

EXHIBIT A

02:01PM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

Doug Lair, Steve Dogiakos,
American Tradition Partnership,
American Tradition Partnership PAC,
Montana Right to Life Association
PAC, Sweet Grass Council for
Community Integrity, Lake County
Republican Central Committee,
Beaverhead County Republican
Central Committee, Jake Oil LLC,
JL Oil LLC, Champion Painting Inc.,
and John Milanovich,

Plaintiffs,

Civil Docket
No. 12-12-H-CCL

-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, and
Leo Gallagher, in his official
capacity as Lewis and Clark County
Attorney,

Defendants.

TRANSCRIPT OF STATUS HEARING PROCEEDINGS

Heard in Courtroom II
Paul G. Hatfield Federal Courthouse - 901 Front Street
Helena, Montana - March 9, 2012 -10:01 a.m.

BEFORE THE HONORABLE CHARLES C. LOVELL
UNITED STATES SENIOR JUDGE

Proceedings recorded by FTR Gold recording, transcript produced
by mechanical stenography and computer.

TINA C. BRILZ, RPR, FCRR - Official Court Reporter
United States District Court
Missouri River Courthouse - 125 Central Avenue West, Room 301
Great Falls, Montana 59404

A P P E A R A N C E S :

PRESENT ON BEHALF OF THE PLAINTIFFS, Doug Lair, Steve Dogiakos, American Tradition Partnership, American Tradition Partnership PAC, Montana Right to Life Association PAC, Sweet Grass Council for Community Integrity, Lake County Republican Central Committee, Beaverhead County Republican Central Committee, Jake Oil LLC, JL Oil LLC, Champion Painting Inc., and John Milanovich:

MR. JAMES EDWARD BROWN
Attorney at Law
DONEY CROWLEY BLOOMQUIST PAYNE UDA
44 West 6th Avenue, Suite 200
P.O. Box 1185
Helena, Montana 59624

PRESENT ON BEHALF OF THE DEFENDANTS, 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, and Leo Gallagher, in his official capacity as Lewis and Clark County Attorney:

MR. MICHAEL G. BLACK and
MR. ANDREW HUFF
Assistants Attorney General
MONTANA ATTORNEY GENERAL
P.O. Box 201401
215 North Sanders
Helena, Montana 59620-1401

08:22AM

08:22AM

09:21PM 1 The following proceedings were had:

09:21PM 2

09:24PM 3 THE COURT: Be seated, please.

09:24PM 4 Good morning.

09:25PM 5 We are ready to proceed in Civil 12-12, a Helena Division

09:25PM 6 case, Lair and others against Murry and others. We have

09:25PM 7 Mr. Brown here for the plaintiffs. Mr. Black for the

09:25PM 8 defendants, and Mr. Huff also here for the defendants.

09:25PM 9 This is the time set down for status conference and

09:25PM 10 discussion and planning as to what happens next in this case.

09:26PM 11 Everyone is aware that the court entered an order granting

09:26PM 12 and denying a motion for preliminary injunction.

09:26PM 13 Question now is where do we go from here? What are the

09:26PM 14 remaining issues for trial?

09:26PM 15 And I want to hear from both sides on this. I -- by way

09:26PM 16 of introduction, the court has been working on a plan and a

09:26PM 17 schedule. But I don't know whether my thinking as to what

09:27PM 18 remains to be tried is at all in accord with the thinking of

09:27PM 19 the parties.

09:27PM 20 We might discuss, during the course of this hearing,

09:27PM 21 whether there's anything in the court's order that both parties

09:27PM 22 can agree on. And I would like the parties to critically

09:27PM 23 examine what issues remain. It will make a difference in how

09:27PM 24 we proceed. But absent some other happening here, let me throw

09:28PM 25 out a possible schedule that the court has considered.

09:28PM 1 To begin with, any amendments or preliminary
09:28PM 2 determinations by the party, the deadline would be March 23rd.
09:28PM 3 Deadline for expert disclosures would be the same date.
09:28PM 4 March 30 for disclosure of responsive experts.
09:28PM 5 Discovery would end April 6.

09:28PM 6 Motions deadline, fully briefed, would be April 13.

09:29PM 7 I think the initial disclosures date was March 15.

09:29PM 8 Now, all parties know better than I do that you have a
09:29PM 9 primary election coming the first week in June. What is our
09:29PM 10 obligation to get this case settled or fully decided not only
09:29PM 11 by the first week in June, but in an adequate time prior
09:30PM 12 thereto that the candidates and the public are able to
09:30PM 13 meaningfully participate in the primary election?

09:30PM 14 Now, recognizing that the rules would provide greater time
09:30PM 15 latitude for the parties, we are at this point and query: To
09:30PM 16 what extent can the issues be streamlined; can the case be put
09:30PM 17 in a position by both sides and by the court for resolution,
09:31PM 18 comfortable period of time prior to the primary election?

09:31PM 19 Let's begin with you, Mr. Brown. What do you think of
09:31PM 20 that schedule?

