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RECEIVED

SEP 21 2012

TORNEY GENERALS OFFICE  
HELENA, MONTANA

*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**

COMES NOW Plaintiff Western Tradition Partnership ("WTP"), by and through its undersigned counsel, and files a Motion for Protective Order pursuant to Rule 26, M.R.Civ.P. This Motion is intended to prohibit from public disclosure and public distribution WTP's private, property financial information that is contained in financial documents produced by Wells Fargo Bank in response to a Subpoena sent by counsel for the Defendants on or about May 16, 2012.

The materials produced include WTP's financial records and information, as well as donor information, the content of which are subject to multiple claims of privilege asserted under the First Amendment by WTP. This material was subject to a protective order entered by this Court on or about June 21, 2012. A copy of this Court's protective order is attached to the Brief in Support of this Motion.

In late August, this Court turned over those financial documents to the State of Montana, the Defendants in this action. On or about September 12, 2012, James Scheier, counsel contacted the undersigned via letter notifying Plaintiffs' counsel that PBS Frontline, a news organization with nationwide reach, has requested that the State turn these documents over to them so that they can, presumably, review and publicly broadcast the content of those documents. A copy of the State's letter and the accompanying request from PBS are also attached to the Brief in Support of this Motion.

Pursuant to Rules 45(e)(2)(B) and 26, M.R.Civ.P., counsel for Defendants, James Scheier, has been notified by telephone and email that materials produced by Wells Fargo relating to WTP are still subject to a claim of privilege by Plaintiff WTP and that this Motion to extend the Court's protection order would be forthcoming. Plaintiff WTP's position is that these documents are not part of the court record, are protected from public disclosure by the well-

recognized First Amendment privilege. Plaintiff WTP requested that the State not turn those materials over to PBS until and unless this Court denies this request for a protective order.

The PBS request to examine confidential and non-public materials is the type of damage that WTP sought to prevent when filing this lawsuit. One of the claims for relief pending before this Court by WTP is to prevent public inspection of WTP's financial records until such time as it was determined as a matter of law, and pursuant to a final judgment, that WTP is a political committee under Montana law. Again, allowing PBS to receive, inspect publicize, and broadcast nationally WTP's financial information will result in denying WTP one of its claims for relief before this case is even resolved on the merits.

As a result, WTP moves this Court to issue a protective order preventing the State from disclosing to PBS specifically or to any other person or entity who is not a party to this case WTP's private financial records.

Pursuant to Rule 26(c)(1), WTP's counsel has contacted and conferred with Jim Scheier, the Commissioner of Political Practices' counsel regarding this motion and regarding WTP's request that the State not turn over WTP's commercial information prior to the conclusion of this case. Mr. Scheier indicates that the State Defendants oppose this Motion and will turn the material over to PBS without action from this Court.

A Brief in Support of this Motion is file contemporaneously herewith. A proposed Order is also submitted herewith for the Court's consideration.

DATED this 20<sup>th</sup> day of September, 2012.

DONEY CROWLEY PAYNE BLOOMQUIST P.C.




John E. Bloomquist/John Brown  
*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* was served via U.S. First Class Mail, postage-prepaid on this 20<sup>th</sup> day of September, 2012, upon the following:

Steve Bullock, Attorney General  
Michael Black/Andrew I. Huff  
215 North Sanders  
P.O. Box 201401  
Helena, MT 59620-1401  
*Attorney for Defendants Steve Bullock and State of Montana*

James M. Scheier  
Agency Legal Services Bureau  
1712 Ninth Avenue  
P.O. Box 201440  
Helena, MT 59620-1440  
*Attorney for Defendant and Counterclaimant Commissioner of Political Practices*

  
Audrey J. Blomquist, Paralegal

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jbbrown@doneylaw.com

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TORNEY GENERALS OFFICE  
HELENA, MONTANA

*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

**BRIEF IN SUPPORT OF MOTION  
FOR PROTECTIVE ORDER**

COMES NOW Plaintiffs Western Tradition Partnership (“WTP”) and files this Brief in Support of its Motion (September 19, 2012) for a protective order to prohibit State Defendants from turning over WTP’s confidential financial information to PBS specifically or to any party who is not a party to this case. In support of its Motion, WTP states as follows:

**I. INTRODUCTION**

As the Court is well aware, this case involves a facial and as-applied to various provisions of Montana’s Campaign Finance and Practices Act, as amended. Specifically, Plaintiff WTP has alleged that the Commissioner of Montana is wrongly attempting to regulate WTP as a political committee and that the Act’s compelled disclosure provisions violate WTP’s First Amendment rights of freedom of speech and association.

