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Attorneys for Plaintiffs Western Tradition Partnership

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

WESTERN TRADITION PARTNERSHIP, a corporation registered in the State of Montana; and MONTANA CITIZENS FOR RIGHT TO WORK, INC., a Montana corporation; MONTANA SWEET GRASS COUNCIL FOR COMMUNITY INTEGRITY, an unincorporated association; and ROES 1 -- 50,

Plaintiffs,

vs.

James Murry, in his official capacity as Commissioner of Political Practices; STEVE BULLOCK, in his official capacity as Attorney General of the State of Montana;

Defendants.

and

James Murry in his official capacity as Commissioner of Political Practices,

Counterclaim Plaintiff,

vs.

WESTERN TRADITION PARTNERSHIP,

Counterclaim Defendant.

Cause No.: BDV 2010-1120

Judge: Jeffrey M. Sherlock

**MOTION FOR PROTECTIVE ORDER
AND RETURN OF DOCUMENTS**

COMES NOW Plaintiff Western Tradition Partnership (“WTP”), by and through its undersigned counsel, and files a Motion for Protective Order pursuant to Rule 45, M.R.Civ.P. This Motion is intended to cover documentation/materials apparently produced by Wells Fargo Bank, NA in response to a Subpoena sent by counsel for the Defendants on or about May 16, 2012, a copy of which is attached hereto as Exhibit 1. The materials produced appear to include WTP’s information that is subject to multiple claims of privilege asserted under the First Amendment by WTP and presently under consideration by this Court. WTP did not initially object because the Subpoena seeks information related to Account # 127-7388789, which is owned by non-party, CEE, and a FEIN that belongs to CEE. Further, there is no indication that CEE ever received notice of the Subpoena. Last night, WTP first became aware that some of its banking information and accounts may have been produced in response to the Subpoena. Wells Fargo has confirmed today that materials relating to WTP’s accounts were mailed to Defendants on or about June 18, 2012 in response to the Subpoena.

Pursuant to Rule 45(e)(2)(B), M.R.Civ.P., counsel for Defendants has been notified by telephone that some of the materials produced by Wells Fargo are subject to a claim of privilege and that the scope of discoverable information is presently pending before the Court. Counsel for Plaintiff requested that the State not open anything sent to them by Wells Fargo and to turn such materials over to the Court until such time as WTP’s First Amendment privilege claims are resolved. Defendant’s counsel represented that he would not commit to the same until the matter was discussed with the Court.

As a result, WTP moves this Court for an order requiring the Defendants and their counsel to turn over to the Court any materials received from Wells Fargo in response to the May 16, 2012 and to do so without opening the envelope or reviewing the materials sent. WTP

then moves to have the Court segregate the materials produced on Account # 127-7388789, which is owned by non-party CEE and was the account subject to the Subpoena, from any materials produced relating to WTP-owned bank accounts. Finally, WTP requests that the materials containing WTP's information be returned to WTP through its counsel.

DATED this 21st day of June, 2012.

DONEY CROWLEY PAYNE BLOOMQUIST P.C.



James E. Brown
John E. Bloomquist
Attorneys for Plaintiffs Western Tradition Partnership

CERTIFICATE OF SERVICE

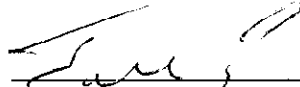
I hereby certify that a true and correct copy of the foregoing *Motion for Protective Order & Return of Documents* was served via personal hand delivery on this 21st day of June, 2012,

upon the following:

Andrew Huff

Assistant Attorney General

Attorney for Defendant Steve Bullock, Montana Attorney General.



James E. Brown
Attorney

RECEIVED
MAY 17 2012
By JER, JB, ASB

STEVE BULLOCK
Attorney General
ANDREW I. HUFF
MICHAEL G. BLACK
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STEVE BULLOCK

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COUNSEL FOR DEFENDANT AND
COUNTERCLAIM PLAINTIFF MURRY

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

WESTERN TRADITION PARTNERSHIP, a
corporation registered in the State of Montana;
and MONTANA CITIZENS FOR RIGHT TO
WORK, INC., a Montana corporation; SWEET
GRASS COUNCIL FOR COMMUNITY
INTEGRITY, an unincorporated association;
and ROES 1- 50,

Plaintiffs,

v.

JAMES ("JIM") MURRY, in his official
capacity as Commissioner of Political Practices;
STEVE BULLOCK, in his official capacity as
Attorney General of the State of Montana;

Defendants,

and

)
) Cause No. BDV 2010-1120
)
) **SUBPOENA FOR PRODUCTION**
) **OF DOCUMENTS AND**
) **ELECTRONICALLY STORED**
) **INFORMATION**

Exhibit 1

JAMES ("JIM") MURRY, in his official
capacity as Commissioner of Political Practices,
Counterclaim Plaintiff,
v.
WESTERN TRADITION PARTNERSHIP,
Counterclaim Defendant.

