

NANCY SWEENEY  
CLERK DISTRICT COURT

2015 JUN 5 11 04 24

FILED

BY T. JOHNSON

**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.

Wesley Prouse,

Defendant.

Cause No.: DDV-2014-250

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
AND ORDER**

The Court heard this matter on October 29, 2015, upon the Default of Respondent Wesley Prouse (Prouse). Plaintiff Commissioner of Political Practices Jonathan Motl (Commissioner) appeared with his attorney, Gene R. Jarussi, was sworn and testified. Exhibits 1 through 40 were offered and admitted into evidence. The Commissioner also submitted hearing memoranda on issues of evidence.

Based on the testimony and evidence submitted, the Court makes the following:

1 **FINDINGS OF FACT**

2 1. Jonathan R. Motl is the duly appointed and confirmed  
3 Commissioner of Political Practices for the State of Montana.

4 2. On March 31, 2014, the Commissioner issued an administrative  
5 sufficient facts decision (sufficiency decision<sup>1</sup>). The Commissioner sent the  
6 sufficiency decision for enforcement to the Lewis and Clark County Attorney.  
7 The Lewis and Clark County Attorney waived the right to prosecute the matter  
8 and returned the complaint to the Commissioner. The Commissioner now seeks  
9 to enforce its sufficiency decision through this action.

10 2. Prouse was duly served with the summons and complaint in this  
11 matter on April 4, 2014. Prouse failed to answer or otherwise defend against this  
12 complaint.

13 3. On November 21, 2014, the Commissioner applied to the Court  
14 for entry of default against Prouse. The clerk of court entered Prouse's default  
15 on November 21, 2014. A notice of entry of default was filed in this matter on  
16 November 25, 2014. The Commissioner served Prouse with this notice of entry  
17 of default.

18 4. The purpose of the October 29, 2015 hearing was for the  
19 Commissioner to present evidence supporting entry of a judgment on the default  
20 of Prouse.

21 5. This matter concerns Prouse's campaign in the 2010 Montana  
22 Republican legislative primary for senate district 23. Prouse had three primary  
23

24 <sup>1</sup> "Sufficiency Decision" refers to the summary of facts and findings of sufficient evidence  
25 to show a violation of Montana's Campaign Practices Act entered in *Bonogofsky v. Prouse*,  
No. Commissioner-2010-CFP-033.

1 election opponents. The 2010 SD 23 Republican primary election was held on  
2 June 8, 2010. Prouse finished in third place in the 2010 SD 23 Republican primary  
3 election with 970 votes. Alan Olson received 1,941 votes and was the winner of  
4 the 2010 SD 23 Republican primary election.

5           6.     Although perhaps not required to do so in view of Prouse's  
6 default, the Commissioner sent notice to Prouse of the October 29 hearing and thus  
7 Prouse had knowledge of the October 29 hearing for entry of default judgment.  
8 The hearing covered the specific issues of: (1) whether there were unlawful  
9 contributions made to and accepted by Prouse in his 2010 SD 23 Republican  
10 primary election campaign; (2) whether Prouse acted in concert with or assigned  
11 agency to corporate entities; (3) whether Prouse failed to report and disclose both  
12 in-kind contributions as well as cash contributions; (4) whether Prouse failed to  
13 comply with laws requiring attribution, acceptance of contributions in excess of  
14 limits; and (5) whether Prouse failed to maintain and produce campaign records.

15           7.     At the October 29, 2015 hearing, the Commissioner offered  
16 evidence as follows:

- 17                   a.     the testimony of the Commissioner;
- 18                   b.     excerpts from the depositions of Carolyn Rockvoy, a  
19 former employee of Western Tradition Partnership (WTP), and of Edward Soady,  
20 associated with the 2010 candidacy of Joel Boniek in HD 61; and
- 21                   c.     documentary evidence from: i) an archive of the 2010  
22 HD 61 Republican primary election campaign documents assembled by the Esp  
23 family; ii) documents delivered to the Commissioner by Rockvoy; iii) WTP  
24 documents delivered from Colorado to the Commissioner; and iv) documents  
25 delivered to the Commissioner from Jeremy Hofer, a staff member of WTP

1 and a Right to Work (RTW) organization.