As the Court is also aware, one of the requests for relief requested by the Plaintiffs in the Second Amended Complaint in this matter is a request for an order, pursuant to Mont. Code Ann. §27-19-201, permanently enjoining all Defendants in this case, including Steve Bullock, from conducting any further investigation into, or seeking the disclosure through documents or testimony of Plaintiffs’ speech and associate communications or financial documents, disclosure of the identities of their contributors, or any communications or documents concerning political strategies or their political associations. *See*, Second Amended Complaint, Prayer for Relief, Paragraph 21, p. 61 (September 8, 2011). Further, WTP has asserted in numerous court-filed documents that it will be denied one of the requests for relief in this case if its private, financial information and/or the names of its donors are made available to the public. *See*, WTP’s Response in Opposition to the State’s Motion to Compel (Dec. 27, 2011); *see, also*, WTP’s Motion for Protective Order (June 21, 2012). A copy of the Court’s order of June 24, 2012 is included herewith as Exhibit “A”.

One basis for the relief sought in the complaint is that unless WTP is determined by a Court of Law to be a "political committee" as that term is defined under Montana law and regulation, the State of Montana has no authority to regulate them in in the first instance and, further, neither they nor the public has no cognizable interest in forcing them to disclose to the State or to the public their constitutionally protected speech and association activities, including WTP's confidential commercial and business information or its donor information.

On or about June 24, 2012, this Court recognized the harm that will accrue to WTP if its financial information is released publicly when it issued an order protecting from public disclosure Plaintiff WTP's financial information obtained as a result of a subpoena sent to Wells Fargo by the State. However, over objections of WTP specified in WTP's Response in Opposition to State's Motion to Compel and as specified in in WTP's responses to the State's First and Second Discovery Requests, and in the face of First Amendment privilege assertions, the Court has since released WTP's financial information to the State Defendants.

In realization of WTP's fears and as WTP stated would happen, the State of Montana has received a request from a national news organization, PBS, to obtain copies of WTP's private, confidential financial and donor information. By letter of September 12, 2012, the attorney for Defendant Commissioner, Jim Scheier, notified the undersigned of this request by PBS and the State's intent to turn over to PBS copies of WTP's financial records unless WTP objected to the public disclosure of its financial information. A copy of these communications is attached as Exhibit "B". On September 11, 2012, the undersigned counsel notified Defendant's counsel by email that it objected to the public disclosure of its financial information. A copy of this email is attached as Exhibit "C". And, again, in a phone call of September 19, 2012, Plaintiffs' counsel informed Defendant's counsel that WTP objected to the public disclosure of its financial

information, as well as disclosure of contributor information, and that WTP intended to file the attached Motion for Protective Order to prevent the public disclosure of the same.

Given the nature of this suit, the First Amendment challenges raised herein, and the claims for relief requested, Plaintiff WTP strongly objects to the State making public its financial and donor information prior to the resolution of this lawsuit. The release of such information will be highly prejudicial to WTP, and its use by a national news organization will cause great injury to the organization that cannot be remedied once the information is released, reviewed and used. Further, WTP strongly opposes this request on the grounds that PBS is not entitled to this information as it is not part of the existing court record and, therefore, the information is not public information that can be obtained by an entity or person who is not a party to this case.

Given that WTP has not been found as a matter of law to be subject to regulation by the State of Montana, neither the Defendants nor any member of the public have any right to make WTP's financial information publicly available and to publish the information. Clearly, protection of WTP's confidential, private information is warranted here and WTP is entitled to this immediate form of relief while WTP pursues its claims under the First Amendment to the United States Constitution.

