COPY

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. _____

HARRIS HIMES,

Petitioner,

v.

MONTANA TWENTY-FIRST JUDICIAL
DISTRICT COURT, RAVALLI COUNTY,
THE HONORABLE LOREN TUCKER,
DISTRICT JUDGE,

Respondent.

PETITION FOR WRIT OF SUPERVISORY CONTROL

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INTRODUCTION

This Petition arises from an order denying Petitioner Harris Himes' motion for discovery of evidence of selective prosecution arising from the exercise of his First Amendment rights on behalf of conservative Christian causes. While this Court has reviewed numerous rulings on the merits of selective prosecution claims, entitlement to discovery supporting such claims presents a constitutional issue of first impression in Montana.

Defendants seeking selective-prosecution discovery must offer "some evidence tending to show the existence of the essential elements of the defense, discriminatory effect and discriminatory intent." *United States v. Armstrong*, 517 U.S. 456, 468 (1996). Himes' motion is supported by, *inter alia*, detailed testimony from two witnesses employed by the Auditor's Office (the prosecuting agency in this case) when Himes was charged who observed the Office's bias against conservative Christians. One of those witnesses served as a prosecutor from 2000 until early this year.

The court's role in evaluating an *Armstrong* discovery motion is simply to determine the legal sufficiency of the defendant's evidence. *United States v. Olvis*, 97 F.3d 739, 743 (4th Cir.1996). The District Court erred by instead weighing the deposition testimony of Himes' witnesses against unsworn statements by the prosecutors. Courts do not weigh

conflicting evidence in evaluating *Armstrong* discovery motions. Rather, they do so during subsequent evidentiary hearings on the merits of selective-prosecution claims. The District Court also erred in other ways described below.

This case satisfies the requirements for supervisory control. Mont. App. P. Rule 14(3). Himes therefore requests relief prior to commencement of trial on September 16, 2013.

STATEMENT OF FACTS

Lynne Egan has served as the Deputy Securities Commissioner for the Auditor's Office ("Office") since June 2006 and is "second under [Commissioner] Monica Lindeen" with regard to securities. (Ex. F, 94, 96.) She has both charging and declination authority. (*Id.*, 144-45, 188 ("Lynne would be the determiner of what matter would actually become an investigation"); *id.*, 212 (Egan is "the real gatekeeper on cases going forward or not going forward"); *id.*, 225.)

Egan bases charging decisions on emotions and if "she's upset with somebody or not upset with somebody, that sort of determined how things went." (Ex. F, 152.) Christians make her physically agitated. (*Id.*, 160.) She makes "lots of negative comments about Christians in general." (*Id.*,

154; see also *id.*, 199-200 ("I've cited three or four [anti-Christian remarks] to you but there's been a dozen since I worked there.")) She tells employees that Boy Scouts are "Nazis" because of their affiliation with churches, (*Id.*, 114, 157), and the church is a "negative influence on things." (*Id.* 196.) She ridicules church members in court, (*id.*, 179,) and once referred to a federal prosecutor as "such a smart guy. I don't know where he gets, you know, caught up in this Christian stuff." (*Id.*, 156.)

Egan told an employee last year that Lindeen had received a "Christmas present" when Derek Skees announced his candidacy for her office. (Ex. F, 194.) When the employee asked her who Skees was, she replied, "he's a right wing nut case." (*Id.*, 195.) When asked why she thought that, she replied that Skees attends an Assembly of God church. (*Id.*) When the employee informed Egan that he, too, attended this church, she "went back to her computer and acted like I'd left the room." (*Id.*) Brett O'Neil, one of the prosecutors in this matter, has also stated repeatedly that "these right-wing Christians are whack jobs." (*Id.*, 158.)

The Office harasses Christian employees and, as noted by a Human Resources employee, "Christians weren't treated too well in the office." (Ex. F, 221.) For example, Egan falsely informed employees that a Christian employee was having an affair with a former attorney in the

Office. (*Id.*, 131-33, 205.) She denigrates employees who pray on their own time, (*Id.*, 207-208, 223-24), and subjects Christian employees to unsolicited, vulgar rants. (*Id.,* 134-35, 228-29.)

Himes has been a conservative Christian activist for over a decade. (Ex. F, 231.) This activism includes testifying before the Legislature. (*Id.*) Himes' testimony, which includes warnings that God's wrath will be visited upon those seeking to promote abortion or same-sex marriage, has produced considerable press coverage, (*id.,* 74-83), as well as critics who describe him as an "American Taliban." (Ex. E, 37, fn.5)

The prosecution knew of Himes' controversial speech prior to charging him. One of the prosecutors in this matter, Jesse Laslovich, previously sat on the Senate judiciary committee when Himes testified on at least seven bills relating to abortion and gay rights and even directed questions to Himes. (Ex. F, 231.) Additionally, the State's evidence is replete with references to Himes' activism. (See, *e.g.*, Ex H, 342 (describing Himes' anti-abortion protests)).

Himes did not profit from any of the securities or theft charges contained in the Amended Information. The State's evidence shows only that a co-defendant instructed the alleged victim to wire $150,000 to an account to which Himes had no access. (Ex. F, 278.) The State alleges that

these funds were transferred to "credit cards in [Himes'] name," and that Himes "also had his credit cards in his name paid off" with victim funds. (Ex. C, 16, 18.) None of its own evidence, however, supports these allegations. (Ex. E, 40-42.)

During a radio interview after being charged in September 2011, Himes called Commissioner Lindeen "very pro-gay, very pro-abortion" and her case "very weak." (Ex. F, 279-83.) A month later, the Office amended the Information to add Count VII, another securities charge. (Ex. B, 7-14.) The Ravalli Sheriff's Department had rejected the allegations underlying Count VII *over ten years ago*. (Ex D, 21.) The Office filed the charge anyway, along with an affidavit asserting that the underlying instrument was a "security." (Ex B, 12.) The Office, which specializes in securities offenses, lacked any evidence that the alleged instrument at issue in Count VII was in fact a "security" under Montana law. (Ex. I, 483-85.)[1]

Egan offers pre-filing conferences to suspects to "come-clean" prior to making charging decisions. (Ex F., 162, 237.) Suspects who avail themselves of this opportunity usually benefit. (*Id.*, 164-65.) Egan initially claimed to have attempted to speak with Himes prior to charges being filed against him. (*Id.* 85-86.) Months later, she recanted and admitted that she

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[1] The District Court dismissed Count VII last year. (Ex. D, 21-22.)

never made such an attempt. (*Id.* 120.)

Prosecutors insisted upon excluding Himes when defense counsel interviewed prosecution witnesses. (Ex. F, 239.) They do not similarly exclude defendants in other cases. (*Id.*, 170.)

Himes has identified four similarly situated suspects who were not outspoken Christian conservatives and were not prosecuted by the Auditor. (Ex. E, 43-45; Ex. F 124-26, 147-48, 152-53, 174-76, 214-16). Himes has requested, *inter alia*, discovery to identify other similarly situated suspects receiving favorable treatment in order to determine if they engage in First Amendment activism similar to his. (Ex. F, 68-70.) If none of them does, this would significantly bolster Himes' arguments during a hearing on the merits. The State refuses to provide unredacted files containing this information despite Himes' offer of a protective order. (*Id.*, 71-73)

ISSUE PRESENTED

Does the some-evidence test established by *United States v. Armstrong,* 517 U.S. 456 (1996), for discovery of selective-prosecution evidence permit the District Court to weigh sworn testimony of defense witnesses against unsworn statements by prosecutors or is its task simply to determine the legal adequacy of the defendant's evidence ?

ARGUMENT

I SUPERVISORY CONTROL IS APPROPRIATE BECAUSE HIMES MEETS THE REQUIREMENTS OF RULE 14(3)

A. A Post-Trial Appeal is Inadequate Because Victims of Selective Prosecution Are Entitled to Avoid Trial Altogether

While a post-conviction appeal is usually an adequate remedy for trial errors, this Court has held that issues as to whether a criminal trial should occur *at all* satisfy the "urgency" requirement in Rule 14(3). *Booth v. Montana Twenty-First Judicial Dist. Court*, 1998 MT 344, ¶ 6, 292 Mont. 371, 972 P.2d 325 (writ issued because double jeopardy issue potentially involved a defendant's "entitlement to avoid the prosecution altogether"); *Miller v. Montana Eighteenth Judicial Dist. Court*, 2007 MT 149, 337 Mont. 488, 162 P.3d 121 (writ issued because prosecution failed to timely file death penalty notice, thereby resulting in defendants potentially "being subjected to prosecutions as capital defendants, notwithstanding their entitlement to avoid being prosecuted as such altogether").

A selective-prosecution claim is analogous to those in *Booth* and *Miller* because it "is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution." *Armstrong*, 517 U.S. at 464. Such claims allege a "defect in the institution of the prosecution" that should be

"raised prior to trial." *United States v. Edwards,* 188 F.3d 230, 237 (4th Cir.1999). Selective prosecution, if proven, warrants dismissal. *State v. Stanko*, 1998 MT 323, ¶¶ 49-52, 292 Mont. 214, 974 P.2d 1139 (claim of selective prosecution was evaluated as a motion to dismiss by the district court and subject to plenary review on appeal), *overruled on other grounds* in *State v. Ariegwe*, 2007 MT 204, ¶ 72, 338 Mont. 442, 167 P.3d 815; see also *United States v. Jones*, 159 F.2d 969, 978 n.8 (6th Cir.1998) (reversal of trial court's denial of discovery "gives Jones the opportunity to move to dismiss the indictment following discovery"). A post-conviction appeal is thus inadequate because, like the defendants in *Booth* and *Miller*, Himes may be "entitle[d] to avoid the prosecution altogether" if he obtains relief from this Court. *Booth*, ¶ 6,

That Himes is seeking supervisory control over an order regarding selective-prosecution discovery rather than one on the merits is of no moment. Because "the amount of evidence needed to support a selective prosecution claim on the merits is greater than that which justifies discovery, it follows that, when ... discovery [is] not warranted, [a] defendant's merits claim must also fail." *United States v. Alameh*, 341 F.3d 167, 175 (2d Cir.2003). Given the District Court's many errors during the *Armstrong*

hearing, asking it to now rule on the merits prior to seeking relief from this Court would be a futile and unnecessary act. § 1-3-223, MCA.

B Whether Himes Satisfies *Armstrong's* "Some Evidence" Test is an Issue of Law

Himes' petition satisfies the requirement in Rule 14(3) that the case involve a "purely legal question":

> When we review a district court's discovery order in support of a selective-prosecution claim, we are determining the legal adequacy of the evidence. We review the legal adequacy of evidence de novo.

United States v. James, 257 F.3d at 1178, quoting *Olvis*, 97 F.3d at 743; *United States v. Hedaithy*, 392 F.3d 589, 606-607 (3d Cir.2004) (reviewing discovery order for abuse of discretion but noting that abuse results from "an errant conclusion of law" and "we may independently review whether [the defendant] was entitled to discovery" because the appellate record contained all relevant documents submitted to the trial court). The documentary evidence Himes presented to the District Court is contained in exhibits to this Petition. The issue of legal adequacy under *Armstrong's* some-evidence test is therefore appropriate for review by this Court.