2           8.     These four sources of documents meet the criteria of reliability  
3 as evidence. The Commissioner is a witness qualified to provide opinion  
4 testimony. In making these determinations, the Court notes that the Honorable  
5 Greg Pinski made comparable determinations in the findings of fact and  
6 conclusions of law entered in *Commissioner v. Boniek*, Lewis and Clark County  
7 cause no. XDV-2014-202 (Mont. 1st Jud. Dist. Ct. (Mar. 14, 2014)) (hereinafter  
8 *Boniek*).

9           9.     Prouse filed only one 2010 SD 23 Republican primary election  
10 campaign finance report disclosing \$260 in primary election contributions from  
11 two individuals. Prouse's campaign finance report disclosed \$0 in expenses.  
12 Prouse thus reported that he spent no money at all in campaign activity.

13           10.    Prouse's 2010 SD 23 Republican primary election campaign  
14 finance report did not reflect the true extent or nature of actual direct-mail  
15 campaign activity supporting Prouse or opposing his opponents, including eventual  
16 primary winner Olson. To the contrary, as explained below, Prouse was part of  
17 an unreported and undisclosed SD23 Republican primary election four-part  
18 direct-mail election campaign that involved surveys, candidate letters, attack  
19 letters based on the survey results, and attack flyers.

20           10.    This four-part direct-mail election campaign was carried out by  
21 a print shop and mail house called Direct Mail that advertised its printers and staff  
22 could carry out a "shock and awe electoral bombing campaign." Again, the Court  
23 notes that Judge Pinski received these same exhibits as evidence in the hearing  
24 before his court in *Boniek*.

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1           11. The best example of the four-part direct-mail campaign carried  
2 out in a 2010 primary election was the campaign carried out in favor of Candidate  
3 Joel Boniek and against Candidate John Esp in the 2010 HD 61 Republican  
4 primary election. This HD 61 direct-mail campaign evidence was presented  
5 to Judge Pinski in *Boniek* and to this Court through the testimony of the  
6 Commissioner. Judge Pinski determined that the WTP direct-mail campaign  
7 in the 2010 HD 61 election consisted of:

8           a. seven candidate letters signed by and promoting  
9 Candidate Boniek. Those seven letters consisted of two initial letters, four issue-  
10 focused letters, and one closing letter.

11           b. an eighth letter, signed by Candidate Boniek's wife  
12 (wife letter), also promoting Candidate Boniek.

13           c. survey forms mailed to Candidates Boniek and Esp by  
14 several corporations. These corporations then sent ten letters attacking Candidate  
15 Esp and promoting Candidate Boniek based on the survey results.

16           d. three glossy postcards from corporations attacking  
17 Candidate Esp.<sup>2</sup>

18           12. An equivalent four-part direct-mail campaign was likely made  
19 available and implemented on behalf of Prouse in the 2010 SD23 Republican  
20 primary election. Because this is a default hearing, the Court's reporting and  
21 disclosure findings are based only on those 2010 SD 23 Republican primary  
22

23 \_\_\_\_\_  
24 <sup>2</sup> Except for the dedicated effort by the Esp family to document his campaign, it is unlikely that  
25 any opposing candidate would be able to collect copies of the full number of direct-mail pieces  
involved in an election.

1 election direct-mail pieces of which the Commissioner was able to produce actual  
2 documentary evidence of printing or mailing.

3           13. Prouse was involved in an undisclosed and unreported 2010  
4 SD 23 Republican primary election direct-mail campaign as follows. Prouse was  
5 part of a selected group of 2010 Republican primary election candidates who  
6 signed up for the maximum direct-mail campaign offered by an affiliated group  
7 of corporations. The corporations involved in this extensive direct-mail effort  
8 (called “the works” or a “shock and awe electoral bombing campaign”) were  
9 as follows:

10           a. Western Tradition Partnership (WTP) was a not-for-  
11 profit corporation organized under the laws of Colorado and also registered in  
12 2010 with the Montana Secretary of State. WTP conducted fundraising around  
13 the 2010 Republican primary election activity and used that money to fund some  
14 of Prouse’s 2010 Republican primary election direct-mail campaign.