Again, the very essence of this case is that the First Amendment protects Plaintiff WTP from being forced to reveal the identities of their donors, the identities of the groups and persons with whom WTP associates, and from being forced to reveal its financial information either to the State or to the public. If the State makes publicly available WTP's financial information, Plaintiff WTP will be denied its right to obtain the legal relief it requests. *See, NAACP v. Alabama*, 357 U.S. 449, 459. Thus, Plaintiff WTP requests this Court issue an order protecting



WTP's financial information from public disclosure unless this Court, or another court, enters a final judgment determining that WTP is a 'political committee' as defined under Montana law. However, because Plaintiffs understand the State will try to use some of these documents in their dispositive motions or at trial, Plaintiffs request that the Court order that any use of this information be filed under seal.

## II. ARGUMENT

Rule 26(c) empowers this Court to issue orders for the protection of parties and their confidential information during the litigation process. This includes orders to prohibit the disclosure of certain matters obtained through discovery when there is good cause to do so. Mont. R. Civ. P. 26(c)(1)(A). The Ninth Circuit Court of Appeals has made clear that a party is entitled to an order protecting the rights of non-parties, particularly donor information, when the party believes its own rights or interests are jeopardized by the non-party discovery or by the public disclosure of speech and association information. *See, Perry v. Schwarzenegger*, 591 F.3d 1147 (9<sup>th</sup> Cir., 2010); Wright, Miller & Marcus, Federal Practice and Procedure: Civil 3d § 2035; The issuance of a protective order is particularly warranted where a party is invoking a First Amendment privilege in objection to discovery and the assertion is made to protect the vindication of First Amendment rights. *See, FEC v. WRTL*, 551 U.S. 449, 468-69 (2007) (finding that a challenge to political speech regulations "must entail minimal if any discovery" and that the discovery permitted by the district court was erroneous and constituted a severe burden on free speech). This is because the disclosure of protected speech and association during the court of the legal challenge.

*A. Good cause exists to issue a protective order here. This is WTP will be significantly prejudiced and harmed should the State Defendants publicly disclose to PBS or any other non-party WTP's financial records and donor information. However, the State suffers no harm by the granting of a protective order.*

Under Mont. R. Civ. P. R. 26, good cause exists to issue a protective order in this case to prohibit the State from disclosing to PBS or to any other non-party entity WTP's financial information and donor information. This is because the State has no interest in disclosing information, particularly information about other nonparties, obtained in discovery to a nonparty to the proceeding. *See, Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d* § 2037.

Furthermore, the First Amendment protects against the public disclosure of documents subject to a First Amendment Privilege prior to a determination on the merits of the First Amendment challenge. *See, Buckley v. Valeo*, 424 U.S. 1, 64-68 (1976); *Perry v. Schwarzenegger*, 591 F.3d 1147 (9th Cir. 2010). And courts have made clear that requiring the release of documents subject to a privilege destroys the very privilege asserted. *See, In re Von Bulow*, 828 F.2d 94, 98 (2<sup>nd</sup>. Cir., 1987).

Court across the country have also recognized that compelled disclosure of documents can seriously infringe on privacy of association, belief and can chill First Amendment speech. *See, Davis v. F.E.C.*, 128 S.Ct. 2759, 2774-75 (2008) (quoting *Buckley, supra*). As noted previously, this case involves the very question of whether WTP has to disclose its financial information to the State of Montana as asserted by the State Defendants, and only then if it has to disclose financial information related to paying for flyers sent out during the 2008 election cycle. Thus, this case differs significantly from the typical civil lawsuit where a party may seek leave to file documents under seal or to protect its documents from public disclosure.

This case is a pure First Amendment challenge where Plaintiff WTP asserts that Montana no interest sufficient to justify compelled disclosure, public or otherwise, of WTP's political speech and association activities. Thus, if the Court does not issue a protective order protecting the public release of WTP's financial documents, the Court will be perpetuating the very harm that Plaintiffs seek to redress through this suit. That is, unless this Court protects against the public disclosure of Plaintiffs' financial information and donor information, there is no meaningful way for Plaintiffs to protect and assert their First Amendment rights without first suffering the court-recognized harm of public disclosure.