09:31PM 21 MR. BROWN: Well, let me answer it this way, Your
09:31PM 22 Honor: It is the intent of the plaintiffs to file summary
09:31PM 23 judgment on those provisions that the court has granted
09:31PM 24 preliminary injunction upon, and we intend to do that before
09:31PM 25 the primary. We believe that under the court's order, we're

09:31PM 1 going to have to develop some evidence as to the contribution
09:31PM 2 limits and whether they're unconstitutionally low. We do not
09:31PM 3 expect, as we indicated to the defendants in a phone call
09:31PM 4 yesterday, to have that information developed by the primary.
09:31PM 5 So we expect to go past the primary in that.

09:31PM 6 And then as to the direct contributions, my guess is that
09:32PM 7 defendants would probably file for summary judgment on that
09:32PM 8 case, which could be resolved probably before the primary
09:32PM 9 season.

09:32PM 10 So we believe that at this point in time, because of the
09:32PM 11 need to develop evidence as to the contribution limits, we're
09:32PM 12 okay with taking this case past the primary date for
09:32PM 13 resolution.

09:32PM 14 THE COURT: Mr. Black.

09:32PM 15 MR. BLACK: With the understanding that it's
09:32PM 16 plaintiffs' burden of proof, and we do not believe that they
09:32PM 17 have satisfied their burden of proof, at least initially -- and
09:32PM 18 I'll try and speak up, because I know I'm --

09:32PM 19 It is important to the state to have this resolved prior
09:32PM 20 to the next legislative session. This case has been pending
09:33PM 21 for a few months. We understand the position of the
09:33PM 22 plaintiffs. So, if the plaintiffs don't believe that they can
09:33PM 23 satisfy their burden of proof prior to the election, we would
09:33PM 24 not be -- or at least the primary election, we would not
09:33PM 25 necessarily be opposed to continuing this beyond that. It is

09:33PM 1 their burden of proof. However, it is important to the state
09:33PM 2 to have this resolved prior to the end of the year.

09:33PM 3 THE COURT: All right.

09:33PM 4 So Mr. Brown is comfortable with going past the primary
09:33PM 5 election. Your only concern, or at least your principal
09:33PM 6 concern, is before the next legislative session convenes.

09:34PM 7 MR. BLACK: I mean, Your Honor, as we argued on a
09:34PM 8 motion for preliminary injunction, we believe that the
09:34PM 9 contribution limits, which is, I think, primarily what we're
09:34PM 10 going to talk about at the trial, are constitutional. It would
09:34PM 11 be their burden of proof to demonstrate that the Eddleman
09:34PM 12 case -- that circumstances have changed as reflected in the
09:34PM 13 court's preliminary injunction order.

09:34PM 14 In the event that they can prevail on their theories, we
09:34PM 15 want to make sure that the next legislature has the opportunity
09:34PM 16 to review that. That is the most important thing from the
09:34PM 17 state's perspective.

09:34PM 18 THE COURT: Of course.

09:34PM 19 Mr. Brown suggested you might raise this by summary
09:34PM 20 judgment.

09:34PM 21 Let's consider that. It has seemed to the court that that
09:34PM 22 is an issue for trial. That is an issue to be resolved on the
09:35PM 23 facts that probably cannot be resolved by summary judgment. If
09:35PM 24 the parties agree on this, it seems to me that this could save
09:35PM 25 some considerable time in the scheduling here.

09:35PM 1 I would carry that further and ask about the other issues
09:35PM 2 which can be resolved by summary judgment. And it seems to me
09:35PM 3 there should be a few of those that could be.

09:35PM 4 Mr. Brown, do you want to address that point at this time?

09:35PM 5 MR. BROWN: I believe Your Honor is absolutely
09:36PM 6 correct. I believe that all counts of the plaintiffs'
09:36PM 7 complaint, except for the contribution limits, can probably be
09:36PM 8 resolved as a matter of law on the pleadings at summary
09:36PM 9 judgment, but that for trial, it will be necessary to hold a
09:36PM 10 trial on the contribution limits and their constitutionality.

09:36PM 11 THE COURT: What do you say to that, Mr. Black?

09:36PM 12 MR. BLACK: I think it is likely that a lot of the
09:36PM 13 legal issues, other than the contribution limits, will be
09:36PM 14 susceptible to summary judgment. But I do not believe that the
09:36PM 15 contributions limits issues will be.

09:36PM 16 THE COURT: Well, if I hear and understand correctly,
09:36PM 17 you both are saying that the contribution issues, or issue,
09:36PM 18 needs to be tried on the facts. All other issues can be
09:36PM 19 dispensed with by summary judgment.

09:37PM 20 Is that right?

09:37PM 21 MR. BLACK: I think it's likely, Your Honor. I mean,
09:37PM 22 you know, basically, what we're talking about, at least as I
09:37PM 23 understand the court's order on preliminary injunction as to
09:37PM 24 the political libel statute and the voting disclosure statutes,
09:37PM 25 those are essential facial challenges to the statute, and I

09:37PM 1 think that those are susceptible to summary adjudication. With
09:37PM 2 respect to the issue of independent expenditures, obviously,
09:37PM 3 that may depend upon what the United States Supreme Court does,
09:37PM 4 but at least at this juncture, I don't know that there's going
09:37PM 5 to be any, you know, material disputes of fact that would
09:37PM 6 preclude summary judgment. Those are going to be very close to
09:37PM 7 being legal issues. I mean, depending upon how it may play
09:37PM 8 out, but I don't, as I sit here today, see triable issues with
09:37PM 9 respect to that. We do have the issue, I know that the court
09:37PM 10 is aware of the motion for leave to -- for reconsideration on
09:38PM 11 the preliminary injunction order. I suspect we'll talk about
09:38PM 12 that at some point today, having to do with how we work that
09:38PM 13 out. And I think that we can work that out, at least from the
09:38PM 14 preliminary injunction stage.