15           b. Right to Work (RTW) is a not-for-profit corporation  
16 organized on a national level and as a Montana non-profit corporation. RTW in  
17 Montana targeted the 2010 SD 23 Republican primary election. RTW national  
18 staff, specifically Jedd Coburn, designed and drafted the prototype direct-mail  
19 pieces for Prouse’s campaign and sent the prototype to Montana RTW operatives  
20 Allison LeFer and Christian LeFer. RTW paid some or all of the salaries of the  
21 LeFers and RTW/WTP staffer Jeremy Hofer.

22           c. Direct Mail and Communications, Inc. (Direct Mail)  
23 was a for-profit corporation organized in 2010 under the laws of Colorado and  
24 also registered in 2010 with the Montana Secretary of State. The LeFers managed  
25 Direct Mail as the printing arm for RTW electoral activity in Montana. Direct

1 Mail described itself as a “grassroots direct mail fortress” carrying out “shock and  
2 awe electoral bombing campaigns.”

3 d. WTP’s principal staffer was Christian LeFer. Christian  
4 LeFer was married to Allison LeFer, the president of Direct Mail. Both the  
5 LeFers, along with Jeremy Hofer, were paid by RTW, either directly or through  
6 WTP funds.

7 e. Taxpayers for Liberty was a Montana corporation set  
8 up by and managed by the LeFers and RTW for the purpose of engaging in 2010  
9 Republican primary election activity, including direct-mail activity in Prouse’s  
10 2010 Republican primary election.

11 14. This group of corporate entities and the LeFers engaged in 2010  
12 SD 23 Republican primary election direct-mail activity on behalf of Prouse as  
13 follows:

14 a. WTP’s records show that Prouse received seven  
15 candidate letters. These records show that Prouse received 1,169 intro letters,  
16 1,702 wife letters, 2,267 issue letters (there were four separate issue letters), and  
17 1,872 closing letters.

18 b. the Commissioner demonstrated that this group of  
19 corporate entities sent a total of 7,017 copies of these seven letters to voters in the  
20 2010 SD 23 Republican primary election. Specifically, the Commissioner showed  
21 that:

22 (i) RTW designed, wrote and sent the Prouse  
23 prototype candidate letters from its east coast office into Montana for use  
24 by Direct Mail.

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1 (ii) Direct Mail then printed the final Prouse letters  
2 with design and text virtually identical to the prototype letters. These  
3 candidate letters were mailed out over Prouse's signature. Prouse provided  
4 his model signature which Direct Mail scanned into its printers and used to  
5 reproduce Prouse's signature on each of the 7,017 candidate letters.

6 (iii) the Commissioner examined the WTP records  
7 archive and found signed copies of four of the seven Prouse letters,  
8 including a copy of a wife letter.

9 (iv) the group of corporate entities prepared and mailed  
10 one attack flyer, mailed under the name of Taxpayers for Liberty, and two  
11 attack letters, mailed under the name of Montana Citizens for Right to Work,  
12 in the 2010 SD 23 Republican primary election. The flyer and letters  
13 attacked the opponents of Prouse and supported Prouse.

14 15. Neither Prouse nor any of the corporate entities reported any  
15 of the costs of the 2010 SD 23 Republican primary election letters and flyers  
16 identified in Finding No. 14 as 2010 SD 23 Republican primary election expenses.

17 16. The Court below determines the costs of the letters and flyers  
18 listed in Finding No. 14. In that regard, the Commissioner presented to the Court  
19 the costs used and accepted by Judge Pinski in *Boniek*. The Court determines these  
20 costs as follows:

21 a. Prouse's opening letter work, including mailing list  
22 provision, letter writing and mail piece handling, involved unreported and  
23 undisclosed costs of at least \$1.02 per letter with 1,164 letters making a total of  
24 at least \$1,187 in costs.

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1                   b.     Prouse's issue of four letters work, including mailing  
2 list provision, letter writing and mail piece handling, involved unreported and  
3 undisclosed costs of at least \$1.04 per letter for 2267 letters for a total of at least  
4 \$2358 in costs.

5                   c.     Prouse's wife letter work, including mailing list  
6 provision, letter writing and mail piece handling, involved unreported and  
7 undisclosed costs of at least \$1.28 per letter for 1702 letters totaling at least \$2,179  
8 in costs.

9                   d.     Prouse's final letter work, including mailing list  
10 provision, letter writing and mail piece handling, involved unreported and  
11 undisclosed costs of at least \$0.83 per letter for 1872 letters totaling at least \$1,554  
12 in costs.