Case law makes clear that "the loss of First Amendment freedoms and protections, even for minimal periods of time, unquestionable constitutes irreparable injury. *See, United Food & Commercial Workers Union, Local 1099 v. Southwest Ohio Regional Transit Authority*, 163 F.3d 341, 363 (6<sup>th</sup> Cir. 1998). If the State makes WTP's financial records available at this point and then later determines that WTP cannot be regulated by the State of Montana, WTP's legal victory will be rendered hollow and meaningless. This is the very definition of burden and prejudice to a litigating party. *See, Mont. R. Civ. P. 26.*

Finally, WTP's associational interests will be seriously jeopardized by the public disclosure of its internal communications, finances and donor information at any time, but especially prior to a determination that WTP can even be constitutionally regulated by the State of Montana. The chilling effect of the release of this information on its membership and fundraising would be severe. *See Anderson v. Cryovac, Inc.*, 805 F.2d 1, 7-8 (1st Cir. 1986); *See, also Aff. of Donny Ferguson, WTP Executive Director.* The law makes clear that WTP, as the donee, may assert privileges on behalf of their membership. *See, NAACP v. Alabama*, 357 U.S. 449, 458-60 (1958).

What is more, the release of such information is not necessary to the State's prosecution of its case. The State suffers no burden or prejudice due to the grant of a protective order preventing disclosure of WTP's confidential information to a nonparty. However, as stated, the release of such information prior to a determination on the merits in this case is, on its face, burdensome on WTP's donors and their associational right.

Rules 26 and 30, as well as the First Amendment, firmly support a protective order in this particular case. The annoyance, embarrassment, oppression, and undue burden and expense involved in the release to a national news entity of WTP's private, confidential information far outweighs any need or benefit to the Defendants. As a result, Plaintiff WTP's Motion for Protective Order should be granted.

*B. The Entity requesting the information is not a party to this suit, and has not provided this Court with either a request for or provided a basis for their interest in obtaining WTP's financial information.*

The United States Supreme Court has held that compelled disclosure of information subject to a First Amendment privilege assertion and a First Amendment legal challenge cannot be justified by some mere showing of some legitimate government interest. Rather, the entity requesting disclosure must show some legitimate government interest and that interest must survive exacting scrutiny. *See, WRTL*, 551 U.S. at 468-69; *see, also, FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 289-90 (D.C. Cir. 1981).

Here, the requesting party, PBS Frontline, is not even a party to this case. Further, PBS Frontline has neither requested that this Court authorize the release of the records, nor requested that Plaintiff WTP provide a copy of the records. Rather, PBS had decided to obtain this confidential information by backdoor means, namely by requesting the information through an adverse party – a party it knows will be friendly to the request due to the State's desire to force WTP to publicly disclose its speech and association activities. *See, Counterclaim of*

Commissioner of Political Practices (Dec. 30, 2010). More important, since the requested documents are not part of the public record in this case, PBS has no right to access them now or at any point.

As noted above, this is the type of request WTP knew it would have to deal with as a result of the Commissioner's unsupported, adverse administrative decision in the Matter of the Complaint Against Western Tradition Partnership and Coalition for Energy and the Environment (Oct. 30, 2010). It is because of a request such as this and the forced public disclosure of WTP when it brought this suit. This is because of this type of request that WTP has been hesitant to respond to the unconstitutionally broad requests by the State for donor information, membership lists, internal campaign communications, and for information not even remotely relevant to the underlying administrative decision at issue in this case.