09:38PM 15 But certainly, the contribution limits, that's going to be
09:38PM 16 a fact-intensive inquiry that will need a fully developed
09:38PM 17 record. And I just can't see that being subject to summary
09:38PM 18 adjudication.

09:38PM 19 THE COURT: All right.

09:38PM 20 Both of you, then, agree that the contribution issue has
09:38PM 21 to be tried.

09:38PM 22 Mr. Black, you seem hesitant and willing to go the full
09:38PM 23 distance here and say that the other issues can be resolved by
09:38PM 24 summary judgment. You say they likely can be. You're
09:39PM 25 hesitant.

09:39PM 1 MR. BLACK: I'm always hesitant to stipulate, Your
09:39PM 2 Honor, on things like that. I'm not saying that they're not
09:39PM 3 susceptible to summary judgment. I think they likely are,
09:39PM 4 particularly to the extent that there's a facial challenge to
09:39PM 5 these statutes. We have the issue of standing. The court
09:39PM 6 determined that standing exists. But to the extent that
09:39PM 7 there's an as-applied challenge to these statutes that is going
09:39PM 8 to remain, there is always the issue of disputes of fact. I
09:39PM 9 understand that, you know, if certain issues are summarily
09:39PM 10 adjudicated pending final trial in this matter, that those
09:39PM 11 won't be final orders and that we'll, you know, limit the
09:39PM 12 evidence that we present at trial. However, just to make sure
09:39PM 13 that I'm preserving my record, in the event that there is a
09:39PM 14 factual issue that's important, that's how I couch it is I
09:39PM 15 think it's likely susceptible to summary judgment.

09:40PM 16 Our focus going forward certainly, Your Honor, will be on
09:40PM 17 the contribution limits aspects of this case.

09:40PM 18 I don't think that there are significant issues with
09:40PM 19 respect to the statutes on political libel or disclosure of
09:40PM 20 voting record. I think that those present issues of law and
09:40PM 21 statutory interpretation. And I think that we would agree with
09:40PM 22 the court on that. So, that being said, I'm always a little
09:40PM 23 bit reluctant to stipulate that everything's going to be
09:40PM 24 susceptible to summary judgment when I'm not exactly sure what
09:40PM 25 their evidence is on some of these issues at this point in

09:40PM 1 time.

09:40PM 2 THE COURT: Well, Mr. Brown, maybe you can mention
09:40PM 3 something to Mr. Black right now which will give him some
09:40PM 4 comfort so that perhaps we can have a stipulation of some sort
09:41PM 5 between counsel here today as to the issues that can be
09:41PM 6 resolved by summary judgment. Do you see any factual issues?
09:41PM 7 What are you going to prove in your presentation that would
09:41PM 8 present a factual issue as to either the rulings on
09:41PM 9 constitutional vagueness -- let's start with those.

09:41PM 10 MR. BROWN: Your Honor, having read your preliminary
09:41PM 11 injunction order, we believe that you got it right on point.
09:41PM 12 We believe that the issues that you granted PI on and denied PI
09:42PM 13 on, and especially as to the direct corporate contributions to
09:42PM 14 candidates, that those are just questions of law, and that we
09:42PM 15 can't really present any factual issues beyond what we've
09:42PM 16 presented in our complaint as to those matters, and we believe
09:42PM 17 that based on your ruling, those matters can be summarily
09:42PM 18 disposed of. I'm not sure what to offer the court beyond the
09:42PM 19 fact that it would seem to me that, really, the only questions
09:42PM 20 of fact left are as to the constitutionality of Montana's
09:42PM 21 contribution limits.

09:42PM 22 But I understand Mr. Black's position that he doesn't want
09:42PM 23 to put the state in any position where they can't challenge the
09:42PM 24 factual assertions.

09:42PM 25 But we have submitted a verified complaint, where the

09:42PM 1 plaintiffs have sworn to the facts in the complaint, so I don't
09:42PM 2 see those factual allegations changing.

09:43PM 3 THE COURT: I don't think it's unfair of the court to
09:43PM 4 ask for an itemization of fact issues today that the state
09:43PM 5 wants to have tried. We are in a situation where it's in the
09:43PM 6 interests of all parties and the court to have this case
09:43PM 7 disposed of timely, if it's not too late for that.

09:43PM 8 MR. BROWN: Sure.

09:43PM 9 THE COURT: And let me mention, then, at this point,
09:43PM 10 we have a motion for reconsideration, which is now properly
09:43PM 11 pending before the court, except that the grounds are not
09:43PM 12 grounds permitted for reconsideration, as I understand the
09:44PM 13 rule.