C. Himes Meets Both Rule 14(3)(a) and 14(3)(b)

The remaining requirement of Rule 14(3) is satisfied if the District Court is proceeding under a mistake of law and causing a gross injustice, or a constitutional issue of statewide importance is involved. Himes can meet either of these tests.

1. The District Court is Acting Under a Mistake of Law and Causing a Gross Injustice

The District Court erred by failing to limit its analysis of Himes' *Armstrong* motion to the legal adequacy of his evidence and instead weighed his witnesses' sworn statements against unsworn statements by prosecutors. This error is causing a gross injustice by depriving Himes of discovery that would bolster his claim of selective prosecution.

2. Access to Selective-Prosecution Discovery is a Constitutional Issue of Statewide Importance

A defendant's right to discovery of selective-prosecution evidence arises from the Fourteenth Amendment's guarantee of equal protection. *Armstrong*, 517 U.S. at 464[2]. This constitutional issue has statewide

[2] *Armstrong* involved a federal prosecution, thereby implicating the equal protection component of the Due Process Clause of the Fifth Amendment.

importance and is a subject courts describe as "a murky corner of equal protection law"[3] involving a "protean standard."[4] An opinion from this Court will guide Montana's bench and bar on an issue likely to reoccur.

II HIMES HAS PRODUCED SIGNIFICANT EVIDENCE OF DISCRIMINATORY INTENT

Though broad, prosecutorial discretion "is subject to constitutional constraints." *Armstrong*, 517 U.S. at 464. The guarantee of equal protection prohibits charging decisions "based on an unjustifiable standard such as race, religion, or other arbitrary classification." *Id.* Arbitrary classifications can arise from defendants exercising their First Amendment rights. *State v. Maldonado*, 176 Mont. 322, 329, 578 P.2d 296 (1978).

Discovery motions for selective-prosecution evidence require a lesser showing than dismissal motions. Obtaining a *dismissal* of charges based on selective prosecution requires "clear evidence" of an equal protection violation. *Armstrong*, 517 U.S. at 464. Obtaining *discovery* for a selective prosecution claim, however, requires defendants to produce only "*some* evidence" of discrimination. *Id.* at 468. Thus, "[a]lthough the 'some

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[3] *Zahra v. Town of Smithfield*, 48 F.3d 674, 683 (2d Cir.1995).

[4] *United States v. Lewis*, 517 F.3d 20, 25 (1st Cir.2008).

evidence' standard is rigorous, it is still relatively light, because obviously, a defendant need not prove his case in order to justify discovery on an issue." *United States v. Thorpe*, 471 F.3d 652, 657 (6th Cir.2006), quoting *Jones*, 159 F.3d at 978; see also *James*, 257 F.3d at 1178 ("[i]n light of *Armstrong's* seemingly less stringent 'some evidence tending to show' standard, the defendants need not establish a prima facie case of selective prosecution to obtain discovery on these issues").

Analyses of selective prosecution claims "draw on ordinary equal protection standards." *Armstrong*, 517 U.S. at 465. Accordingly, this Court may consider both Himes' evidence as well as "the reasonable inferences arising therefrom." *People v. Superior Court (Baez),* 79 Cal.App.4th 1177, 1196 (2000).

Evidence of discriminatory intent in Himes' case greatly exceeds *Armstrong's* some-evidence standard, *e.g.*, the habitual use of anti-Christian epithets by the prosecution, the denial of a pre-filing conference offered to other similarly situated suspects, the addition of Count VII, a time-barred charge lacking any probable cause in retaliation for Himes'criticism of Lindeen, the State's false assertion that Himes profited from the remaining six charges, and his exclusion from witness interviews. Such evidence in discrimination cases is extraordinary because most "violators have learned

not to leave the proverbial 'smoking gun' behind." *Aman v. Cort Furniture Rental Corp.*, 85 F.3d 1074, 1082 (3d Cir.1996).

The District Court seemed to acknowledge bigotry within the Office:

> I would suppose that you, Mr. Laslovich, and you, Mr. O'Neil, have already had some discussions in your office about the complications which ensue when people who are bigots, if there are any, run off their mouths unnecessarily and improperly and how much they complicate the task that prosecutors might have in this kind of case.

(Ex. J, 530.) The court erred, however, regarding the implications of this bigotry. Himes' witnesses -- one was a prosecutor for 13 years -- described in detail Egan's control over the charging of suspects. (Ex. F, 144-45; *id.* 188 ("Lynne would be the determiner of what matter would actually become an investigation"); *id.*, 212 (Egan is "the real gatekeeper on cases going forward or not going forward")). They also described the reasons for her influence, including her position in the office, (*id.*, 145), her knowledge of securities law (*id.*, 225), the inexperience of the Office's prosecutors, (*id.*, 146), her ability to prepare documents for court, (*id.*, 220), and her work on behalf of Lindeen's and Laslovich's campaigns. (*Id.*, 201-202.) They also detailed several instances of similarly situated suspects who, on Egan's authority, were not charged. (*Id.*, 147-48, 174-76.)

Prosecutors responded during the District Court's *Armstrong* hearing with unsworn statements that they, not Egan, make charging decisions. (Ex.

J, 511-12). Rather than evaluate the legal adequacy under *Armstrong* of Himes' evidence, the District Court disregarded it. (*Id.*, 530 ("There simply is no connection between [Egan's] statements and these two gentlemen's determination to prosecute"). The District Court then added the following:

> And I need to tell you directly, Mr. Monforton, an argument that Ms Egan, some person who is not the prosecutor, has been able to make a determination about which cases are going to go forward and which are not going to go forward simply is not persuasive.

(*Id.*, 530.) Egan's control over charging and declination decisions, however, is not merely a defense "argument"; it is the sworn testimony of two of the Office's employees, including a prosecutor with over a decade of experience.

Armstrong requires only that defendants present legally adequate evidence in order to obtain selective-prosecution discovery. See, *e.g.*, *United States v. Bass*, 536 U.S. 862, 863 (2002) (defendants seeking selective prosecution discovery "must *show* some evidence" of discrimination); *id.* at 864 (*Armstrong* motion properly denied "because respondent failed to *submit* relevant evidence"); *Jones*, 159 F.3d at 977 (defendant "has *set forth* 'some evidence' warranting discovery"); *United States v. DiStefano*, 129 F.Supp.2d 342, 348 (S.D.N.Y. 2001) (defendant's "burden to obtain discovery" is to "*offer* some evidence tending to show"

discrimination); *United States v. Drake*, 934 F.Supp.953, 964 (N.D.Ill. 1996) (defendants must "*introduce* some evidence" of discrimination). Defendants who do so are entitled to discovery to prepare for an evidentiary hearing on the merits where the District Court, after hearing live witnesses from both sides who are sworn and subject to cross examination, can properly weigh evidence and make credibility determinations.[5]

The District Court's reasoning in this case effectively requires defendants raising selective-prosecution claims to prevail in *two* evidentiary hearings, one to determine whether discovery is warranted and a second to determine the merits of the claim. Nothing in *Armstrong* requires this.

The District Court compounded its error by refusing to consider other evidence of discriminatory intent, starting with the anti-Christian animus of Prosecutor Brett O'Neil, one of the prosecutors assigned to this matter. (Ex. F, 194.) It also refused to consider Egan's denial of a pre-filing conference to Himes afforded other suspects. (Ex. J, 523 ("You're talking about what

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[5] The District Court also appears to have assumed that selective prosecution cannot arise from actions by anyone other than prosecutors. (Ex. J, 522 ("Now, I haven't heard anything that indicates that Ms Egan is entitled to prosecute anybody")). This assumption is erroneous. See *e.g.*, *Jones*, 159 F.3d at 978 (selective prosecution discovery permitted based upon evidence of discriminatory actions by police); *Murgia v. Municipal Court*, 15 Cal.3d 286, 301 (1975) (same).

Ms Egan can prevent, but that's not the issue here"). Nor was the District Court willing to consider Egan's earlier, false claim that she extended such an offer to Himes. (*Id.* 529 (Egan's "inconsistent statements do not, in and of themselves, demonstrate any kind of connection to unjustifiable classification")). Her contradictions on this and other issues, however, are highly probative. *Cf. Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 147 (2000) ("the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose").

The District Court also refused to consider prosecutors' suspicious filing of Count VII. (Ex. J, 498 ("I don't think there's going to be any benefit in arguing about a count filed without probable cause to support an argument of selective prosecution")). There was not a shred of evidence that this time-barred, 11-year old securities charge -- which had been rejected by Ravalli authorities a decade ago -- involved a "security." This filing, occurring shortly after Himes' public denunciation of Commissioner Lindeen, provides clear evidence of First Amendment retaliation.

The District Court also refused to consider that prosecutors insisted upon excluding Himes when counsel interviewed prosecution witnesses. (Ex. F, 239.) Prosecutors do not similarly exclude defendants in other cases.

(*Id.*, 170.)

The District Court erroneously denied Himes' *Armstrong* motion by (1) weighing key portions of his evidence against prosecution evidence at a time when no such weighing is permitted and (2) refusing to even consider his other evidence. Supervisory control is therefore appropriate and necessary.

III HIMES HAS PRODUCED SIGNIFICANT EVIDENCE OF DISCRIMINATORY EFFECT

Himes can satisfy *Armstrong's* discriminatory-effect prong "by identifying a similarly situated individual" who could have been charged, but was not. *James*, 257 F.3d at 1179. The District Court did not rule on this issue.

Himes' witnesses presented detailed evidence of four similarly situated suspects who are not outspoken Christians and were not prosecuted. (Ex. E, 43-45; Ex. F 124-26, 147-48, 152-53, 174-76, 214-16). One was Bill Nooney, who allegedly defrauded investors out of $1 million. (Ex. F, 174-75, Ex. I, 487-88.) Though unwilling to meet with Himes, Egan met Nooney several times. (Ex. F, 126.) And though the State offers an unsupported assertion that it is still investigating Nooney, (Ex. G, 314), one of his victims responded with a sworn statement that Egan told the victim

nearly two years ago that she had closed the investigation. (Ex. I, 486-87.) The State's conclusory, unsworn assertions regarding alleged differences between Himes and Nooney, (Ex G, 316), are likewise unpersuasive.

Nick Cladis also could have been criminally charged for defrauding investors, but was not. (Ex F., 147-48.) Though unwilling to meet Himes, Egan met with Cladis, whose sobbing dissuaded Egan from prosecuting him despite his $4 million net worth. (*Id.*, 147, 152.)

The State downplays Cladis' case because he is "a very active Christian." (Ex. G, 315.) Nothing indicates, however, that Cladis engaged in any controversial First Amendment speech as Himes did, or that Egan even knew of his beliefs when she rejected the case for criminal filing. As with Nooney, the State offers conclusory, unsworn assertions regarding alleged differences between Himes and Cladis that are unpersuasive. (Ex G, 316.)

The State also contends that "the FBI didn't think enough existed to prosecute [Cladis] criminally." (Ex. G, 316.) This argument, besides being based upon inadmissible hearsay from Cladis, (Ex. G, 313, Ex. H, 452, ¶ 5), is contradicted by the former prosecutor's testimony that, at least under state law, Cladis could have been prosecuted. (Ex F., 147-48.)