In the Ninth Circuit, there is a "strong presumption in favor of access to court records." Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1135 (9th Cir. 2003). However, for the public to access the material, the requested information must be by its very definition "a public record". In this case, WTP's financial information and donor information is clearly neither a public record nor has it been made a public record by a judicial filing, such as by means of a motion, by either the Plaintiff or the State Defendants. Thus, the presumption of public inspection of judicial records is not even implicated in this case, and the State Defendants have no legal authority to turn over information to a non-party entity where the requested information is subject to multiple claims of privilege against disclosure. *See*, WRTL (supra); *see also*, Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1179 (9th Cir. 2006) (emphasis added). "[C]ompelling reasons" sufficient to outweigh the public's interest in disclosure of judicial filings and justify sealing court records exist when such court filings, such as a motion

for summary judgment, might have become a vehicle for improper purposes,” such as for the use of a court filing to gratify private spite, to embarrass, to punish a party, to promote public scandal, to circulate libelous statements, or to release trade secrets or other private financial information. *Id.* (citing Nixon v. Warner Communications, 435 U.S. at 598).

Again, the standard for granting public access to a litigants private and confidential documents contemplates that the documents will have first become a part of the official court record before the public may even ask for the right to view them. WTP’s financial information and donor information are not a part of the public record in this judicial proceeding. Further, as courts around the country have stated, in First Amendment cases, courts must use its supervisory power over the discovery process to ensure that a party’s first amendment rights of speech and association are not burdened by public disclosure of materials that ultimately the State and the public have no right to access in the first instance. *See, WRTL, supra; Schwarznegger supra.* This heightened protection is particularly appropriate in a case where a nonparty is seeking the information for mere curiosity or publicity purposes. Such is the case in this instance where a news organization is requesting the information to do a story on WTP’s financial information and donors. *See, Exhibit “B”.* This is the type of improper and burdening use of private information that Mont. R. Civ. P. 26 contemplates protecting.

Here, PBS and other members of the public will be able to access judicial information once the appropriate court pleadings are filed, such as at the time dispositive motions are filed. Such access to the actual judicial record satisfies the public right’s to know. Even so, Plaintiffs herein request that for any dispositive pleading filed with the court, the parties be ordered to redact any personal identifying information and to file the unredacted copies with the court under seal. Such an action will prevent the clearly harm and prejudice to Plaintiffs that will accrue if

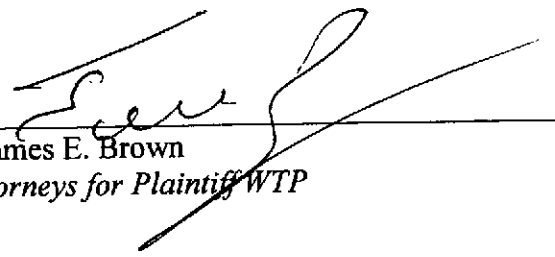
this protective order is not granted, and will only place a marginal restriction on the public's right of access to access 'actual' court documents once those documents are filed.

### III. CONCLUSION

For the foregoing reasons, WTP respectfully requests that the Court grant its Motion of September 20, 2012. Such Motion requests the Court issue an order pursuant to Mont. R. Civ. P. R. 26 protecting WTP's private financial and donor information as produced by Wells Fargo to the State's subpoena from disclosure to any nonparty, including PBS, until such time as it is determined that WTP is a political committee under Montana law and, if such determination is made, that disclosure only need be made to the extent disclosure is required under the applicable Montana codes. Further, the Motion requests that in any motion or pleading filed with the Court redact the name of any donors or identifying donor information.

DATED this 20<sup>th</sup> day of September 2012.

DONEY CROWLEY PAYNE BLOOMQUIST P.C.

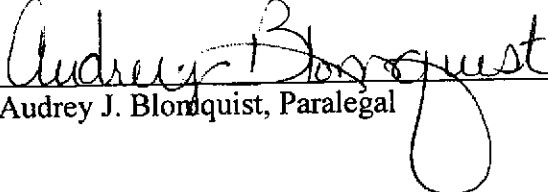
  
By James E. Brown  
*Attorneys for Plaintiff WTP*

**CERTIFICATE OF SERVICE**

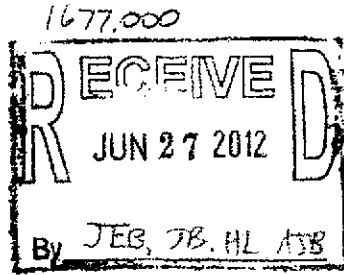
I hereby certify that a true and correct copy of the foregoing *Brief in Support of Motion for Protective Order* was served, postage prepaid, via first class U.S. mail on this 20<sup>th</sup> day of September, 2012, upon the following:

Steve Bullock, Attorney General  
Michael Black/Andrew I. Huff  
215 North Sanders  
P.O. Box 201401  
Helena, MT 59620-1401  
*Attorney for Defendants Steve Bullock and State of Montana*

James M. Scheier  
Agency Legal Services Bureau  
1712 Ninth Avenue  
P.O. Box 201440  
Helena, MT 59620-1440  
*Attorney for Defendant and Counterclaimant Commissioner of Political Practices*

  
Audrey J. Blomquist, Paralegal





CLERK OF DISTRICT COURT  
LEWIS AND CLARK COUNTY  
MONTANA

JUN 25 11 59 05

T. DILLMAN

MONTANA FIRST JUDICIAL DISTRICT, LEWIS AND CLARK COUNTY

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

ORDER GRANTING PROTECTION AND RETURN OF DOCUMENTS

Upon review of Plaintiffs' June 21, 2012 Motion for Protective Order and Return of Documents, after conducting a hearing with Plaintiffs' and Defendants' counsel regarding the

ORDER



merits of the Plaintiffs' Motion, and in light of the fact that the documents at issue are presently subject to a First Amendment privilege assertion by Plaintiff WTP, and for good cause appearing therefore,

IT IS HEREBY ORDERED that:

1. Plaintiffs Motion for Protective Order is GRANTED;
2. Defendants are ORDERED,, upon receipt of materials produced by Wells Fargo Bank in Response to Defendants' May 15, 2012 subpoena, to immediately turn over to the Court the materials produced in response to the Subpoena. The Defendants are ORDERED not to open the materials or to any way review or copy them. Any such action will be subject to a contempt order by this Court;
3. Pursuant to the Court's oral order, the Court will SEGREGATE, to the extent such materials can be identified, the financial materials produced relating to the Montana PAC, the Coalition for Energy and the Environment and make those materials available to both parties; and
4. And any materials produced not related to CEE will not be released by the Court to the State until such date as this Court rules on the merits of the Plaintiffs' First Amendment privilege claims and determines the relevancy of the materials to the claims involved in the underlying case. These discovery matters are presently under the Court's advisement and consideration.

DATED this 24 day of June, 2012.

**JEFFREY SHERLOCK**

Honorable Jeffrey Sherlock  
District Court Judge

cc: James E. Brown  
Steve Bullock/Andrew Huff/Michael Black; James Schier

STATE OF MONTANA  
DEPARTMENT OF JUSTICE  
AGENCY LEGAL SERVICES BUREAU

1677 000  
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SEP 13 2012  
BY JEB, JB, ATB

Steve Bullock  
Attorney General



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September 12, 2012

Mr. James E. Brown  
Doney Crowley Payne Bloomquist, P.C.  
Diamond Block, Suite 200  
44 West 6th Ave.  
P.O. Box 1185  
Helena, MT 59624-1185

Re: Western Tradition Partnership, et al. v. James "Jim" Murry, et al., First Judicial District  
Court, Lewis and Clark County, Cause No. BDV 2010-1120

Dear Jim:

Enclosed is an emailed request from Emma Schwartz of the PBS Frontline program, requesting copies of the bank records released to the State by the District Court. It is our position that these documents are public records that can be made available for inspection by the requesting party, with redactions to delete account or routing numbers and other private information.

The purpose of this letter is to advise you that we intend to make the documents available for inspection by PBS unless you state a valid legal basis that would prohibit us from doing so. If you have an objection please contact me no later than September 21, 2012, to discuss it, otherwise we will make the documents available after that date.

Sincerely,

AGENCY LEGAL SERVICES BUREAU

Handwritten signature of Jim Scheier in cursive.

