp as supporting Planned Parenthood (Ex. 24b); and a WTP Flyer attacking Esp on inheritance taxes (Ex. 24c).
- b. A 2010 campaign bill showed that Assembly Action Fund purchased 1,500 copies of an attack Flyer to be used in the 2010 HD 61 Republican Primary election. (Ex. 24d).
- c. The court determines that 4,500 Flyers (1,500 times 3) were used to attack Candidate Esp in HD 61 Republican primary election. Commissioner Motl testified that no person or entity, including Candidate Boniek and WTP, reported the cost of the 4,500 Flyers attacking Candidate Esp in the 2010 HD61 Republican primary election.

20. Based on the evidence presented through documents and testimony the Court determines that as a matter of fact agency and/or action in concert existed between Direct Mail and WTP and, in turn, between Candidate Boniek and WTP/Direct Mail as to the attack flyers. That agency and/or acting in concert relationship led to the following activity:

- a. WTP, through its independent fundraising, had funds available to spend on the Boniek 2010 HD 61 Republican primary election campaign and it did so

through its direct mail campaign activity. (*Ex. 12 (particularly 12c) and Commissioner Motl testimony*).

- b. Candidate Boniek knew that the 2010 HD 61 direct mail campaign organized by WTP on his behalf was far more extensive than the printing and postage costs he paid for the 8 candidate letters.
- c. As to the additional costs of the attack flyers, C. B. Pearson was presented to and accepted by the Court as an expert (*Exs. 25 and 26*) on the unreported and disclosed costs of the 2010 HD 61 Republican primary election attack flyers prepared and mailed by WTP and its affiliated corporations. C.B. Pearson testified that he used the cost of \$0.43 per attack flyer, the amount listed by WTP on the Assembly Action Fund attack flyers. (*Ex. 24d*). The Court notes that Pearson testified that his valuation number in this matter was low as one of the flyers used a first class stamp and, further, it does not take into consideration the costs of the mailing list or creation of the piece.
- d. Based on the evidence presented through documents and testimony the Court determines as follows as to the 2010 HD 61 Republican primary election attack flyers:
 - i) That the work on the attack flyers, including mailing list provision, letter writing and mail piece handling, involved unreported and undisclosed costs of at least \$0.43 per flyer that was covered by WTP or one of the affiliated corporations.
 - ii) That the work by the corporations on the 4,500 attack flyers, including mailing list provision, letter writing and mail piece

handling, and involved at least \$1,935.00 of cost coverage by WTP and the affiliated corporations.

- e. That the \$1,935.00 of unreported and undisclosed direct mail costs provided Candidate Boniek for his 2010 HD 61 campaign came from a corporation, WTP, acting in concert with other corporations and as an agent for or in concert with Candidate Boniek.

21. In total, the Court determines that the unreported and undisclosed amount expended by WTP and its allies for the HD61 Republican primary election direct mail campaign in support of Candidate Boniek or in opposition to Candidate Esp was \$9,060.40. Because these groups acted as agents of or in concert with Candidate Boniek the same amount is an expenditure or contribution to Candidate Boniek by these groups.

In making this funding of fact the Court notes that this amount is conservative because the COPP's witnesses did not present evidence on some costs in this matter (for example, creative fees involved in the letter writing content and full costs associated with the attack flyers) that the COPP intends to develop and present in similar later cases involving 2010 candidates who benefited from direct mail campaigns mounted by WTP/Direct Mail.

CONCLUSIONS OF LAW

1. The Commissioner duly issued a Sufficiency Decision, referred the Sufficiency Decision to a County Attorney, accepted the return of the Sufficiency Decision from the County Attorney and duly filed the civil complaint in this Matter.

2. 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.

3. Candidate Boniek was duly served, defaulted and noticed for the default judgment hearing.

4. A default judgment hearing was duly held in this Matter with these conclusions of law issuing from evidence presented at the hearing.

5. This Court finds and determines as a matter of law that:

- a. Candidate Boniek acted in concert with or assigned agency to corporate entities including National ProLife Alliance, National League of Taxpayers, Western Tradition Partnership, National Gun Owners Alliance, Direct Mail and Communications, Inc., Assembly Action Fund and Montana Citizens for Right To Work. In addition one PAC, Sportsman Rights PAC coordinated with WTP.
- b. Candidate Boniek acted in violation of Montana law, specifically Mont. Code Ann. § 13-35-227(2), when he accepted \$9,060.40 in in-kind contributions from corporations carrying out a direct mail campaign for his benefit in his 2010 HD61 Republican primary election.
- c. Candidate Boniek acted in violation of Montana law, specifically Mont. Code Ann. § 13-37-225, when he failed to report and disclose \$9,060.40 in in-kind contributions in his 2010 HD61 Republican primary election.
- d. Candidate Boniek also acted in violation of Montana Campaign Finance Reporting and Disclosure laws such as attribution, acceptance of contributions in excess of limits, failure to maintain and produce campaign

records, Mont Code Ann. §§ 13-35-225, 13-37-216, 13-37-218, respectively, but the Commissioner waived entry of judgment on these specific matters.