Two other suspects, Daniel Two Feathers and Rick Young, had to be

eventually prosecuted by federal authorities because, with Two Feathers, Egan "just kind of dropped it and went on her way," (Ex. F, 148), while Young was not "interesting" to her. (*Id.*, 153.)

Prosecutors told the District Court that the State "worked jointly with the United States Attorney's office to bring those two to justice." (Ex J, 510.) Even taking these unsworn assertions at face value, they do not address why Egan rejected these cases for state prosecution when they were first brought to her.

Finally, the State contends Himes "did not and cannot provide this Court with any kind of evidence whatsoever that shows that the prosecutors, the investigators, or anyone at the Auditor's office did not (or will not) criminally prosecute Mr. Nooney because he was/is not an 'outspoken conservative Christian'." (Ex. G, 315.)[6] Besides being a confusing triple negative, this contention misstates the law. The effect-prong only requires Himes to "produce some evidence that similarly situated defendants...could have been prosecuted, but were not...." *Armstrong*, 517 U.S. at 469. *Armstrong* does not impose upon Himes the added burden of showing prosecutors' subjective reason for declining to charge these suspects.

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[6] The State makes the same argument regarding the other suspects. (Ex. G, 313-14.)

Conflicting evidence as to why certain suspects were not prosecuted should instead be resolved during an evidentiary hearing on the merits.

CONCLUSION

For all of the foregoing reasons, Harris Himes respectfully requests this Court:

1) Assert supervisory control over this case;

2) Order the State to produce evidence pertaining to suspects who were investigated but not prosecuted since 2006 when Lynne Egan became Deputy Securities Commissioner,

DATED: April 4, 2013

Respectfully submitted,

_____

Matthew G. Monforton
Attorney for Petitioner

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 14(9)(b) of the Montana Rules of Appellate Procedure, I certify that this Petition is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and quoted and indented material; and the word count calculated by Microsoft Word is exactly 3,995 words, excluding caption page, Table of Contents, Table of Authorities, Certificate of Compliance and Certificate of Service.

Dated: April 4, 2013

By:_____
Matthew G. Monforton
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Petition for Writ of Supervisory Control to be mailed to:

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Office of the Commissioner of Securities & Ins.
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The Honorable Loren Tucker
District Court Judge
2 S. Pacific #6
Dillon, Montana 59725

Dated: April 4, 2013

By:_____
Matthew G. Monforton
Attorney for Petitioner

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. _____

COPY

HARRIS HIMES,

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MONTANA TWENTY-FIRST JUDICIAL
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THE HONORABLE LOREN TUCKER,
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EXHIBITS A-J TO PETITION FOR WRIT OF SUPERVISORY CONTROL

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EXHIBIT A

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**MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT,
RAVALLI COUNTY**

STATE OF MONTANA, Plaintiff, vs. HARRIS HIMES, Defendant.	Cause No.: DC-11-_17_ Dept 4 **INFORMATION**

Comes now Jesse Laslovich and Brett O'Neil, Special Deputy Ravalli County Attorneys, as attorneys for the state of Montana, having first obtained leave of Court as required by law, and accuse the Defendant, HARRIS HIMES, of having committed the following offenses.

COUNT I

That on or about March 2008 in Ravalli County, Montana, the Defendant committed the offense of THEFT, a FELONY, in violation of Mont. Code Ann. 45-6-301(2)(c).

The facts constituting this offense are as follows:

That at the time and place mentioned above, with the purpose to deprive G.S. of property, the Defendant purposely or knowingly obtained or exerted by threat or deception control of G.S.'s property, and used, concealed, or abandoned the property knowing that the

use, concealment, or abandonment probably would deprive G.S. of his property.

Specifically, Defendant deceived G.S. into investing $150,000 in Duratherm Building Systems (DBS). The $150,000 was deposited into an account solely owned by James Bryant and his wife (Monarch Beach Properties, LLC). The money was transferred from the Monarch Beach account to the Defendant, to credit cards in the Defendant's name, and to other payees The money has not been returned to G.S. and despite the Defendant's representations otherwise, G.S has received no ownership stake in DBS.

Pursuant to Mont. Code Ann. § 45-6-301(8)(b)(i), the offense is punishable by a fine not to exceed $50,000 and/or imprisonment in a state prison for a term not to exceed 10 years

COUNT II

That on or about March 2008 in Ravalli County, Montana, the Defendant committed the offense of FAILURE TO REGISTER AS A SALESPERSON, a FELONY, in violation of Mont Code Ann § 30-10-201(1)

The facts constituting this offense are as follows:

That at the time and place mentioned above, the Defendant acted as a salesperson of a security without being registered with the state of Montana.

Specifically, the Defendant represented an issuer in effecting or attempting to effect sales of securities by deceiving G.S. into investing his money with DBS.

Pursuant to Mont Code Ann. § 30-10-306(1), the offense is punishable by a fine not to exceed $5,000 and/or imprisonment in the state prison for a term not to exceed 10 years

COUNT III

That on or about March 2008 in Ravalli County, Montana, the Defendant committed the offense of FAILURE TO REGISTER A SECURITY, a FELONY, in violation of Mont Code Ann. § 30-10-202(1)

The facts constituting this offense are as follows.

That at the time and place mentioned above, the Defendant offered an unregistered security to G.S.

Specifically, the Defendant offered G.S. an investment opportunity in DBS, a security that was not registered with the state of Montana

Pursuant to Mont. Code Ann. § 30-10-306(1), the offense is punishable by a fine not to exceed $5,000 and/or imprisonment in the state prison for a term not to exceed 10 years.

COUNT IV

That on or about March 2008 in Ravalli County, Montana, the Defendant committed the offense of FRAUDULENT PRACTICES, a FELONY, in violation of Mont. Code Ann. § 30-10-301(1)(b).

The facts constituting this offense are as follows

That at the time and place mentioned above, the Defendant, while offering the sale of a security, directly and/or indirectly made untrue statements of a material fact and/or omitted a material fact, which, in light of the circumstances under which they were made, were misleading

Specifically, the Defendant misled G.S. by making untrue statements or omitting material facts when he failed to provide G.S. with complete disclosure information or a prospectus regarding G.S.'s investments in DBS.

Pursuant to Mont. Code Ann. § 30-10-306(1), the offense is punishable by a fine not to exceed $5,000 and/or imprisonment in the state prison for a term not to exceed 10 years.

COUNT V

That on or about March 2008 in Ravalli County, Montana, the Defendant committed the offense of CONSPIRACY TO COMMIT THEFT, a FELONY, in violation of Mont. Code Ann. §§ 45-6-301(2)(c) and 45-4-102(1)

The facts constituting this offense are as follows:

That at the time and place mentioned above, the Defendant agreed with another to purposely commit the offense of theft, and acted in furtherance thereof by purposely or knowingly obtaining by threat or deception control over property of the owner and using, concealing, or abandoning the property knowing that the use, concealment, or abandonment probably would deprive the owner of the property

Specifically, the Defendant agreed with Pastor Bryant to purposely commit the offense of theft, and acted in furtherance thereof by deceiving G.S. into investing in DBS, and then accepting money from Pastor Bryant through the Monarch Beach Properties, LLC bank account. Defendant also had credit cards in his name paid off by the Monarch Beach account. The Defendant has not returned G.S.'s money to G.S

Pursuant to Mont. Code Ann. § 45-4-102(3), the offense of conspiracy is punishable by a maximum sentence provided for the offense that is the object of the conspiracy. Pursuant to Mont. Code Ann. § 45-6-301(8)(b)(i), the offense of theft is punishable by a fine not to exceed $50,000 and/or imprisonment in the state prison for a term not to exceed 10 years.

COUNT VI

That on or about March 2008 in Ravalli County, Montana, the Defendant committed the offense of CONSPIRACY TO COMMIT FRAUDULENT PRACTICES, a FELONY, in violation of Mont. Code Ann §§ 30-10-301(1)(b) and 45-4-102(1).

The facts constituting the offense are as follows:

That at the time and place mentioned above, the Defendant, while offering the sale of a security, agreed with another to purposely commit securities fraud and acted in furtherance of the agreement by directly and/or indirectly making untrue statements of a material fact and/or omitting to state a material fact, which, in light of the circumstances under which statements or omissions were made, were misleading.

Specifically, the Defendant agreed with Pastor Bryant to purposely commit fraudulent

practices and acted in furtherance thereof by making untrue statements or omitting material facts when he failed to provide G.S with complete disclosure information or a prospectus regarding G.S.'s investments in DBS.

Pursuant to Mont. Code Ann. § 45-4-102(3), the offense of conspiracy is punishable by a maximum sentence provided for the offense that is the object of the conspiracy. Pursuant to Mont Code Ann. § 30-10-306(1), the offense of Fraudulent Practices is punishable by a fine not to exceed $5,000 and/or imprisonment in the state prison for a term not to exceed 10 years.

DATED this 23rd day of September, 2011.

By: _____

JESSE LASLOVICH
BRETT O'NEIL
Special Deputy Ravalli County Attorneys

EXHIBIT B

JESSE LASLOVICH
BRETT O'NEIL
Special Deputy Ravalli County Attorneys
Special Assistant Montana Attorneys General
Office of the Commissioner of Securities and Insurance
Montana State Auditor
840 Helena Ave
Helena, Montana 59601
(406) 444-2040

Attorneys for Plaintiff

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT,
RAVALLI COUNTY

STATE OF MONTANA, Plaintiff, vs. HARRIS HIMES, Defendant.	)))))))))	Cause No. DC-11-117 **MOTION FOR LEAVE TO FILE AMENDED INFORMATION AND AFFIDAVIT IN SUPPORT**

STATE OF MONTANA)
) ss.
County of Ravalli)

JESSE LASLOVICH, having been first duly sworn, deposes and says:

1. That he is a duly appointed, qualified, and acting Special Deputy County Attorney in and for the county of Ravalli, state of Montana.