JIM SCHEIER  
Assistant Attorney General

jms/clr

Enc.

c/enc: Jim Murry  
Mike Black  
Andy Huff

TELEPHONE: (406) 444-2026 FAX: (406) 444-4303



**Scheier, James**

**From:** Steab, Julie  
**Sent:** Tuesday, September 11, 2012 4:27 PM  
**To:** Scheier, James  
**Subject:** FW: Document Request

**From:** Emma Schwartz [mailto:emmarschwartz@gmail.com]  
**Sent:** Tuesday, September 11, 2012 9:52 AM  
**To:** Steab, Julie  
**Cc:** Rick Young  
**Subject:** Document Request

Ms. Julie Steab:

I'm a reporter with PBS Frontline and working on a documentary on campaign finance in Montana. As part of the piece we're looking at the group that has been central to challenging the state's campaign finance laws, Western Tradition Partnership. I understand that the district court has released bank records to the state for WTP and a related entity, Coalition for Energy & the Environment. Because we're doing a story on the group, we would like copies of those bank records as soon as possible to help further our reporting. We are willing to pay for copies and shipping of the material.

Please let me know if you have any additional questions. I look forward to hearing from you soon.

Thanks.

Best,  
Emma

---

Emma Schwartz  
PBS Frontline  
o: 202.885.6432  
c: 202.352.5605

## Jim Brown

---

**From:** Jim Brown  
**Sent:** Monday, September 17, 2012 5:18 PM  
**To:** 'Scheier, James'  
**Subject:** jim -- received this letter  
**Attachments:** 1677 scheier ltr.pdf

Thank you for the notice, and the opportunity to object. As you know, one of the claims for relief in WTP's suit is to prevent the public disclosure of WTP's financial information and donor information. Clearly, if the financial documents obtained by the State as a result of discovery in this matter are disclosed to a news organization, which then would run them in a broadcast aired to millions of America, that would defeat the purpose of the plaintiffs' lawsuit. The sharing of this information would also result in the disclosure of WTP's confidential and proprietary financial information.

In light of this, I intend to draft a request for protective order tomorrow, protecting from public disclosure the information obtained by the State as a result of its subpoena. Until the judge rules on that motion, I request that the state not disclose WTP's financial information to any party beyond those involved in the present lawsuit, WTP v. State of Montana.

Thank you

Jim Brown  
Attorney at Law



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

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

Counterclaim Defendant.

Cause No.: BDV 2010-1120

Judge: Jeffrey M. Sherlock

(PROPOSED)

**ORDER GRANTING MOTION FOR  
PROTECTIVE ORDER**

Plaintiff Western Tradition Partnership (WTP) having filed a Motion and Brief in Support of the Motion for a Protective Order to prevent State Defendants from publicly

disclosing WTP's financial records until such time as this Court of competent jurisdiction enters a final order in this matter that determines as a matter of law that WTP is a 'political committee' under Montana law, and based on this Court's Protection Order entered June 21, 2012, and for good cause appearing therefor;

IT IS HEREBY ORDERED, that

- (1) The State Defendants are prohibited from publicly disclosing or making publicly available to any non-party any financial records of WTP that were obtained by the State as a result of their Subpoena to Wells Fargo. However, the State Defendants may submit any of those records to the Court in support of a pleading or motion or at trial. However, if donor names and/or identifying donor information is used such information will be redacted in the public filing and the original document will be filed under seal; and
- (2) Pursuant to rule 26, Mont. R. Civ. P., the Court hereby issues a Protective Order to protect the State Defendants from making available for public viewing, inspection, and disclosure WTP's financial and donor information that was produced as a result of the State's Subpoena to Wells Fargo; and
- (3) The scope of this protective order shall extend indefinitely, unless this Court enters an order determining as a matter of law that WTP is a political committee as that term is defined in Montana law. If such an Order is entered, the Court and the parties will revisit the information that WTP is required under Montana law to disclose publicly.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2012.

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Honorable Jeffrey M. Sherlock  
District Court Judge

cc: James Brown  
Michael Black/Andrew Huff  
Jim Scheier