

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 06-634

MONTANANS FOR JUSTICE: VOTE NO ON CI-98; NOT IN MONTANA: CITIZENS AGAINST CI-97 AND PROPERTY OWNERS AGAINST I-154,

Plaintiffs-Respondents,

v.

STATE OF MONTANA by and through BRAD JOHNSON in his capacity as Secretary of State,

Defendant-Respondents,

MONTANANS IN ACTION, a Montana Corporation, CITIZENS RIGHT TO RECALL MONTANA, PROTECT OUR HOMES MONTANA, STOP OVER SPENDING MONTANA, Political Ballot Committees, and TREVIS BUTCHER,

Defendant-Appellants,

KENDALL COX, ERVIN J. HANKS, and ROBERT G. COOPER, Individually,

Intervenors-Appellants.

OBJECTION TO STATE’S MOTION TO PRESENT ADDITIONAL EVIDENCE AT APPELLATE LEVEL

Defendants-Appellants (hereinafter Proponents) object to Defendant-Respondents' (hereinafter State or State's) Motion to submit additional evidence to this Court on appeal.

I. ADDITIONAL EXAMPLE THAT DUE PROCESS HAS BEEN DENIED.

The State's request merely provides this Court yet another example of what occurs in judicial proceedings where one side is denied due process, notice and the opportunity to be heard at a reasonable time and in a reasonable manner. See Wilson v. Department of Public Service Regulation, (1993) 260 Mont. 167, 858 P.2d 368; Winston v. Kansas Dept. of SRS, 49 P.3d 1274, 1283 (2002), cert. denied 537 U.S. 1088 (2002). The State's motion also illustrates the need to allow due process which includes discovery in order to prevent trial by ambush so that the truth may be found and disclosed for the benefit of the fact-finder. Buyers Products Co. v. Clark, 847 S.W.2d 270, 276 (Tex. App. 1992).

II. PROPONENTS WERE NOT ALLOWED TO OVERSEE OR REVIEW THE PROCESS BY WHICH THIS INFORMATION WAS GAHTERED.

Further, the Secretary of State's office seems to have begun the process of collecting this information shortly after the conclusion of the September 8, 2006, trial. Proponents were made aware the research was

being conducted, yesterday, September 28, 2006. Given the significance of this information in relation to the issues presented in this case Proponents were entitled to participate in such a process. Proponents are certainly interested in the manner in which this was conducted as well as any parties that might have assisted in gathering the information. At a minimum, Proponents should have been aware that the research was being conducted in anticipation of requesting that this Court accept it as additional evidence on appeal. The lack of participation coupled with the delay in notification with regard to this newly conducted inspection of pertinent records causes us further grounds in issuing this objection.

III. PROPONENTS HAVE ADDITIONAL SUPPLEMENTAL EVIDENCE READY AND ABLE TO SUBMIT.

Lastly, if this Court, in its wisdom, sees fit to allow parties to submit additional evidence intended to supplement the record, Proponents have numerous affidavits and other evidence which they too would request be submitted. The nature of this evidence is that following the trial Proponents attempted to contact each of the persons listed on Plaintiffs' Exhibit 5 in order to determine the veracity of the exhibit. What Proponents found is startling, alarming, and reprehensible.

Through means of picking up the telephone or mailing letters Proponents have since verified, by sworn affidavit, that the addresses provided on affidavits listed in Plaintiffs' Exhibit 5 are indeed the true and correct address of the person signing the affidavit. At the time of the writing of this objection Proponents have 26 such sworn affidavits which they are willing and able to produce as evidence challenging the veracity of Plaintiffs' Exhibit 5. In all cases it is attested that the address on the affidavit is their true and correct address, and it is identical to the address listed on their petition affidavit submitted to the State. In many cases these are not "paid, migrant, out-of-state signature gatherers" but Montanans who were in fact volunteers. Even the District Court through its own observation was able to discount the accuracy of one signature on Plaintiffs' Exhibit 5, where Ms. Debra Mart listed the Cascade County Election Office address because she is an employee in the office. There is much evidence illustrating the inaccuracy of this exhibit.

IV. CONCLUSION

The State's motion merely illustrates the need for recognition of the requirements for procedural due process. The example should be noted and the Motion denied. The proper place for submitting this

evidence is on remand with a new hearing on the evidence. If the Court sees fit to allow additional evidence in this case to be submitted at this appellant level Proponents would then respectfully request that they be allowed to submit their own evidence which Proponents too feel will supplement the record and give the Court a better understanding of all circumstances involved when deciding this appeal.

Counsel for the Proponents attempted to contact counsel for the State with respect to the Motion actually filed. As of the time of filing this objection Proponents have not been given a copy of the actual Motion but Proponents understand the scope and general purpose of the Motion to be that as herein contained or as described to Proponents counsel by the counsel for the State.

DATED: this _____ of September, 2006.

Respectfully submitted,

CHRIS J. GALLUS
Attorney for Proponents

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing Objection to the State's Motion was served upon the persons named below by hand-delivery and they are as follows:

**Honorable Mike McGrath
Attorney General
Justice Building
P.O. Box 201401
Helena, MT 59620-1401**

**Mr. Peter Michael Meloy
Ms. Robin Meguire
Meloy Triewailer
80 South Warren
Helena, MT 59624-1241**

**Mr. Patrick Watt
Jardine, Stephenson, Blewett & Weaver, P.C.
P.O. Box 2269
Great Falls, MT 59403**

This _____ day of September, 2006.