2. That the Defendant has committed offenses in Ravalli County as hereinafter set forth and, based upon information developed through an investigation conducted by law enforcement officers and criminal justice investigators, the Court should grant leave to file the Amended Information directly in District Court pursuant to Mont. Code Ann. § 46-11-201, charging the above-named Defendant with the offenses of: **COUNT I,** THEFT, by purposely or

knowingly obtaining by threat or deception control over G.S.'s property and using, concealing, or abandoning the property knowing that the use, concealment, or abandonment probably would probably deprive G.S. of his property, a FELONY, in violation of Mont. Code Ann. § 45-6-301(2)(c); **COUNT II**, FAILURE TO REGISTER AS A SALESPERSON, by representing an issuer in effecting or attempting to effect sales of securities without being registered, a FELONY, in violation of Mont. Code Ann. § 30-10-201(1); **COUNT III**, FAILURE TO REGISTER A SECURITY, by offering an unregistered security to G.S., a FELONY, in violation of Mont. Code Ann. § 30-10-202(1); **COUNT IV**, FRAUDULENT PRACTICES, by directly or indirectly making untrue statements of a material fact and/or omitting a material fact, which, in light of the circumstances under which they were made, were misleading, a FELONY, in violation of Mont. Code Ann. § 30-10-301(1)(b); **COUNT V**, CONSPIRACY TO COMMIT THEFT, by agreeing with another to purposely commit the offense of theft, and acting in furtherance thereof by purposely or knowingly obtaining by threat or deception control over G.S.'s property and using, concealing, or abandoning the property knowing that the use, concealment, or abandonment probably would deprive G.S. of his property, a FELONY, in violation of Mont. Code Ann. §§ 45-6-301(2)(c) and 45-4-102(1); **COUNT VI**, CONSPIRACY TO COMMIT FRAUDULENT PRACTICES, by agreeing with another to purposely commit the offense of securities fraud, and acting in furtherance thereof by directly or indirectly making untrue statements of a material fact and/or omitting a material fact, which, in light of the circumstances, were misleading, a FELONY, in violation of Mont. Code Ann. §§ 30-10-301(1)(b) and 45-4-102(1); <u>COUNT VII, FAILURE TO REGISTER AS A SALESPERSON, by representing an issuer in effecting or attempting to effect sales of securities without being registered, a FELONY, in violation of Mont. Code Ann. § 30-10-201(1).</u>

3. That law enforcement officers and criminal justice investigators have made a full and careful investigation of all the facts and circumstances surrounding the commission of said offenses, so far as they are known or ascertainable, and Affiant believes it a proper case for the filing of an Amended Information. For this reason and pursuant to Mont. Code Ann. § 46-11-201, Affiant respectfully moves the Court for leave to file said Amended Information directly in District Court.

4. That the following information is submitted to establish probable cause for the filing of the foregoing charges:

a. On or about December 2007, G.S. received notice he would be inheriting a large sum of money. He discussed this windfall with Defendant Harris Himes, a pastor at Big Sky Christian Center. G.S. told Defendant he wished to invest his money in a conservative, risk-free investment that provided income to support ministry work and would allow him to serve the Lord full time.

b. Defendant told G.S. that Defendant and another pastor, James "Jeb" Bryant, were partners in a company called Duratherm Building Systems (DBS). DBS allegedly manufactured structural insulated panels and would eventually provide a healthy return should G.S. choose to invest.

c. On or about March 2008, Pastor Bryant gave a PowerPoint presentation to G.S. about DBS. Defendant was present at the meeting. Defendant and Pastor Bryant told G.S. they, themselves, could not invest more money "right now" because their money was tied up in a gold mine in New Mexico, but if they could get $150,000, they could procure a glue machine, which was the last thing DBS needed to begin production of its insulated panels. At the meeting, Defendant and Pastor Bryant told G.S. that in exchange for a $150,000 investment,

G.S. would receive a 20 percent minimum annual return for two years, or a 5 percent ownership with DBS with a 20 percent annual return and "perks" for a longer-term investment. These "perks" were to include the use of a beach house in Mexico and employment with DBS.

d. Based on the forgoing information, G.S. agreed to a $150,000 investment which, according to the PowerPoint presentation and subsequent emails, would provide G.S. with $36,000 per year return (roughly 24 percent on the investment). Pastor Bryant's subsequent emails to G.S. also included bank wiring instructions. Pastor Bryant further provided a third party's Letter of Intent stating it would purchase panels should certain timelines be met. This Letter of Intent was not on any company letterhead, nor did it refer to any specific business purpose for the panels.

e. Defendant Himes encouraged G.S. to set up a corporation sole from which to wire the $150,000. G.S. set up a corporate account named "Image of Truth" in May 2008. Defendant Himes told G.S. a corporation sole was the best method for handling the financial side of ministry work.

f. On or about June 6, 2008, G.S. wired $150,000 from the corporate account "Image of Truth" to Harris Bank in Chicago, Illinois, f/b/o Monarch Beach Properties, LLC (Monarch), per the instructions in Pastor Bryant's emails. G.S. was told that Monarch was a "type of parent corporation" for DBS. Monarch is solely owned by Pastor Bryant ~~and his wife, Diana Bryant~~. The Monarch address on the wiring instructions contained in Pastor Bryant's email is located in an apartment complex in Rockville, Maryland, but the company is not registered with the Maryland Secretary of State. Harris Bank records, however, list a P.O. Box in Hamilton, Montana, as Monarch's mailing address.

g. On or about July 2008, at the Defendant's behest and with encouragement from Pastor Bryant, G.S. traveled to Texas to meet with Pastor Bryant to assist with transportation across the Mexican border. Defendant provided vehicle stickers to G.S. prior to his departure from Montana.

h. Approximately one month after arriving in Texas, G.S. travelled with Pastor Bryant to Mexico to view the property where the factory was alleged to be and to work as an electrician for DBS, one of the "perks" described in the initial offering. When he arrived at the location of the alleged factory, he found an empty building. There were no workers, no machinery, no floor plan, and no sign that the building was occupied. This facility was not owned by DBS, Defendant, or Pastor Bryant. Shortly after the "factory" tour, Pastor Bryant left G.S. alone in Mexico and G.S. was forced to return to Texas by himself.

i. DBS is an investment property per the subscription agreement provided to G.S. by Defendant. However, G.S. never received a statement of ownership in DBS after he transferred the money to the Monarch account (the subscription agreement states DBS will issue certificates of ownership to its investors). Furthermore, G.S. was denied access to a financial accounting of assets (the subscription agreement states they will be viewable during reasonable business hours). Finally, G.S. never received a prospectus or even a receipt confirming his purchase (he was given the unsigned subscription agreement in lieu of both). His request to Defendant and Pastor Bryant to be bought out from his share in the company has not been met, though Defendant and Pastor Bryant have told G.S. they would help him to sell off his share in the business. Both Defendant and Pastor Bryant stopped returning G.S.' phone calls over one year ago.

j. Bank statements obtained by the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), confirm G.S. deposited $150,000 into the Monarch account. This money ultimately went to various payees, including Defendant and Pastor Bryant; to credit card debt owned by Monarch Beach Properties (both Defendant and Pastor Bryant were named on the credit cards); and to various other payees. G.S.'s investment did not go to DBS. G.S. never received a 20 percent minimum annual return for two years; he never received a 5 percent (or any type of) ownership with DBS with a 20 percent annual return; he never received the "perks" which Defendant and Pastor Bryant promised for his investment with DBS. The Defendant and Pastor Bryant never returned G.S.'s money.

k. Neither Defendant nor Pastor Bryant are registered, nor have they ever been registered, to sell securities in the state of Montana with the CSI. DBS was not registered as an investment property with the CSI. Neither Defendant nor Pastor Bryant disclosed this information to G.S.

l. After the CSI filed its Information against Defendant Himes, the CSI was approached by certain persons claiming they, too, had been offered securities by the Defendant. An investigation revealed that on or about 2000-2004, Defendant Himes had a series of meetings with various citizens of Ravalli County. In those meetings, Defendant Himes advised people to make group investments in the commodities market.

m. On or about February 1, 2000, L.J., who was in attendance with his wife at one of these meetings, made an investment of $10,000 with Defendant Himes. L.J. received a signed letter from Defendant acknowledging L.J. was "investing in a program which will enable him to help in both the Lord's work and his own retirement." Based on the Defendant's representations, L.J. believed he would receive $1,000-$2,000 per month on his investment.

n. On or about 2002, L.J. had not received any return on his investment. He approached the Defendant in an effort to withdraw his money, but was told it was with three men in California.

o. On or about 2003, L.J. again approached the Defendant in an attempt to recoup his money. The Defendant told L.J. the money was gone.

WHEREFORE, the undersigned moves the Court for an Order granting leave to file an Information directly in District Court charging the above-named Defendant with the felony offenses of THEFT, by purposely or knowingly obtaining by threat or deception control over G.S.'s property and using, concealing, or abandoning the property knowing that the use, concealment, or abandonment probably would deprive G.S. of his property, a FELONY, in violation of Mont. Code Ann. § 45-6-301(2)(c); FAILURE TO REGISTER AS A SALESPERSON, by representing an issuer in effecting or attempting to effect sales of securities without being registered, a FELONY, in violation of Mont. Code Ann. § 30-10-201(1); FAILURE TO REGISTER A SECURITY, by offering an unregistered security to G.S., a FELONY, in violation of Mont. Code Ann. § 30-10-202(1); FRAUDULENT PRACTICES, by directly or indirectly making untrue statements of a material fact and/or omitting a material fact, which in light of the circumstances under which they were made were misleading, a FELONY, in violation of Mont. Code Ann. § 30-10-301(1)(b); CONSPIRACY TO COMMIT THEFT, by agreeing with another to purposely commit the offense of theft, and acting in furtherance thereof by purposely or knowingly obtaining by threat or deception control over G.S.'s property and using, concealing, or abandoning the property knowing that the use, concealment, or abandonment probably would deprive G.S. of his property, a FELONY, in violation of Mont. Code Ann. §§ 45-6-301(2)(c) and 45-4-102(1); CONSPIRACY TO COMMIT FRAUDULENT

PRACTICES, by agreeing with another to purposely commit the offense of securities fraud, and acting in furtherance thereof by directly or indirectly making untrue statements of a material fact and/or omitting a material fact which, in light of the circumstances, were misleading, a FELONY, in violation of Mont. Code Ann. §§ 30-10-301(1)(b) and 45-4-102(1), and FAILURE TO REGISTER AS A SALESPERSON, by representing an issuer in effecting or attempting to effect sales of securities without being registered, a FELONY, in violation of Mont. Code Ann. § 30-10-201(1) as more particularly set forth herein.

Due to the large sum of money at issue in this case, the State feels bond should continue to be $10,000.

DATED this 10th day of November, 2011.

JESSE LASLOVICH
BRETT O'NEIL
Special Deputy Ravalli County Attorney

SUBSCRIBED AND SWORN to me before this 10th day of November, 2011, by Jesse Laslovich

JESSE LASLOVICH
BRETT O'NEIL
Special Deputy Ravalli County Attorneys
Special Assistant Montana Attorneys General
Office of the Commissioner of Securities and Insurance
Montana State Auditor
840 Helena Ave
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(406) 444-2040

Attorneys for Plaintiff

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT,
RAVALLI COUNTY

STATE OF MONTANA, Plaintiff, vs. HARRIS HIMES, Defendant.	Cause No.: DC-11-117 **AMENDED INFORMATION**

Comes now Jesse Laslovich and Brett O'Neil, Special Deputy Ravalli County Attorneys, as attorneys for the state of Montana, having first obtained leave of Court as required by law, and accuse the Defendant, HARRIS HIMES, of having committed the following offenses:

COUNT I

That on or about March 2008 in Ravalli County, Montana, the Defendant committed the offense of THEFT, a FELONY, in violation of Mont. Code Ann. 45-6-301(2)(c).

The facts constituting this offense are as follows:

That at the time and place mentioned above, with the purpose to deprive G.S. of property, the Defendant purposely or knowingly obtained or exerted by threat or deception control of G.S.'s property, and used, concealed, or abandoned the property knowing that the

use, concealment, or abandonment probably would deprive G.S. of his property.