13                  e.     two survey-based attack letters sent in Prouse's campaign  
14 had a cost of at least \$1.04 per letter with 1113 letters mailed for a total of at least  
15 \$1178 in costs.

16                  f.     attack flyer sent in Prouse's campaign had a cost of at  
17 least \$0.43 per flyer with 1500 sent for a total cost of at least \$645.

18                  17.    The two political action committees made a contribution of  
19 \$160 each to Prouse that were not reported or disclosed by Prouse on his campaign  
20 finance report.

21                  18.    The seven different candidate letters lack full attribution in that  
22 some were missing a portion of the attribution and others lacked any attribution at  
23 all.

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1           19. Based on the amounts<sup>3</sup> set out in Findings No. 16 and 17,  
2 Prouse failed to report and disclose \$9,101 of in-kind contributions, stemming  
3 from direct-mail expense costs, and \$320 in cash contributions for a total of  
4 \$9,421. Prouse accepted \$9,101 of in-kind contributions from corporations,  
5 stemming from direct-mail expense costs.

6           20. The campaign related cooperation between Prouse and the  
7 corporations was planned and expected. Through the work of its national staff by  
8 payment of the salaries of the LeFers and other WTP staff and by establishing the  
9 Direct Mail printing shop, RTW devoted considerable resources over a substantial  
10 period of time creating the staffing and resource base that allowed the in-kind  
11 corporate expenditures to be made on Prouse's behalf. Through its independent  
12 fundraising, WTP also had funds available to spend on the Prouse 2010 SD 23  
13 Republican primary election campaign, listing the amount it expected to expend  
14 at \$15,000 per senate election. Well before the 2010 primary election, WTP and  
15 Direct Mail each described the plan for an extensive direct-mail campaign in which  
16 during "the final weeks of the election, letters and glossy postcards [would be] sent  
17 to tens of thousands of likely voters and issue-ID lists in our targeted races . . ."  
18 (Pl.'s Trial Ex. (Prouse Ex. 14, Western Traditional Partnership confidential  
19 overview at 3, para. 5).) Prouse had substantial interaction with the corporate  
20 entities involved in this planned direct-mail campaign on his behalf. Specifically,  
21 Prouse provided his signature for use on his candidate letters, returned surveys on  
22 RTW, the wife letter, and agreed to "the works" or the "full shock and awe direct  
23 mail campaign."

24 \_\_\_\_\_  
25 <sup>3</sup> The Court notes that these tend to be conservative figures. For example, the Commissioner did  
not address some costs, such as mailing list development costs, in this matter.



1           4.     Although perhaps not required following Prouse’s default,  
2 the Commissioner provided Prouse with notice of the default judgment hearing.  
3 Prouse did not appear at the default hearing.

4           5.     The Court heard Commissioner’s motion for entry of default  
5 judgment.

6           6.     This Court concludes:

7           a.     Prouse acted in concert with or assigned agency to  
8 corporate entities including Western Tradition Partnership, National Right to  
9 Work, Direct Mail and Communications, Inc., Montana Citizens for Right To  
10 Work and Taxpayers for Liberty and thus coordinated with each and all of the  
11 corporate entities.

12           b.     Prouse violated § 13-35-227(2), MCA, when, through  
13 coordination, he accepted \$9,101 in in-kind contributions from corporations  
14 making expenses in carrying out a direct-mail campaign for his benefit in his  
15 2010 SD 23 Republican primary election.

16           c.     Prouse violated § 13-37-225, MCA, when he failed to  
17 report and disclose \$9,421 in contributions, consisting of \$9, 101 in in-kind,  
18 coordinated contributions plus \$320 in cash contributions to his 2010 SD 23  
19 Republican primary election.

20           d.     Prouse violated §§ 13-35-225, 13-37-216, and 13-37-218,  
21 MCA, respectively, requiring attribution, acceptance of contributions in excess of  
22 limits, and failure to maintain and produce campaign records. The Commissioner  
23 seeks enforcement only as to the attribution failure under § 13-35-225, MCA.

24           Based on the foregoing findings of fact and conclusions of law, the  
25 Court enters the following:

1 **ORDER**

2 **Monetary Penalties**

3 1. Prouse is directed and ordered to pay a civil penalty judgment  
4 in the amount of three times the amount of illegal corporate contributions in the  
5 amount of \$27,303, pursuant to §§ 13-37-128 and -129, MCA.