09:44PM 14 And so it's the court's expectation that that motion has
09:44PM 15 to be denied.

09:44PM 16 Do you have anything that you want to say, Mr. Black? You
09:44PM 17 objected, after the court gave you the chance, to the motion
09:44PM 18 being granted. Do you want to be heard on that?

09:44PM 19 MR. BLACK: Absolutely, Your Honor. And I informed
09:44PM 20 the plaintiffs why we objected prior to their refiling the
09:44PM 21 motion. And the basis for us not agreeing to their relief is:
09:44PM 22 I don't think it falls under the rules, and we didn't have an
09:44PM 23 opportunity to respond to the motion pursuant to the local
09:44PM 24 rules.

09:44PM 25 We don't believe -- we understand what the court ruled on

09:45PM 1 preliminary injunction. And what the court ruled, per our
09:45PM 2 understanding, which we informed plaintiffs of, is that this
09:45PM 3 court has enjoined a prohibition against corporate
09:45PM 4 contributions to political committees that engage in
09:45PM 5 independent expenditures to the extent that those funds are
09:45PM 6 going to be used -- excuse me -- for independent expenditures.
09:45PM 7 We understand that. We believe that this court has ruled that
09:45PM 8 that statute cannot be, to the extent it precludes that type of
09:45PM 9 activity, cannot be enforced, and we're not going to enforce
09:45PM 10 it. So I think that the objection or the motion for
09:45PM 11 reconsideration is more of a technical argument seeking to
09:45PM 12 clarify the court's order. And as I discussed with counsel
09:45PM 13 yesterday, I think that we'd be willing to propose language or
09:46PM 14 even stipulate that the court has ruled that corporate
09:46PM 15 contributions to political committees making independent
09:46PM 16 expenditures cannot be precluded under the law. And the only
09:46PM 17 thing that we'd point out is that what the plaintiffs requested
09:46PM 18 when they sought relief is that to the extent that there's an
09:46PM 19 anti-circumvention interest here, that these funds should be
09:46PM 20 segregated and accounted for, so that these corporate
09:46PM 21 contributions to committees cannot be used to go around the
09:46PM 22 direct ban of corporate contributions to campaigns. And
09:46PM 23 certainly, what we have advised our clients is that the Judge
09:46PM 24 has ruled. And we are not in any respect going to try and
09:46PM 25 enforce any banned contributions to political committees from

09:46PM 1 corporate funds that are to be used for corporate expenditures.
09:47PM 2 We only anticipate moving forward requiring an accounting as to
09:47PM 3 how those funds are spent to preserve the state's
09:47PM 4 anti-circumvention interest.

09:47PM 5 So to that extent, as we step back a little bit, I see the
09:47PM 6 motion for relief to file a motion for reconsideration as
09:47PM 7 essentially a request to clarify the court's order to make it
09:47PM 8 more precise.

09:47PM 9 I think we understand what the order says, we are going to
09:47PM 10 abide by that order. And I don't anticipate being back in
09:47PM 11 front of this court with any argument that we're not abiding by
09:47PM 12 the terms of the order.

09:47PM 13 So, that was the purpose of us objecting, is we don't
09:47PM 14 think that there's anything to reconsider here. We understand
09:47PM 15 that the court has ruled.

09:47PM 16 THE COURT: Well, I don't think, Mr. Brown, that the
09:47PM 17 argument that you want to be making here, if I understand it
09:48PM 18 correctly, can be raised by motion for reconsideration. It
09:48PM 19 just doesn't fall within the rule. If you read the rule
09:48PM 20 carefully and look at what you're trying to accomplish, it just
09:48PM 21 isn't permitted.

09:48PM 22 And so the court is very unlikely to grant your motion.

09:48PM 23 Now, do you want to respond to anything that Mr. Black
09:48PM 24 just said?

09:48PM 25 MR. BROWN: Your Honor, I agree with everything he

09:48PM 1 said. And I understand the court's position reading through
09:48PM 2 that -- the federal rules, it's not exactly clear what
09:48PM 3 mechanism we could use for the clarification. What we're
09:48PM 4 seeking is a clarification of the court's ruling. And the
09:49PM 5 concern that the plaintiffs have is that there's nothing in the
09:49PM 6 court's ruling that says that Section 1 and Section 2 of 13-227
09:49PM 7 are enjoined to the extent that Mr. Black stated.

09:49PM 8 And so we have assurances from the state today that they
09:49PM 9 read your order to mean what both sides think it means, but
09:49PM 10 there's nothing that binds the state at this point. Even
09:49PM 11 though it seems clear that the court's intent was to enjoin
09:49PM 12 enforcement of those provisions.

09:49PM 13 So, to the extent that we can submit language to the court
09:49PM 14 to clarify footnote 8, I would be amenable to that and seems
09:49PM 15 Mr. Black would too, if the court is amenable to that. We're
09:49PM 16 just seeking some clarification in footnote 8, Your Honor.