Specifically, Defendant deceived G.S. into investing $150,000 in Duratherm Building Systems (DBS). The $150,000 was deposited into an account solely owned by Pastor James Bryant (Monarch Beach Properties, LLC). The money was transferred from the Monarch Beach account to the Defendant, to credit cards in the Defendant's name, and to other payees. The money has not been returned to G.S. and despite the Defendant's representations otherwise, G.S. has received no ownership stake in DBS.

Pursuant to Mont. Code Ann. § 45-6-301(8)(b)(i), the offense is punishable by a fine not to exceed $50,000 and/or imprisonment in a state prison for a term not to exceed 10 years.

COUNT II

That on or about March 2008 in Ravalli County, Montana, the Defendant committed the offense of FAILURE TO REGISTER AS A SALESPERSON, a FELONY, in violation of Mont. Code Ann. § 30-10-201(1).

The facts constituting this offense are as follows:

That at the time and place mentioned above, the Defendant acted as a salesperson of a security without being registered with the state of Montana.

Specifically, the Defendant represented an issuer in effecting or attempting to effect sales of securities by deceiving G.S. into investing his money with DBS.

Pursuant to Mont. Code Ann. § 30-10-306(1), the offense is punishable by a fine not to exceed $5,000 and/or imprisonment in the state prison for a term not to exceed 10 years.

COUNT III

That on or about March 2008 in Ravalli County, Montana, the Defendant committed the offense of FAILURE TO REGISTER A SECURITY, a FELONY, in violation of Mont. Code Ann. § 30-10-202(1).

The facts constituting this offense are as follows:

1 That at the time and place mentioned above, the Defendant offered an unregistered
2 security to G.S.
3 Specifically, the Defendant offered G.S. an investment opportunity in DBS, a security
4 that was not registered with the state of Montana.
5 Pursuant to Mont. Code Ann. § 30-10-306(1), the offense is punishable by a fine not to
6 exceed $5,000 and/or imprisonment in the state prison for a term not to exceed 10 years.
7 **COUNT IV**
8 That on or about March 2008 in Ravalli County, Montana, the Defendant committed the
9 offense of FRAUDULENT PRACTICES, a FELONY, in violation of Mont. Code Ann. § 30-
10 10-301(1)(b).
11 The facts constituting this offense are as follows:
12 That at the time and place mentioned above, the Defendant, while offering the sale of a
13 security, directly and/or indirectly made untrue statements of a material fact and/or omitted a
14 material fact, which, in light of the circumstances under which they were made, were
15 misleading.
16 Specifically, the Defendant misled G.S. by making untrue statements or omitting
17 material facts when he failed to provide G.S. with complete disclosure information or a
18 prospectus regarding G.S.'s investments in DBS.
19 Pursuant to Mont. Code Ann. § 30-10-306(1), the offense is punishable by a fine not to
20 exceed $5,000 and/or imprisonment in the state prison for a term not to exceed 10 years.
21 **COUNT V**
22 That on or about March 2008 in Ravalli County, Montana, the Defendant committed the
23 offense of CONSPIRACY TO COMMIT THEFT, a FELONY, in violation of Mont. Code
24 Ann. §§ 45-6-301(2)(c) and 45-4-102(1).
25 The facts constituting this offense are as follows:

1 That at the time and place mentioned above, the Defendant agreed with another to
2 purposely commit the offense of theft, and acted in furtherance thereof by purposely or
3 knowingly obtaining by threat or deception control over property of the owner and using,
4 concealing, or abandoning the property knowing that the use, concealment, or abandonment
5 probably would deprive the owner of the property.
6 Specifically, the Defendant agreed with Pastor Bryant to purposely commit the offense
7 of theft, and acted in furtherance thereof by deceiving G.S. into investing in DBS, and then
8 accepting money from Pastor Bryant through the Monarch Beach Properties, LLC bank
9 account. Defendant also had credit cards in his name paid off by the Monarch Beach account.
10 The Defendant has not returned G.S.'s money to G.S.
11 Pursuant to Mont. Code Ann. § 45-4-102(3), the offense of conspiracy is punishable by
12 a maximum sentence provided for the offense that is the object of the conspiracy. Pursuant to
13 Mont. Code Ann. § 45-6-301(8)(b)(i), the offense of theft is punishable by a fine not to exceed
14 $50,000 and/or imprisonment in the state prison for a term not to exceed 10 years.
15 **COUNT VI**
16 That on or about March 2008 in Ravalli County, Montana, the Defendant committed the
17 offense of CONSPIRACY TO COMMIT FRAUDULENT PRACTICES, a FELONY, in
18 violation of Mont. Code Ann. §§ 30-10-301(1)(b) and 45-4-102(1).
19 The facts constituting the offense are as follows:
20 That at the time and place mentioned above, the Defendant, while offering the sale of a
21 security, agreed with another to purposely commit securities fraud and acted in furtherance of
22 the agreement by directly and/or indirectly making untrue statements of a material fact and/or
23 omitting to state a material fact, which, in light of the circumstances under which statements or
24 omissions were made, were misleading.
25 Specifically, the Defendant agreed with Pastor Bryant to purposely commit fraudulent

practices and acted in furtherance thereof by making untrue statements or omitting material facts when he failed to provide G.S. with complete disclosure information or a prospectus regarding G.S.'s investments in DBS.

Pursuant to Mont. Code Ann. § 45-4-102(3), the offense of conspiracy is punishable by a maximum sentence provided for the offense that is the object of the conspiracy. Pursuant to Mont. Code Ann. § 30-10-306(1), the offense of Fraudulent Practices is punishable by a fine not to exceed $5,000 and/or imprisonment in the state prison for a term not to exceed 10 years.

COUNT VII

That on or about 2000, in Ravalli County, Montana, the Defendant committed the offense of FAILURE TO REGISTER AS A SALESPERSON, a FELONY, in violation of Mont. Code Ann. § 30-10-201(1).

The facts constituting this offense are as follows:

That at the time and place mentioned above, the Defendant acted as a salesperson of a security without being registered with the state of Montana.

Specifically, the Defendant represented an issuer in effecting or attempting to effect sales of securities by offering or selling a security to L.J.

Pursuant to Mont. Code Ann. § 30-10-306(1), the offense is punishable by a fine not to exceed $5,000 and/or imprisonment in the state prison for a term not to exceed 10 years.

DATED this 10th day of November, 2011.

By: _____
JESSE LASLOVICH
BRETT O'NEIL
Special Deputy Ravalli County Attorneys

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 10th day of November, 2011, by US mail, certified first-class postage paid, to the following:

Hon. Loren Tucker
5th Judicial District Court
2 S. Pacific #6
Dillon, MT 59725

Patrick F. Flaherty
Attorney at Law
1026 First Avenue South
P.O. Box 1968
Great Falls, MT 59403

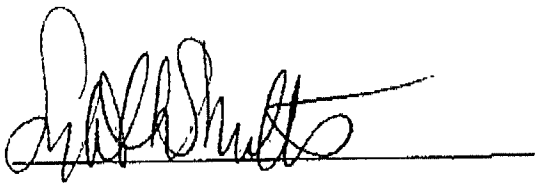


EXHIBIT D

RECEIVED
Aug 1, 2012
BRET FLAHERTY
ATTORNEY AT LAW

FILED
DEBBIE HARMON, CLERK
JUL 3 0 2012
DEPUTY

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

STATE OF MONTANA, Plaintiff, vs. HARRIS HIMES, Defendant.	Cause No. DC-11-117 **ORDER DISMISSING COUNT VII OF THE AMENDED INFORMATION**

Defendant moved to dismiss Count VII of the Amended Information as being barred by the statute of limitations and citing delay as a violation of Defendant's due process rights.

It is unrefuted that the controlling limitation is ten years. It is unrefuted that the alleged violation was known by agents of the State more than ten years before filing the information. It is also unrefuted that an apparently significant witness suffers from dementia.

Both parties provide only conclusory argument about the existence of actual prejudice to the defense and the issue of concrete evidence of material harm.

A one year extension to the statute of limitations is allowed in the event that violation was unknown to the prosecutor. The parties argue whether information known by investigating agents, although arguably unknown by the prosecutor, is controlled by that rule. Unfortunately for the State, it provided no evidence that the exception would apply and has not requested a hearing to provide such evidence.

Defendant's arguments about due process are cogent and a substantial concern given the ten year period allowed to the State, the State's lack of evidence to support its claim that an exception should be allowed to it and the fact that the State has not refuted the existence of dementia in a significant witness. The existence of dementia is certainly a strong indicator that memories will have dimmed. The memory of a significant witness may be important to Defendant. Defendant may have no opportunity to recreate information obtained from that witness or to garner it from other sources.

The State apparently concedes that more than ten years lapsed before the offense was prosecuted. The State has not provided any facts to support its argument that the "prosecuting officer" learned of the alleged crime only after the lapse of the statute of limitations. The State's argument about the statute of limitations require fact evidence to demonstrate merit in the State's position. The State has offered none and has requested no opportunity to do so. Exceptions to the limitation rule are to be strictly construed. The State's bare argument that the exception to the statute of limitations should be allowed is not persuasive.

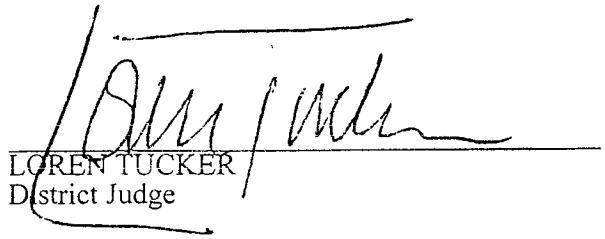
The allegations made by Defendant about dementia in an important witness demonstrate an almost classic case of denial of due process. The State has not refuted Defendant's factual assertion. The State's conclusory statement that due process was provided does not persuade.

The State has supplied only unsupported assertions for its position. The two principles of limitation and due process are important. The weakness of the State's position on the combination of both issues is fatal.

NOW THEREFORE, IT IS HEREBY ORDERED as follows:

1. Defendant's Motion to Dismiss Count VII of the Amended Information is granted.
2. The Clerk of Court will please file this Order and distribute a copy to the parties.

Dated: July 26, 2011.



LOREN TUCKER
District Judge

EXHIBIT E

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MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT
RAVALLI COUNTY

STATE OF MONTANA, Plaintiff, vs. HARRIS HIMES, Defendant.	Case No. DC 11-117 [Assigned to the Honorable Loren Tucker] **MOTION TO COMPEL PRODUCTION OF SELECTIVE PROSECUTION EVIDENCE; BRIEF IN SUPPORT OF MOTION** **Filed Concurrently With:** **1) Defendant's Compendium of Evidence In Support of Motion to Compel Selective Prosecution Evidence** **2) Request for Leave to File Oversized Brief**

Defendant Harris Himes hereby moves the Court to compel production by the State of evidence pertaining to selective prosecution. Himes' motion is based upon this Notice and Brief, the

accompanying Compendium of Evidence, Request for Leave to File an Oversized Brief and any other matter that may be considered by the Court at any hearing on this Motion.

Concurrent with this Motion, Himes also moves this Court for an extension to file a motion to dismiss the matter due to the State's unlawful selective prosecution. This extension is needed because of the importance of the evidence Himes is seeking in this Motion to Compel, as explained in detail in the Brief appended to this motion.