JUDGMENT

Monetary Penalties

Therefore, the Court hereby DECREES and ORDERS that:

1. The Court enters a civil penalty judgment against Mr. Boniek in the amount of three times the amount of illegal corporate contributions in the amount of \$27,181.20, pursuant to Mont. Code Ann. §§ 13-37-128 and 129; and
2. The Court enters a separate and further civil penalty judgment against Mr. Boniek in the amount of three times the amount of unreported and undisclosed contributions in the amount of \$27,181.20, pursuant to Mont. Code Ann. §§ 13-37-128 and 129.

Equitable Penalties

This Court has broad authority to "...enjoin any person to prevent the doing of any prohibited act or to compel the performance of any act required by the election laws", Mont. Code Ann. § 13-35-108. Further, "[i]n addition to all other penalties prescribed by law... if an elected official or a candidate is adjudicated to have violated any provision of this title....the individual must be removed from nomination or office, as the case may be, even though the individual was regularly nominated or elected", Mont. Code Ann. § 13-35-106(3). "The Code recognizes that public confidence in the integrity of state officials, legislators and state employees is paramount to the overall effectiveness and legitimacy of the government" *Molnar v. Fox*, 2013 MT 132, ¶18; 370 Mont. 238; 301 P.3d 824. The holding of a public office in Montana is a public trust

with the obligation to carry out duties "for the benefit of the people of the state", Mont. Code Ann. § 2-2-103. Stated another way:

"Not only... is the Corrupt Practices Act intended to guarantee the purity of elections and to assure a free exercise of the franchise by the voter uninfluenced by any appeals to its prejudice or cupidity, but it is also designed to protect candidates for public office; and by limiting expenditures and forbidding certain practices, afford an equity of opportunity to the candidates and protect them from the pressure applied by salesmen and others whose purpose it is to increase their sales, or to secure personal benefit at the expense of the candidate",

Kommers et al. v. Palagi, 111 Mont. 293, 297; 108 P.2d 208 (1940)(emphasis added).

As to Candidate Boniek, this Court determines that Candidate Boniek exhibited corruption, specifically quid pro quo corruption, in his 2010 HD 61 Republican Primary Election. Candidate Boniek accepted at least \$9,000 in corporate expenditures that became in-kind contributions to his campaign. In the context of the HD 61 Republican primary election this amount is large, being more than either Candidate Esp or Candidate Boniek reported raising and spending. Not only is the amount of money large but the number of campaign letters, attack letters or attack flyers (at least 21) is extreme by Montana standards.

What Candidate Boniek received, then, (the quid) was the appearance of a grass roots campaign created by direct mail for which he did not pay, report or disclose. What Candidate Boniek promised in return (the pro quo) for that benefit was unswerving fealty to the corporations carrying out the direct mail campaign: "complete opposition to the union bosses..." (*Montana Citizens for Right to Work – Ex. 23a*); "...100% in favor of your gun owner's rights..." (*National Gun Owners Alliance – Exs. 23 b, f*); "...100% pro-life stance..." (*National Pro-Life Alliance- Ex. 23c*); and "...100% opposition to

radical environmentalists'..." (WTP- Ex. 23e). WTP bragged generally that those candidates it supported "...rode to office in 100% support of WTP's responsible development agenda." (Ex. 11, p. 3).

The holding of a public office in Montana is a "public trust", Mont. Code Ann. §2-2-103(1). Montana prohibits corporate contributions completely, limits contributions from those who can contribute to candidates and requires disclosure and reporting of all contributions. Through this system Montana attempts to insure that the obligations of an office holder are those natural obligations owed to their constituents, voters and contributors, all as disclosed and understood by the Montana public. There is substantial and severe harm, or corruption, to Montana's public trust expectations when the largest corporate donor to Candidate Boniek's campaign is banned to start with, the amounts are far in excess of any limits even if allowed and the bulk of the funds (creating the "100%" fealty) are not reported or disclosed. Candidate Boniek, and the others supported by WTP, owed "100%" fealty to their unreported and undisclosed principal corporate sponsor, something that surely corrupts public trust.

Given the findings as to corruption, the Court makes the following special findings in regard to the equitable remedies set out below:

The Court hereby additionally DECREES and ORDERS that:

- 1) Mr. Boniek be prohibited from filing and again running for public office until such time that he files supplemental 2010 campaign finance forms reporting and disclosing the \$9,060.40 in campaign contributions and expenditures, in accordance with the factual findings in this matter pursuant to the provisions of Mont. Code Ann. §§ 13-35-108 and 13-37-201, *et. seq.*;

2) AND until such time that Mr. Boniek pays the civil fines for his violations of the Montana Campaign Finance and Practices law to the People of Montana as provided under the Monetary Penalty portion of this Order.

DATED this 13 day of Aug 2015.


Hon. Gregory G. Pinski
District Court Judge

cc. Jonathan R. Motl and Jaime MacNaughton
Joel Boniek