09:49PM 17 THE COURT: The order itself is preliminary. And it
09:50PM 18 seemed to me that your remedy was in the final judgment, which
09:50PM 19 fits into our discussion here. Is there anything in the way of
09:50PM 20 fact questions that need to be resolved in order to decide that
09:50PM 21 issue? And I was hoping that today, we could have some sort of
09:50PM 22 clear understanding and stipulation as to what issues actually
09:50PM 23 needed to be tried. In that regard, what do you think,
09:51PM 24 Mr. Black?

09:51PM 25 MR. BLACK: I appreciate that, Your Honor. From what

09:51PM 1 I understand from Mr. Brown, is that the plaintiffs don't
09:51PM 2 intend to offer any additional evidence with respect to the
09:51PM 3 direct ban on corporate contributions to campaigns. So it
09:51PM 4 seems to me that that issue is moot from factual
09:51PM 5 considerations.

09:51PM 6 It's also my understanding based upon, you know, what
09:51PM 7 Mr. Brown represented earlier, is that they don't intend to
09:51PM 8 offer any other further evidence with respect to the other
09:51PM 9 statutes; that all that they expect to offer evidence on is
09:51PM 10 contribution limits, as to everything outside of the direct
09:51PM 11 corporate ban on contributions under 227.

09:51PM 12 So I am comfortable with moving forward on the
09:51PM 13 understanding that they're not going to offer any evidence with
09:51PM 14 respect to the direct corporate ban on contributions; that
09:51PM 15 that's not going to be a factual issue; that what we're going
09:52PM 16 to argue about in this case and present evidence on is the
09:52PM 17 constitutionality of the contribution limits that exist. More
09:52PM 18 than happy to do that. I don't think that there's an awful lot
09:52PM 19 of factual disputes that will be relevant as to the other
09:52PM 20 statutory provisions.

09:52PM 21 THE COURT: Well, I was with you until the last
09:52PM 22 several words that came from your mouth.

09:52PM 23 Can we not stipulate that we're going to have a trial on
09:52PM 24 the contribution issues, and the others are going to be
09:52PM 25 resolved by summary judgment, and that each of you will make

09:52PM 1 your motion for summary judgment within a certain length of
09:52PM 2 time? And we will go forward, then, with a schedule on the
09:53PM 3 contributions issues that are going to be tried? We'll get
09:53PM 4 right down to the nubbins here on the dates that I've thrown
09:53PM 5 out to see whether you can live with those dates. I have a
09:53PM 6 trial date in mind, which is May Day. That may be too early
09:53PM 7 under some circumstances. But if the -- if the issue is
09:53PM 8 limited to the contribution questions, it seems to me that you
09:53PM 9 can round up your experts; that you can exchange information,
09:54PM 10 and that you can be ready to try it by May 1. If we can do
09:54PM 11 that, then, if the court can decide that issue and all of the
09:54PM 12 motions for summary judgment, which will be fully briefed
09:54PM 13 before then, the court can have a final judgment prior to the
09:54PM 14 primary with still some time for campaigning on the basis of
09:54PM 15 those rulings.

09:54PM 16 Now, that will be the end of my participation. That may
09:54PM 17 not be the end of the case. The case may go on for a long
09:54PM 18 time. But at least we will have done our part to get these
09:55PM 19 issues at least ruled upon ahead of the primary election.

09:55PM 20 MR. BLACK: Well, Your Honor, I didn't mean to throw
09:55PM 21 you off on my last several words. The point I was trying to
09:55PM 22 make is: As I understand Mr. Brown's comments, is that other
09:55PM 23 than on the contribution limits themselves, the actual amounts
09:55PM 24 that are at issue in this case, that the plaintiffs do not
09:55PM 25 expect to offer any other evidence on any of the other issues,

09:55PM 1 which would include the direct -- the ban on direct corporate
09:55PM 2 contributions to campaigns. That being understood, I don't
09:55PM 3 believe that there will be an issue of material fact. And as
09:55PM 4 to the issues, other than the contribution limits, I believe
09:55PM 5 that will be susceptible to summary adjudication. And with the
09:55PM 6 understanding that they're not going to offer more evidence,
09:55PM 7 I'm more than happy to stipulate that we'll move for summary
09:56PM 8 judgment based upon the evidence in the record as to those
09:56PM 9 issues.

09:56PM 10 But not knowing what their evidence might otherwise be,
09:56PM 11 I'm a little bit reluctant to go further than that. But that's
09:56PM 12 what I understand Mr. Brown represented to the court on the
09:56PM 13 issues other than the campaign limits themselves, the
09:56PM 14 contribution limits themselves.

09:56PM 15 THE COURT: Well, by way of some comfort for you, we
09:56PM 16 could go ahead and begin the summary judgment process, and the
09:56PM 17 court could guarantee you a hearing and give you the right to
09:57PM 18 present a witness at the time of the hearing, if that is the
09:57PM 19 assurance that you need for a stipulation here.

09:57PM 20 MR. BLACK: Well, Your Honor, I would expect to have
09:57PM 21 the opportunity to offer evidence. I guess my question, and
09:57PM 22 this is going back to what Mr. Brown --

09:57PM 23 THE COURT: Well, you would as a part of the motion.
09:57PM 24 You could file your affidavits, whatever you want to do by way
09:57PM 25 of a factual presentation. But if there is evidence that comes

09:57PM 1 in from Mr. Brown that you're worried about now, so that you
09:57PM 2 don't want to foreclose that fact, it can be presented at the
09:57PM 3 time of the summary judgment hearing.