DATED: September 22, 2012

Matthew Monforton
Attorney for Defendant Harris Himes

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INTRODUCTION

Defendant Harris Himes is an outspoken conservative Christian who routinely testifies before the Legislature concerning abortion and gay rights bills, and usually quotes the Bible while doing so. When the State Auditor's Office charged Himes with six felonies in September 2011 -- in a case in which the Auditor's own documents show that he received no financial benefit -- he told the press that Commissioner Monica Lindeen targeted him with a "weak case" because she is "very pro-gay, pro-abortion." As if to prove his point, the Auditor promptly added a seventh felony charge based upon allegations that were a decade old, not supported by probable cause, and previously rejected by Ravalli County authorities.[1] Himes became even more convinced that he was the target of a selective prosecution, but lacked solid evidence to support this claim. Until now.

Last month, two whistleblowers from the Auditor's Office came forward and, in sworn testimony, confirmed Himes' worst nightmare: decision makers in the Auditor's Office engage in acts of religious bigotry almost daily. One of these whistleblowers, Alan Ludwig, is a devout Christian who served as a securities examiner for the Auditor for four years before leaving as a result of management's virulent, anti-Christian bigotry.

The other whistleblower, Roberta Cross Guns, served the Auditor's Office as a staff attorney from 2000 to January of this year and, before that, served as an attorney for the Flathead and Blackfeet tribes for several years. She is a life-long Democrat, a fan of President Barack Obama, and a supporter of same-sex marriage. She was nevertheless appalled by the unethical actions and anti-Christian bias she witnessed in the Auditor's Office.

Sworn testimony from Ludwig and Cross Guns reveals the following:

- Decision makers in the Office, including one of the prosecutors assigned to this case, routinely use anti-Christian epithets in describing conservative Christians; for example, they describe conservative Christians as "Nazis" and "whack jobs"-- behind closed doors they've smeared Himes as a "whack job" and "right wing Christian";

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[1] Two months ago the Court granted Himes' motion to dismiss this count.

- Deputy Securities Commissioner Lynne Egan, the official responsible for determining whether securities complaints get filed in court and, if so, whether they are filed criminally or civilly, routinely denigrates employees who are devout Christians, including falsely slandering them about being adulterers and subjecting them to vulgar rants;

- Egan has enormous influence in the Office because of the inexperience of its prosecutors and because she provides "free" campaign services to Lindeen, who is currently seeking re-election, and provided campaign services for Jesse Laslovich, another prosecutor assigned to this matter, when Laslovich was a candidate for Attorney General; this influence is exemplified by the $9,000 annual raise Lindeen gave Egan for providing "free" campaign services at a time when a state salary freeze was in place;

- Other suspects who are not outspoken conservative Christians, and who are accused of taking far greater amounts than those at issue in this case, are offered an opportunity to meet with Egan prior to charges being filed and, often, are successful in dissuading her from seeking criminal charges; in one case, Egan went so far as to give false statements to the FBI in order to help a suspect with political connections, causing the FBI to now be concerned about inappropriate ties between the suspect and the Auditor's Office;

- The prosecution in this matter is based upon a report prepared by Egan containing numerous, materially false claims, such as the allegation that James "Jeb" Bryant, Himes' alleged co-conspirator, has numerous prior criminal convictions (Bryant has none), statements by a customs agent that he was "not surprised that Bryant was in trouble" (the customs agent denies under oath that he said this), and Egan's claim that both Himes and Bryant gave the alleged victim instructions on where to wire funds (only Bryant gave such instructions);

- The bias against Himes by decision makers in the Auditor's Office is so strong that its prosecutors refuse to allow the defense access to prosecution witnesses unless Himes is excluded from interviews and depositions of those witnesses;

- At the time the Auditor's Office charged Himes, one of the factors considered in determining whether to criminally file a given case was whether the filing would improve Laslovich's viability as a candidate for Attorney General, as he did not have any meaningful criminal trial experience prior to joining the Office;

Himes is a 70-year old decorated veteran. As detailed below, he has no prior criminal convictions and, contrary to the Auditor's false claims, did not financially benefit from the alleged crimes in this matter. Himes was not a signatory on the bank account to which the allegedly stolen funds were wired, nor did he disperse any of those funds or even know what became of them. Yet he stands charged with *six felonies*.

Based on evidence already marshaled, Himes intends move for dismissal based upon selective prosecution. At this point, he seeks additional evidence to bolster this claim. Himes has asked the Auditor's Office to allow him to review other cases to determine if similarly situated suspects who are not outspoken conservative Christians tend to receive more favorable treatment.[2] He has also requested information regarding Egan that is needed for expert witness cross-examination.[3] The Auditor, however, refuses to provide case files without redacting the identities of the suspects and refuses to provide Egan's file at all. Redacted discovery is useless -- if Himes does not know the identities of persons investigated by the Auditor, he cannot determine whether they are members of the protected class at issue in this case: outspoken conservative Christians.

Himes is not yet moving for dismissal based upon selective prosecution, although there is arguably sufficient evidence to do so. Rather, he seeks additional discovery regarding this issue in order to prepare a more thorough motion to dismiss. The federal constitution's guarantee of equal protection entitles Himes to discovery of selective prosecution evidence if he shows the following:

1) "some" evidence of a discriminatory intent by the prosecution, and
2) "some" evidence of a discriminatory effect.

United States v. Bass, 536 U.S. 862, 864 (2002), citing *United States v. Armstrong*, 517 U.S. at 465. Himes not only has some evidence of discrimination, he has a mountain of it. The Constitution therefore entitles him to additional discovery of selective prosecution evidence. Additionally, § 46-15-322(5), MCA, the "catch-all" provision in Montana's criminal discovery statute, entitles Himes to discovery of selective prosecution evidence. Finally, because the State has designated Egan as its expert witness, evidence concerning her background, and her biases, constitute exculpatory evidence and are discoverable for that reason as well.

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[2] This is one of the elements a defendant must show in order to prevail on a motion to dismiss for selective prosecution. *United States v. Armstrong*, 517 U.S. 456, 465 (1996).

[3] Egan not only decides whether cases should be filed criminally or civilly, she is also the State's designated expert in this case and others. As discussed in more detail below, this bizarre arrangement creates a conflict and compounds the problem of selective prosecution. Complicating matters further is that Egan has not yet produced an expert report.

STATEMENT OF FACTS

I ANTI-CHRISTIAN BIGOTRY OF DECISION MAKERS IN THE AUDITOR'S OFFICE

Lynne Egan served as the Acting Deputy Securities Commissioner for the Auditor's Office in June 2006 and became Deputy Securities Commissioner in January 2009. (Deposition transcript of Lynne Egan, p. 21, portions of which are attached as Exhibit 2 to Defendant's Compendium of Evidence, filed concurrently with this Brief.) As such, she is "second under Monica Lindeen" with regard to securities. (*Id.*, p. 23.)

Egan determines whether securities cases are filed criminally. (Deposition Transcript of Roberta Cross Guns, pp. 32-33, Exhibit 3.) She is "the most powerful person in that office for making consideration on what charges are applied regarding securities because of the extensive knowledge that she has and the expertise that she has." (Deposition Transcript of Alan Ludwig, p. 156, Exhibit 4; see also Egan Depo., p. 43, Exhibit 2 (admitting that she offers recommendations as to criminal filings). As Egan correctly notes, "any violation of the [Montana] securities act can be criminal." (*Id.*, p. 43.) Egan controls not only how cases are charged but also whether they are investigated when they initially arrive in the Office. (Ludwig Depo., pp. 29, 33, 103, Exhibit 4, (describing Egan "the real gatekeeper on cases going forward or not going forward.") The Auditor has no written charging policy. (See State's Ltr to Himes dated 8/31/12, attached as Exhibit 1B to Defendant's Compendium of Evidence).

Egan bases charging decisions on emotions. (Cross Guns Depo., pp. 47, 104, Exhibit 3.) If "she's upset with somebody or not upset with somebody, that sort of determined how things went." (*Id*, p. 47.) Thus, "if she finds the defendant particularly repulsive, then she wants to go after them." (*Id.*, p. 105.) Particularly pertinent in this case, Egan refers to Himes as a "whack job" and a "right-wing Christian." (Cross Guns Depo., p. 55, Exhibit 3.)

One category of persons Egan finds particularly repulsive is devout Christians, as she makes clear almost on a daily basis. Her animus towards devout Christians is so pronounced that she becomes physically agitated when they are discussed. (Cross Guns Depo., p. 61, Exhibit 3.) She makes "lots of negative comments about Christians in general." (*Id.*, p. 53; Ludwig Depo, pp. 56-

57, Exhibit 4 ("I've cited three or four [anti-Christian remarks] to you but there's been a dozen since I worked there.") Egan has a "negative feeling towards" right-wing Christians, (Cross Guns Depo. p. 53, Exhibit 3), and admits telling employees that the Boy Scouts are "Nazis." (Egan Depo., p. 100, Exhibit 2.) Her hatred of the Boy Scouts arises from their affiliation with Christian churches. (Cross Guns Depo., p. 53, Exhibit 3.) Egan tells employees that the Christian church is a "negative influence on things" and that all organized religion is a "fairy tale." (Ludwig Depo., pp. 54-55, Exhibit 4.)

Egan's antipathy towards Christianity manifests itself in her interactions with individual Christians. For example, she ridicules church members who appear in court. (Cross Guns Depo., p. 106, Exhibit 3.) Egan once told Ludwig that Lindeen, who is running for re-election as State Auditor, received a "Christmas present" when Derek Skees announced his candidacy for the office. (Ludwig Depo., p. 51, Exhibit 4.) When Ludwig asked her who Skees was, she replied, "he's a right wing nut case." (*Id.*, p. 52.) Ludwig then asked Egan why she believed Skees was a "right wing nut case," to which Egan replied that Skees attends an Assembly of God church. (*Id.*, p. 52.) When Ludwig told Egan that he, too, attended this church, she "went back to her computer and acted like I'd left the room." (*Id.*, p. 52.)

As noted above, Egan refers to Himes as a "whack job" and a "right-wing Christian." (Cross Guns Depo., p. 55, Exhibit 3.) She has also said that Kurt Alme, a federal prosecutor, is "such a smart guy. I don't know where he gets, you know, caught up in this Christian stuff." (*Id.*, p. 57.)

Egan is not the only decision maker in the Auditor's Office prone to spewing bigoted statements about devout Christians. Brett O'Neil, one of the prosecutors in this matter, has stated repeatedly that "these right-wing Christians are whack jobs." (Cross Guns Depo., p. 59, Exhibit 3.)