6 2. Prouse is directed and ordered to pay a separate civil penalty  
7 judgment in the amount of three times the amount of unreported and undisclosed  
8 contributions in the amount of \$28,263, pursuant to §§ 13-37-128 and -129, MCA.

9 3. Prouse is directed and ordered to pay a separate civil penalty  
10 in the amount of \$3,500 based on the failure to attribute each of seven sets of  
11 candidate letters, pursuant to §§ 13-37-128 and -129, MCA, with a penalty of  
12 \$500 determined for each of the seven sets of letters.

13 **Equitable Penalties**

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

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1 benefit of the people of the state.” § 2-2-103, MCA; *see also, Kommers v. Palagi*,  
2 111 Mont. 293, 297, 108 P.2d 208, 210 (1940).

3           5. Prouse exhibited *quid pro quo* corruption in his 2010 SD 23  
4 Republican primary election. Prouse accepted more than \$9,000 in corporate  
5 expenditures that became in-kind contributions to his campaign. The amount of  
6 materials generated by these corporations on behalf of Prouse was very sizeable  
7 in the context of a Montana primary election. Further, Prouse carried out  
8 absolutely no campaign activity on his own and instead accepted a substantial  
9 and vigorous direct-mail campaign that was completely funded and carried out  
10 by third-party corporate entities. As the *quid*, Prouse received the appearance  
11 of a grass roots campaign created by Direct Mail for which he did not pay, report  
12 or disclose. As the *quo*, Prouse promised in return unswerving fealty to the  
13 corporations carrying out the direct-mail campaign on his behalf “100% opposition  
14 to the forced unionism . . . ,” “100% support for right to work,” and “100%  
15 support of WTP’s . . . agenda.”

16           6. Montana’s election laws prohibit corporate contributions  
17 completely, limit contributions from those who can contribute to candidates,  
18 and requires disclosure and reporting of all contributions. Through this system,  
19 Montana attempts to insure that the loyalty of an office holder is to his or her  
20 constituents, voters and lawful contributors, all as disclosed and understood by  
21 the Montana public. There is substantial and severe harm, *i.e.* corruption, to  
22 Montana’s public trust expectations when the corporate donors to Prouse’s  
23 campaign make unlawful contributions to start with and when the amounts they  
24 spend are far in excess of any limits even if they were allowed. Virtually all of  
25 the funds creating the 100 percent fealty by Prouse are not even reported or

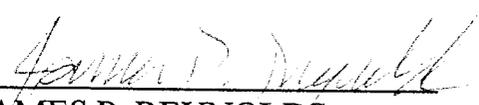
1 disclosed. Prouse owed 100 percent fealty to his unreported and undisclosed  
2 corporate sponsors. This certainly corrupts public trust in Montana's elections.  
3 Given the conclusion as to this *quid pro quo* corruption, the Court concludes the  
4 following equitable remedies are appropriate:

5 a. Prouse is prohibited from filing and running for public  
6 office until such time as he files supplemental 2010 campaign finance forms  
7 reporting and disclosing the \$9,421 in campaign contributions and expenditures,  
8 in accordance with the factual findings and legal conclusions set forth above.  
9 §§ 13-35-108 and 13-37-201 et seq., MCA.

10 b. Prouse is prohibited from filing and running for public  
11 office until such time as he pays the civil fines for his violations of the Montana  
12 Campaign Finance and Practices law as set forth above under the Monetary  
13 Penalty portion of this Order.

14 ***Let Judgment Be Entered Accordingly.***

15 DATED this 5 day of January 2016.

16  
17   
18 JAMES P. REYNOLDS  
19 District Court Judge

20 Copies of this Order are provide to:

21 Jamie MacNaughton, PO Box 202401, Helena, TM 59620-2401  
22 jmacnaughton@mt.gov

23 Gene R. Jarussi/John Heenan, 1631 Zimmerman Tr., Billings, MT 59102  
24 genejarussi@bishopandheenan.com; john@bishopandheenan.com

25 Wesley Prouse, 5464 Pollyanna Drive, Shepherd, MT 59079

By Judicial Assistant Denise Hartman this 5 day of January 2016.