09:57PM 4 You might think about that.

09:57PM 5 MR. BLACK: Sure. Well, Your Honor, I would be
09:58PM 6 prepared to so stipulate as to the issues other than
09:58PM 7 contribution limits.

09:58PM 8 THE COURT: No. We can't -- contribution limits here
09:58PM 9 are going to resolve -- require resolution by trial.

09:58PM 10 MR. BLACK: Absolutely.

09:58PM 11 THE COURT: And that's the court's ruling today.

09:58PM 12 So, Mr. Brown.

09:58PM 13 MR. BROWN: It's my suggestion, Your Honor, that
09:58PM 14 plaintiffs are prepared to dispose of every issue except for
09:58PM 15 the contribution limits by summary ruling. We believe we can
09:58PM 16 get that done within the next several weeks to a month on those
09:58PM 17 issues.

09:58PM 18 It would be my suggestion, Your Honor, that plaintiffs
09:58PM 19 need a little more time than May to develop their evidence as
09:59PM 20 to the unconstitutionality or constitutionality of the
09:59PM 21 contribution limits. The plaintiffs are willing to forego
09:59PM 22 relief prior to the primary election on that count in order to
09:59PM 23 develop our -- or to develop the record, because we believe
09:59PM 24 it's important to develop the record, and the court has so
09:59PM 25 found. We would suggest a trial date on that single issue in

09:59PM 1 August or September, Your Honor.

09:59PM 2 THE COURT: That meets your requirement, Mr. Black,
09:59PM 3 so long as the court decides the issue before the next
09:59PM 4 legislature convenes.

09:59PM 5 MR. BLACK: Your Honor, that would be fine by me. I
09:59PM 6 -- you know, the issue of the impending election was raised by
10:00PM 7 plaintiffs in their pleadings. If they're willing to forego
10:00PM 8 presenting their case prior to the primary, the state -- or the
10:00PM 9 defendants have no objection. It is imperative to us that in
10:00PM 10 the event that this court rules that these contribution limits
10:00PM 11 are not constitutional, that the legislature has the
10:00PM 12 opportunity to review them in the next session.

10:00PM 13 THE COURT: Let me ask this question then: Would it
10:00PM 14 be worthwhile to consider submitting the issues that we've
10:00PM 15 agreed to on summary judgment and bifurcating the case, then,
10:00PM 16 and set down the single issue for trial subsequently at some
10:00PM 17 date, even after the primary, in August perhaps? It would have
10:01PM 18 to be after the salmon season.

10:01PM 19 And the court can go ahead and hear the other matters on
10:01PM 20 summary judgment and enter final judgment. The case, then,
10:01PM 21 would be bifurcated in that regard.

10:01PM 22 MR. BLACK: Just for clarification, Your Honor, when
10:01PM 23 you say "final judgment," do you anticipate a 54(b)
10:01PM 24 certification on those issues? Is that what we're talking
10:01PM 25 about?

10:01PM 1 THE COURT: I hadn't thought that far ahead. I'm
10:01PM 2 just thinking out loud here. I should give you all time to
10:01PM 3 think about this, because it's not a suggestion. It is more of
10:02PM 4 a possibility.

10:02PM 5 MR. BLACK: Sure.

10:02PM 6 THE COURT: I feel quite strongly about trying to get
10:02PM 7 the case resolved as rapidly as we can in view of the
10:02PM 8 forthcoming election. And I feel that way because of the
10:02PM 9 background that I ran into in a case, which I don't think the
10:02PM 10 plaintiffs have cited. I'm sure the defendants are aware of
10:02PM 11 it, Chamber of Commerce against Argenbright. And in that, we
10:03PM 12 had not elections of candidates, but rather ballot issues. And
10:03PM 13 there were two which were at issue. One of them was the
10:03PM 14 requisite to ban -- in fact, it had passed, as I recall --
10:03PM 15 cyanide leaching in gold mining; and the other banned corporate
10:03PM 16 contributions in the ballot elections. And we tried those
10:03PM 17 issues. And I had a little difficulty getting the ban -- the
10:04PM 18 cyanide ban and the corporate case decided. I had them
10:04PM 19 together and then separated them. I can't remember exactly the
10:04PM 20 manner that that occurred. It's been 20 years ago. But in any
10:04PM 21 event, after trial, the ruling was that corporations could
10:04PM 22 contribute to ballot elections, and -- but it came at a time,
10:04PM 23 three weeks or so, before the election.

10:05PM 24 And so here were the mine owners and sympathizers and the
10:05PM 25 public in the absence of any active campaigning by the

10:05PM 1 corporations. And they moved the court for an order cancelling
10:05PM 2 the election, which kept me awake at night.