The Auditor's Office routinely harasses employees who are devout Christians and, as noted by the Office's Human Resources staff member, "Christians weren't treated too well in the office." (Ludwig Depo., p. 144, Exhibit 4.) For example, Egan informed employees that another employee, Tari Nyland, was having an affair with an attorney previously employed by the Office. (Cross Guns Depo., pp. 13-15, Exhibit 3; Ludwig Depo. p. 82, Exhibit 4.) Nyland, who has been married for 25 years, denies the allegation. (Cross Guns Depo., p. 15, Exhibit 3.) Egan knew Nyland was a devout

Christian at the time she slandered her. (*Id.*, p. 53.)[4]

Egan denigrates employees who pray on their own time, (Ludwig Depo., pp. 92-93, 148-149, Exhibit 4), and subjects Christian employees to unsolicited vulgar rants. For example, she informed Ludwig about an employee who shaved his pubic hair, notwithstanding Ludwig's protests that he was a Christian and didn't want to hear such details. (See Exit Letter attached to Ludwig Deposition, Exhibit 4.) On other occasions, Egan advised employees that she did not approve of a male employee's goatee because it looked like pubic hair. (Cross Guns Depo., pp. 16-17, Exhibit 3.)

Employees fear Egan and fear retaliation for complaining about her bigotry. (Cross Guns Depo., pp., 16, Exhibit 3; Ludwig Depo., pp. 83, 145, Exhibit 4.) As explained by Ludwig:

> Monica Lindeen and Jesse Laslovich had a tight relationship with Lynne Egan. They rely on her for the effectiveness of their jobs. Lynne has been there a long time. Lynne understands the statute very well. Lynne gives considerations on what charges should be applied on cases that go forward. Lynne writes press releases sometimes regarding information that leaves the office. Lynne was chosen as their treasurer for their election campaigns. They're -- I weighed on going to talk to Monica Lindeen but for what purpose. Neither of them were going to offend Lynne Egan as I saw it. Not -- not for me.

(Ludwig Depo., pp. 66-67, Exhibit 4.)

Egan's influence in the Auditor's Office arises from her experience, which dwarfs that of the prosecutors:

> Lynne Egan is the most powerful person in that office for making consideration on what charges are applied regarding securities because of the extensive knowledge that she has and the expertise that she has. Jesse Laslovich in stepping into that office that he took over [as the Office's Chief Legal Counsel], took control of the attorneys that work for him, did not have the experience that Lynne Egan did to decide which cases would be pursued and which charges would be applied. And in -- in cases that had to be brought forward, he had to rely on Lynne Egan's expertise in order to determine what charges should be applied.

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[4] Egan admits to hearing these slanders but denied under oath that she repeated them and instead blamed Cindy Palmer, another employee, as being the slanderer. (Egan Depo., pp. 105-107, Exhibit 2.) Egan's denial is contradicted by sworn testimony from both Cross Guns and Ludwig. (Cross Guns Depo., p. 13, Exhibit 3; Ludwig Depo. p. 82, Exhibit 4.)

(Ludwig Depo., pp. 156-157, Exhibit 4.) She often drafts court documents because of the inexperience of the Office's attorneys. (*Id.*, pp. 138-39.) Egan considers Laslovich a "baby lawyer" who would often "cave" during negotiations because he felt "out-gunned" and that he "felt that his experience was so limited that he wasn't able to stand up to attorneys with more experience." (Cross Guns Depo., p. 37, Exhibit 3.)

Egan's influence also arises from the "free" services she provided to Laslovich's campaign for Attorney General as well as the services she still provides to Lindeen's ongoing campaign for re-election as State Auditor. During workdays, Egan collects campaign contributions brought to the office or mailed to the Post Office and keeps them in her desk at the Auditor's Office. (Cross Guns Depo. 20, 21, 25, Exhibit 3.) She also deposits campaign contributions during workdays. (Egan Depo., p. 85, Exhibit 2; Cross Guns Depo., p. 25, Exhibit 3.) Egan routinely meets with Lindeen (and, previously, with Laslovich) during work hours to discuss campaign matters. (Egan Depo., p. 90, Exhibit 2; Cross Guns Depo., p. 27, Exhibit 3; Ludwig Depo. pp. 100-101, Exhibit 4.) She prepares forms required by the Commissioner of Political Practices and maintains contributor lists for the campaigns. (Egan Depo., pp. 85-87, Exhibit 2.) Lindeen gave Egan a $9,000 raise when Egan began providing "free" campaign services, even though there was a salary freeze for state employees. (Cross Guns Depo. p. 21, Exhibit 3.)

II HIMES' QUOTING OF SCRIPTURE TO THE LEGISLATURE REGARDING ABORTION AND GAY RIGHTS BILLS

Harris Himes has been active in conservative politics in Montana for over a decade. As the pastor of Big Sky Christian Center, a volunteer attorney for the Alliance Defense Fund (now the Alliance Defending Freedom), the president of the Montana Family Coalition (formerly the Montana Christian Coalition), and the president of Montana Eagle Forum, he has advocated for pro-family, pro-life, pro-traditional marriage bills and causes during this time. (Himes Affidavit, ¶ 2, attached as Exhibit 5 to Defendant's Compendium of Evidence.)

When the City of Missoula considered a controversial homosexual antidiscrimination ordinance in April 2010, Himes actively opposed it. The ordinance was contentious and extensively covered. For example, the *Missoulian* published an article on April 13, 2010, which included a photograph of Himes and the following statement underneath the photograph: "Hamilton preacher Harris Himes spoke at length about how he thought the ordinance was unconstitutional and would bankrupt the city of Missoula with legal fees." (See Exhibit 1C.)

Legislators responded to Missoula's ordinance by drafting HB 516 which, if enacted, would have prohibited municipalities from enacting gay-rights ordinances. The *Helena Independent Record* published an article on February 19, 2011, which included a color photograph of Himes testifying in support of HB 516 as well as his quote that it is "God himself who says that homosexuality is an abomination, and he has various punishments for that, too" and also his quote from the Book of Leviticus that homosexuals "surely shall be put to death."[5]

Himes has also been quoted in numerous other articles published in the *Helena Independent Record* and other Montana media outlets. On January 11, 2011, the *Independent Record* quoted a portion of Himes' testimony on behalf of HB 167 (a bill criminalizing the death of unborn children) in which he said "I would like to mention there is a far higher authority here. God hates those who shed innocent blood."[6] On August 5, 2011, the *Missoulian* published an article in which Himes stated that the City of Hamilton should refuse federal funding for a family planning clinic because

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[5] A true and correct copy of this article is attached to as Exhibit 1D to Defendant's Compendium of Evidence, and the article can also be viewed at http://helenair.com/news/article_16dd58b0-3bcf-11c0-b41b-001cc4c002e0.html. Left-wing blogs throughout the state also prominently featured Himes' remarks on HB 516. See, *e.g.*, http://mtcowgirl.com/tag/video-harris-himes/ (linking video of Himes' testimony); http://www.leftinthewest.com/tag/Harris%20Himes%20LGBT%20Rights (linking Himes' video and describing him as an "American Taliban").

[6] A true and correct copy of this article is attached as Exhibit 1E to Defendant's Compendium of Evidence and a copy of it can be viewed at http://helenair.com/news/state-and-regional/article_9f13d840-1db2-11c0-9f19-001cc4c002e0.html.

"to vote to accept these funds is to ignore God's mandate."[7]

Decision makers in the Auditor's Office were well aware of Himes' outspoken conservative Christian opinions when they considered charging him, and not just from the extensive press coverage Himes has received over the years in the *Helena Independent Record* and other media outlets. Jesse Laslovich, one of the prosecutors assigned to this case, sat on the Senate Judiciary Committee from 2005 until 2010. Himes testified numerous times before the House Judiciary Committee and the Senate Judiciary Committee since 1999 regarding bills of interest to conservative Christians. He specifically testified before Laslovich on the following bills:

- SB 199 (2005) (inclusion of sexual orientation in human rights statutes);
- SB 202 (2005) (inclusion of sexual orientation to malicious intimidation law);.
- SB 330 (2005) (parental notification for abortion)
- SB 371 (2007) (inclusion of sexual orientation and gender identity to certain statutes)
- SB 46 (2009) (protection of unborn life)
- SB 497 (2009) (criminalization of obstruction of protests at healthcare facilities)
- SB 223 (2009) (revision of hate crimes statute to include sexual orientation)

(Himes Affidavit, ¶ 4, Exhibit 5.) With regard to one of the bills, (SB 497), then-Senator Laslovich directed questions to Himes during a hearing on the bill. (*Id.*, ¶ 5.)

In her August 2012 deposition, when asked about what she knows of Himes' religious beliefs, Egan stated that "I do not know his religious beliefs." (Egan Depo., p.103, Exhibit 2.) This testimony is contradicted by her previous, behind-closed-doors references to Himes as a "whack job" and a "right-wing Christian." (Cross Guns Depo., p. 55, Exhibit 3.) Additionally, reports and email correspondence provided to her by the Ravalli Sheriff are replete with references to Himes' religious beliefs, such as the alleged victim filming Himes' abortion clinic protests. (See, *e.g.*, State's Discovery Documents, Bates No. 47, attached as Exhibit 8.) She was also aware of a radio interview Himes gave in which he accused the Auditor of religious bigotry -- a transcript of the interview was among the documents produced by the State. (*Id.*, Bates Nos. 298-303.)

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[7] A true and correct copy of this article is attached as Exhibit 1F to Defendant's Compendium of Evidence, and a copy of it can be viewed at http://missoulian.com/news/local/article_7209ecfc-bf08-11e0-9327-001cc4c03286.html.

1 III DISCRIMINATION AGAINST HIMES AT THE PRE-FILING STAGE
2
3 The State Auditor's Office has a policy of attempting to resolve allegations of securities
4 violations before filing charges. This policy includes a "standard operating procedure" of sending
5 "come-clean" letters to suspects who are unregistered to sell securities -- such as Himes-- prior to
6 filing charges. (Deposition Transcript of Patrick Navarro, pp. 35-36, attached as Exhibit 6 to
7 Defendant's Compendium of Evidence.) The purpose of these letters is to give suspects an
8 opportunity to "come clean" by providing information to the Auditor's Office in response to
9 complaints received by alleged victims. (Cross Guns Depo., pp. 63-64, Exhibit 3.) Suspects usually
10 benefit when they respond to a "come-clean" letter. (*Id.,* pp. 66-67.)
11 Egan initially claimed that, prior to filing charges, she attempted to contact Himes by leaving
12 a voice mail identifying herself and asking him to return her phone call. (See Egan Transcript
13 (3/21/2012), pp. 27-28, attached as Exhibit 1G to Defendant's Compendium of Evidence.) In a later
14 deposition, however, she admitted that she neither sent a come-clean letter to Himes nor ever
15 attempted to contact him. (Egan Depo., pp. 111-12, Exhibit 2.)
16 Egan prepared a report in April 2011 containing numerous, materially false statements. For
17 example, the first two pages of Egan's report describe the extensive criminal background of Himes'
18 alleged co-conspirator, James "Jeb" Bryant. (A true and correct of Egan's report and other
19 documents submitted by the Auditor's Office pursuant to its discovery duties is attached as Exhibit 8
20 to Defendant's Compendium of Evidence. Egan's Investigative Report consists of Bates Nos. 1-8.)
21 Based on this information, Egan concluded that Himes violated the Securities Act because he
22 omitted disclosing to Geoffrey Serata (the alleged victim), *inter alia*, Bryant's criminal history. (See
23 Exhibit 8, Bates No. 8.) In reaching this conclusion, however, Egan used a rap sheet for a different
24 James Bryant than the one allegedly involved in this matter. The Montana Department of Justice
25 correctly identified Bryant, included his photograph, and described him as having a date of birth of
26 November 11, 1960, brown eyes, measuring 6'0", and having no criminal record. (See Exhibit 8,
27 Bates Nos. 18-20, 24.) The individual Egan describes in her report, however, is two years older,
28 blue eyed, several inches shorter, and has a lengthy criminal record. (*Id.*, Bates Nos. 25-39.)