THE STATE OF MONTANA SENDS GREETINGS TO:

Wells Fargo Bank, N.A.
c/o Corporation Service Company
P.O. Box 1691
26 West Sixth Avenue
Helena, MT 59624-1691

We command you, pursuant to Mont. R. Civ. P. 45, relevant portions which are attached hereto and by this reference incorporated herein, that, all and singular business and excuses being laid aside, you produce the following documents and electronically-stored information: *See Ex. A*, attached. To the extent practicable, production of electronically-stored information shall be in both adobe PDF and Microsoft Excel spreadsheet formats.


Production of said documents and electronically-stored information shall be delivered at the offices of the Attorney General of Montana, 215 North Sanders, Helena, Montana 59601, or P.O. Box 201401, Helena, Montana, 59620-1401. Production shall occur on or before **June 18, 2012**. Disobedience will be punished as contempt by the said Court.

This subpoena remains in effect unless quashed or until judgment, dismissal, or other final determination of the action by the Court.

ATTEST my hand and the seal of said Court this 16th day of May, 2012.

By Order of:

STEVE BULLOCK
Montana Attorney General
ANDREW I. HUFF
MICHAEL G. BLACK
Assistant Attorneys General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

By: 
MICHAEL G. BLACK
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing document to be mailed to:

Mr. John E. Bloomquist
Mr. James E. Brown
Ms. Hollie Lund
Doney, Crowley, Bloomquist, Payne, Ida P.C.
P.O. Box 1185
Helena, MT 59624-1185

DATED: 16 MAY 2012



ATTACHMENT TO SUBPOENA

Mont. R. Civ. P. 45 provides:

....

(d) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction--which may include lost earnings and reasonable attorney fees--on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance not Required.* A person commanded to produce designated documents, electronically-stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce designated materials or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the designated materials or to inspecting the premises--or to producing electronically-stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expenses resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's

officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person - - except that, subject to Rule 45(d)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party;

(iii) Or

(iv) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3) (B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically-Stored Information.*

These procedures apply to producing documents or electronically-stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form of Producing Electronically-Stored Information Not Specified.* If a subpoena does not specify a form for producing

electronically-stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically-Stored Information Produced in Only One Form.*

The person responding need not produce the same electronically-stored information in more than one form.

(D) *Inaccessible Electronically-Stored Information.* The person responding need not provide discovery of electronically-stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of the undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly assert the claim; and
- (ii) describe the nature of the withheld documents, communications, or things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person *making* the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(f) **Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45 (d)(3)(A)(ii).

EXHIBIT A

In connection with this Subpoena Duces Tecum, the following definitions apply:

- A. The term "document," as used herein, means any writing and any other tangible thing whether printed, recorded, electronically stored, reproduced by any process, or written or produced by hand--including, but not limited to, letters, e-mails, reports, agreements, contracts, invoices, billings, purchase orders, receipts, communications (including intra-company communications), correspondence, telegrams, memoranda, summaries or records of personal conversations, formal or informal notes, diaries, forecasts, photographs, tape recordings, models, statistical statements, graphs, laboratory and engineering reports and notebooks, charts, plans, drawings, minutes or records of conferences, expressions or statements of policy, lists of persons attending meetings or conferences, reports and/or summaries of interviews, reports and/or summaries of investigations, opinions or reports of consultants, appraisals, records, reports or summaries of negotiations, brochures, pamphlets, advertisements, circulars, trade letters, press releases, drafts of any document, revisions of drafts of any document and original or preliminary notes. Any comment or notation appearing on any document, and not a part of the original text, is to be considered a separate "document."
- B. "Relating to" and/or "in relation to" means pertinent, relevant or material to, evidencing, having a bearing on, or concerning, affecting discussing, dealing with, considering or otherwise relating in any manner whatsoever to the subject matter of the inquiry.
- C. The term "you" and/or "your" shall mean Wells Fargo Bank, N.A.

YOU ARE COMMANDED to bring with you the following documents and electronically-stored information:

- 1. As to your Account No. 127-7388789:
 - a. All signature cards or other documents evidencing which person(s) have authority to withdraw funds or control disposition of funds held in such account;
 - b. All deposit records for such account, including but not limited to, copies or images of deposit tickets, checks or drafts deposited in such account, and deposit receipts;
 - c. All disbursement records for such account, including but not limited to copies or images of checks or drafts drawing funds from the

account, records of any cash withdrawals, and records of any A.T.M. withdrawals;

- d. All statements provided to the owner or holder of the account, or an authorized representative, that reflect any transaction related to the account;
 - e. All CTR, MIL, or SAR logs or reports relating to such account; and
 - f. All other notations, memoranda, or records relating to such account.
2. As to any other account with you which the account owner, holder, or authorized representative, has opened or maintained such account under Federal Employer Identification No. 26-2289809:
- a. All signature cards or other documents evidencing which person(s) have authority to withdraw funds or control disposition of funds held in such account;
 - b. All deposit records for such account, including but not limited to, copies or images of deposit tickets, checks or drafts deposited in such account, and deposit receipts;
 - c. All disbursement records for such account, including but not limited to copies or images of checks or drafts drawing funds from the account, records of any cash withdrawals, and records of any A.T.M. withdrawals;
 - d. All statements provided to the owner or holder of the account, or an authorized representative, that reflect any transaction related to the account;
 - e. All CTR, MIL, or SAR logs or reports relating to such account; and
 - f. All other notations, memoranda, or records relating to such account.