10:05PM 3 And ultimately, I denied it. Well, I fairly promptly
10:05PM 4 denied it. But it has always troubled me. And as you know,
10:05PM 5 the first thing I did in this case was set a prompt hearing on
10:05PM 6 your preliminary motion -- or preliminary injunction motion, so
10:06PM 7 that we could try to get a start on what really could be done
10:06PM 8 here as far in advance for the benefit of the public as could
10:06PM 9 be done.

10:06PM 10 So, I'm hesitant to go beyond the primary date here if it
10:06PM 11 can be avoided. Now, maybe you'd like to take a recess for 15
10:06PM 12 minutes or so and think about this, discuss it a little bit.
10:06PM 13 And we'll resume, then, at eleven o'clock. And when we come
10:06PM 14 back, let's start with this schedule that I gave you. And
10:07PM 15 maybe you'll have specific changes in the dates that you both
10:07PM 16 can agree to and we can discuss at that time.

10:07PM 17 About 15 minutes, then, subject to the call of the court.

10:07PM 18 MR. BLACK: Thank you, Your Honor:

10:07PM 19 (The proceedings in this matter were recessed at
10:07PM 20 10:45 a.m. and reconvened at 11:08)

10:07PM 21 THE COURT: This is a continuation of status
10:08PM 22 conference in the case of Lair against Murry; Civil 12-12,
10:08PM 23 Helena Division case.

10:08PM 24 Counsel are present. We're ready to proceed.

10:08PM 25 I don't expect you two to have settled the entire case.

10:08PM 1 But I hope we have some good agreements.

10:08PM 2 Mr. Brown, do you want to begin?

10:08PM 3 MR. BROWN: Yes, Your Honor. Thank you.

10:08PM 4 As you stated, counsel took a break to discuss the matters
10:08PM 5 that you raised. Counsel are in agreement that we can
10:08PM 6 bifurcate this case, separating out the contribution limit
10:08PM 7 challenge from the other matters. We believe that we
10:09PM 8 understand your concerns -- Your Honor's concerns about Chamber
10:09PM 9 versus Argenbright. We don't believe that the concerns that
10:09PM 10 were present in that case are necessarily present in this case.
10:09PM 11 And the reason that is, is because if the contribution limits
10:09PM 12 stay in place during the pendency of this challenge, that all
10:09PM 13 parties are playing under the same rules and nobody's
10:09PM 14 disadvantaged.

10:09PM 15 We believe that we could dispose of all the matters except
10:09PM 16 for the contribution limits prior to the June primary, and that
10:09PM 17 those would be ready for summary ruling.

10:09PM 18 It is plaintiffs' contention that we need a little time to
10:09PM 19 be able to put together evidence. Namely, getting expert
10:09PM 20 witnesses to show how Montana's contribution limits are
10:09PM 21 unconstitutional.

10:10PM 22 We would again propose that the trial on that portion be
10:10PM 23 held in August.

10:10PM 24 The opinion on which that sets, of course, is plaintiffs'
10:10PM 25 ability to come up with experts who will render opinions on the

10:10PM 1 constituality of that. So we would propose that plaintiffs
10:10PM 2 have to disclose their experts by May 15th. And then the rest
10:10PM 3 of the schedule would fall in behind that as to the -- as to
10:10PM 4 the trial, Your Honor.

10:10PM 5 THE COURT: All right.

10:10PM 6 Mr. Black.

10:10PM 7 MR. BLACK: Your Honor, I -- we are in agreement that
10:10PM 8 it could be bifurcated --

10:10PM 9 THE COURT: I might say that you suggested Rule
10:11PM 10 54(b), as I recall. And in thinking about that, it seemed to
10:11PM 11 me that that would take care of it.

10:11PM 12 MR. BLACK: It certainly may, Your Honor.

10:11PM 13 THE COURT: It wouldn't require bifurcation, but it
10:11PM 14 would allow either side to immediately go on.

10:11PM 15 MR. BLACK: Yeah. And Your Honor, I wasn't even
10:11PM 16 thinking about the injunctive aspect of this. I mean, to the
10:11PM 17 extent that an injunction is entered, I believe that that would
10:11PM 18 be appealable, as well. So, whether it's 54(b), we're
10:11PM 19 certainly happy to live with that if that's what the court is
10:11PM 20 inclined to do.

10:11PM 21 The issue would just be, you know, if we're going to
10:11PM 22 bifurcate it, how do we deal with appeal issues on either side
10:11PM 23 if we choose to go that way. So, the 54(b) would be fine with
10:11PM 24 us, and we're happy to have a deadline for motions, dispositive
10:12PM 25 motions on everything, but for the contribution limits in the

10:12PM 1 near term.

10:12PM 2 Our thought is, is that we are willing to live with --
10:12PM 3 whatever the court decides regarding scheduling. But we're
10:12PM 4 also -- we're not against giving plaintiffs an opportunity to
10:12PM 5 set this for trial in August. My notes indicate that what we
10:12PM 6 were going to suggest, or at least what plaintiffs were going
10:12PM 7 to suggest, is their deadline for experts is May 1; we have two
10:12PM 8 weeks to file responsive experts, so around May 15th. I don't
10:12PM 9 know what the Fridays are. The end of June is close of
10:12PM 10 discovery. Pretrial motions by the end of the first week of
10:12PM 11 July, a week later. We're going to have this matter prepared
10:12PM 12 to go at the court's convenience in August.

10:12PM 13 But we're also willing to live with whatever schedule the
10:12PM 14 court determines, so -- but we're also going to accommodate the
10:13PM 15 plaintiffs in that regard.

10:13PM 16 THE COURT: The trial then might run as late as the
10:13PM 17 first week in September. But I wouldn't think that would be a
10:13PM 18 problem for anybody.

10:13PM 19 Mr. Brown.

10:13PM 20 MR. BROWN: Not to show my political leanings, Your
10:13PM 21 Honor, but I'll likely be a delegate to the Republican National
10:13PM 22 Convention, and that will be held in Tampa in the first week of
10:13PM 23 September.

10:13PM 24 THE COURT: Well, we'll think about that comment and
10:13PM 25 that obligation on your part.

10:13PM 1 MR. BLACK: I don't believe counsel for defendants
10:13PM 2 have any such obligation or intention, so our schedule is a
10:13PM 3 little bit more open.

10:13PM 4 THE COURT: I can understand that.

10:13PM 5 All right.

10:14PM 6 I will need to think about this. And I think we can get
10:14PM 7 an order out promptly.

10:14PM 8 Are there any other issues that you can agree on today?
10:14PM 9 Anything that will aid and contribute to the early resolution
10:14PM 10 of any other part of the case?

10:14PM 11 MR. BLACK: I'm not sure what other issues there are
10:14PM 12 that we haven't discussed, Your Honor.

10:14PM 13 THE COURT: All right.

10:14PM 14 Is there any way that this can be streamlined? Any other
10:14PM 15 agreements that you can think of? Or any disagreements that,
10:15PM 16 perhaps, can be resolved?

10:15PM 17 MR. BLACK: I don't know that there are, Your Honor.

10:15PM 18 THE COURT: All right.

10:15PM 19 Then, I'll try to get an order out yet today.

10:15PM 20 MR. BLACK: Okay.

10:15PM 21 THE COURT: And I won't be here tomorrow to receive
10:15PM 22 objections. But if for some reason there's some part of the
10:15PM 23 agreement that you simply cannot cope with, you can present
10:15PM 24 those on Monday.

10:15PM 25 Now, I gather there isn't anything else, then, that either

10:15PM 1 party wants to be heard from today? Mr. Brown.

10:15PM 2 MR. BROWN: No, Your Honor.

10:15PM 3 THE COURT: Mr. Black?

10:15PM 4 MR. BLACK: None, Your Honor.

10:15PM 5 I do want to point out that yesterday, I think we filed
10:16PM 6 our Rule 26(f) statement and suggested initial disclosures by
10:16PM 7 March 30th. And I know earlier today, you said March 15th.
10:16PM 8 You know, we're open to whatever the court decides, but I did
10:16PM 9 want to point out that we did file our 26(f) thing --
10:16PM 10 disclosure yesterday. And I assume that this is essentially a
10:16PM 11 preliminary pretrial conference, so there's really no reason
10:16PM 12 for us not to proceed with discovery after we filed our initial
10:16PM 13 disclosures or submitted our initial disclosures to the other
10:16PM 14 parties.

10:16PM 15 THE COURT: I think that's so.

10:16PM 16 MR. BLACK: Okay.

10:16PM 17 THE COURT: Any objection to that?

10:16PM 18 MR. BROWN: None, Your Honor.

10:16PM 19 THE COURT: All right.

10:16PM 20 We'll get that order out today then.

10:16PM 21 Thank you, gentlemen, for coming in; being here for --
10:16PM 22 being in a cooperative, and I think very professional mood.
10:17PM 23 Court's adjourned.

10:17PM 24 MR. BLACK: Thank you, Your Honor.

10:17PM 25 MR. BROWN: Thank you, Your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(The proceedings in this matter were adjourned at
11:18 a.m.)

1 C E R T I F I C A T E

2 STATE OF MONTANA)
3 County of Cascade) : SS

4
5 I, TINA C. BRILZ, RPR, FCRR, Official Court Reporter and
6 Notary Public of the State of Montana residing at Great Falls,
7 Montana, do hereby certify as follows:

8 That the foregoing status hearing was reported by FTR Gold
9 recording on March 9, 2012, at 10:01 a.m. in Courtroom II in
10 the Paul G. Hatfield Federal Courthouse in Helena, Montana.

11 That the foregoing twenty-seven (27) pages of typewritten
12 material constitute a true and accurate transcription of my
13 stenographic notes which were reduced to writing by means of
14 computer-aided transcription from an FTR Gold recording.

15 I further certify that I am not an attorney nor counsel of
16 any of the parties nor a relative or employee of any attorney
17 or counsel connected with this action or otherwise interested
18 in the event thereof.

19 IN WITNESS WHEREOF, I have hereunto set my hand and
20 affixed my Official Seal on this 24th day of June, 2012.

21
22 /s/ Tina C. Brilz
23 TINA C. BRILZ
24 REGISTERED PROFESSIONAL REPORTER
25 NOTARY PUBLIC for the State of
Montana residing at Great Falls,
Montana. My commission expires
October 11, 2015.