The report also falsely claims that Serata wired $150,000 "[a]ccording to bank wiring instructions provided to Serata by the *Pastors*," a reference to Pastor Himes and Pastor Bryant. (Exhibit 8, Bates No. 4.) Egan's report does not reference any evidence showing that *Himes* instructed Serata on how and where to wire the funds. Documents provided by the State make clear that the wiring instructions came from *Bryant*, not Himes. (See, *e.g.*, Exhibit 8, Bates Nos. 95, 99.)

Egan also presented a report purporting to describe her interview of Noe Sanchez. (Exhibit 8, Bates No. 788.) According to Egan, Sanchez said he had never heard of Duratherm (the corporate entity at issue in this case) and that he "was not surprised that [Bryant] might be in trouble." (*Id.*) Sanchez reviewed Egan's report, however, and has submitted an affidavit flatly contradicting it. (See Affidavit of Noe Sanchez, attached to Defendant's Compendium of Evidence as Exhibit 9).

IV THE AUDITOR'S FALSE ALLEGATIONS TO THIS COURT THAT HIMES FINANCIALLY BENEFITED FROM THE ALLEGED CRIME

False statements in Egan's report were followed by false statements in the Information filed in this Court alleging that funds from Serata were transferred to "credit cards in [Himes'] name," and that Himes "also had his credit cards in his name paid off by the Monarch Beach account." (Amended Information, pp. 2, 4.) None of the State's evidence supports these allegations.

All of the allegedly stolen monies in this case were transferred by Serata to an account under the name of Monarch Beach, LLC. (Exhibit 8, Bates No. 3.) Himes has never been a signatory on the Monarch Beach account and never dispersed any monies from the account. Nor did funds from the account pay off any of his credit cards. Funds from the Monarch Beach account in which Serata wired $150,000 were disbursed to the following credit card accounts:

- American Express $17,312.46
- Bank of America $99.71
- Chase $46.884.44
- Discover $12,729.34

(State's Discovery Documents, Bates No. 67, attached as Exhibit 8.)

The State did not produce records from Bank of America or Chase credit card accounts. There is no evidence that Himes incurred any charges on these credit cards or received any benefits from them. Nor is there any evidence that Himes had any liability for those charges. The State therefore has no evidence showing that Bank of America or Chase "credit cards in [Himes'] name [were] paid off by the Monarch Beach account." (Amended Information, p. 4.)

With regard to the Discover account, the primary account holder is listed as Diana Bryant -- Himes was only an additional credit card holder. (Exhibit 8, Bates No. 511). As shown by Egan's summary, *none* of the charges to the Discover account were made with Himes' card. (Exhibit 8, Bates Nos. 511-519.) Nor has the State produced any evidence showing that Himes, as an additional cardholder, had any legal responsibility for purchases made by other cardholders.[8] The State therefore has no evidence showing that any Discover "credit cards in [Himes'] name [were] paid off by the Monarch Beach account." (Amended Information, p. 4.)

Nor do any American Express records show that Serata's money paid debts owed by Himes. One American Express account (with an account number ending in 51009) lists Himes as an account holder, but no records show any payments made to the account from the Monarch Beach account.

The other American Express account at issue lists Holy Ground/Himes as the primary account holder (with an account number ending in 21006) and also lists as card members for the account James Bryant (with an account number ending in 21014) and Sandra Himes (with an account number ending in 21022). (Exhibit 8, Bates No. 390.) The State summarized payments made to these accounts between September 19, 2007 and September 1, 2009. (Exhibit 8, Bates Nos. 508-510.) *All* of these payments were made from a Ravalli County bank account with Himes as the signatory and the account holder listed as Holy Ground, an entity that never received any funds from Serata or the Monarch Beach account. (Exhibit 8, Bates Nos. 320-329.) *None* of the payments made to Himes' American Express account came from the Monarch Beach account. The State therefore

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[8] Additional credit cardholders have no liability for charges incurred by primary cardholders. See, *e.g., Edwards v Wells Fargo & Co.* 606 F.3d 555, 557 (9th Cir.2010) (Wells Fargo does not deem additional card holders as "obligors" who are responsible for payment on the account); *Barrer v. Chase Bank U.S.A*, 566 F.3d 883, 885, n.1 (9th Cir.2009) ("authorized user" on credit card account was not "legally responsible for the account").

has no evidence showing that American Express "credit cards in [Himes'] name [were] paid off by the Monarch Beach account." (Amended Information, p. 4.)

The State's only other allegation of Himes profiting from Serata concerns a $750 check issued to him by Bryant six months after Serata wired $150,000 to the Monarch Beach account in June 2008. (Exhibit 8, Bates No. 747.) This $750 check was reimbursement for Himes' purchase of a water filter system he gave to Bryant as well as for services he performed in reinstating an Illinois corporation called Golden Equities Trading ("GET") that had previously been inactive. (Himes Affidavit ¶ 6, Exhibit 5.) Written on the memorandum line of the check are the words "WATERFILTER GET." (Exhibit 8, Bates No. 747.) This is a reference to the water filter system Himes purchased as well as the services he performed and the fees he paid on behalf of Golden Equities Trading Company. (Himes Affidavit ¶ 7, Exhibit 5.) A Costco receipt issued two weeks before the date of the check reflects Himes' purchase of the water filter system. (See Exhibit 5A.) A letter from the Illinois Secretary of State issued one week before the date of the check verifies Himes' services on behalf of GET. (See Exhibit 5B.)

V THE AUDITOR'S EXCLUSION OF HIMES FROM WITNESS INTERVIEWS AND ADDITION OF A BASELESS CHARGE AFTER HIMES' CRITICISM OF HER IN THE PRESS

Shortly after the State filed its original Information against Himes on September 26, 2011, Himes appeared on a radio show on KGVO (which broadcasts in the Missoula area) and KLYQ (which broadcasts in the Hamilton area)] and referred to Commissioner Lindeen as someone who is "very pro-gay, very pro-abortion" who was bringing a "very weak" case against him because of his opposition to gay-rights legislation. (Exhibit 8, Bates Nos. 298-303.)[9]

Barely a month later, the Auditor's office filed an Amended Information to add another count (Count VII) alleging that Himes violated § 30-10-201(1), MCA, by acting as a "salesperson" *in 2000*

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[9] Himes' remarks to KGVO and KLYQ were reprinted in the *Ravalli Republic* and the *Missoulian* shortly thereafter.

without being registered.[10] The charge was not only clearly time-barred but completely lacking in probable cause. Convicting Himes of Count VII would have required the Auditor to prove that Himes acted as a "salesperson" under the Securities Act, which in turn would have required proof that he (1) represented an "issuer" of a security and (2) sold or offered to sell a "security" to the alleged victim. § 30-10-103(20)(a), MCA. The State's supporting affidavit was completely devoid of evidence showing Himes represented any "issuer" or offered any kind of "security" to the alleged victim in 2000.

In addition to adding Count VII after Himes' radio interview, the Auditor's prosecutors insisted that Himes not attend any witness interviews and depositions of witnesses. (Flaherty Affidavit ¶¶ 1-2, attached as Exhibit 7.) By contrast, other defendants who are not outspoken Christian conservatives are permitted to attend witness interviews and depositions. (Cross Guns Depo., p. 73, Exhibit 3.)

VI THE AUDITOR'S LENIENCY TOWARDS SIMILARLY-SITUATED PERSONS WHO ARE NOT OUTSPOKEN CONSERVATIVE CHRISTIANS

The Auditor's Office deals very differently with suspects who are not outspoken conservative Christians. The Office pursues most of them civilly – or not at all. Roberta Cross Guns, an attorney with the Office for over a decade until she left in January 2012, provided several examples. One involved Nick Cladis, a suspect who aided and abetted Pat Davison, a former gubernatorial candidate who was later sentenced to prison for securities violations. (Cross Guns Depo., pp. 41-42, Exhibit 3.) Cross Guns believed that Cladis should also have been criminally prosecuted given that he committed the same crimes as Davison. (*Id.*, p. 42.) Egan, however, met personally with Cladis, who pleaded his case to her while sobbing. (*Id.*, p. 41.) Cladis' emotional outburst dissuaded Egan from criminally prosecuting him or even seeking restitution from him despite his $4 million net worth. (*Id.*, p. 41, 47.) There is no evidence in the public record indicating that Cladis is an

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[10] Section 30-10-201(1), MCA, states as follows: "It is unlawful for a person to transact business in this state as a broker-dealer or salesperson, except as provided in § 30-10-105, MCA, unless the person is registered under parts 1 through 3 of this chapter."

outspoken conservative Christian.

Another example of a suspect who could have been criminally prosecuted by the Auditor's Office, but was not, is Daniel Two Feathers. (Egan Depo., p. 115, Exhibit 2; Cross Guns Depo., p. 42, Exhibit 3.) Two Feathers defrauded out-of-state investors out of $5 million and was ordered by the Auditor's Office to pay an additional $500,000 in restitution on behalf of victims.[11] Rather than prosecute Two Feathers criminally, however, Egan "just kind of dropped it and went on her way." (Cross Guns Depo., p. 42, Exhibit 3.) The task of prosecuting Two Feathers instead fell upon federal authorities, who are now criminally prosecuting him. (*Id.*, p. 42.) There is no evidence in the public record indicating that Two Feathers is an outspoken conservative Christian.

Another example involved Rick Young, a suspect referred to the Auditor's Office by the Fergus County Attorney. (Cross Guns Depo., p. 47, Exhibit 3.) Egan did not find the case "interesting," and the Auditor's Office therefore never acted upon it. (*Id.*, p. 48.) Instead, federal authorities criminally prosecuted Young two years later. (*Id.*, p. 48.) There is no evidence in the public record indicating that Young is an outspoken conservative Christian.

Yet another example of a suspect that could have been criminally prosecuted by the Auditor, but was not, is Bill Nooney. (Cross Guns Depo., pp. 78-79, Exhibit 3.) Nooney participated in much of Two Feathers' criminal activity. (*Id.*, p. 76.) Egan admits receiving multiple complaints against Nooney. (Egan Depo., p. 117, Exhibit 2; Ludwig Depo., p. 105, Exhibit 4) (noting that the Office had received "several complaints" about Nooney). She also admits meeting him personally on at least three occasions. (Egan Depo. p. 118, Exhibit 2.) Egan expressed concern that prosecuting Nooney would harm his daughter's college education and saw to it that Nooney *received* money from the Office rather than being prosecuted. (Cross Guns Depo., p. 77, Exhibit 3.)

Egan told the FBI that she had looked at Nooney's case and determined that he had not made any financial gain. (Ludwig Depo., pp. 106-107, Exhibit 4.) These statements were false – Nooney had in fact received substantial monies from investors that he either lost or kept himself. (*Id.*, p. 108;

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[11] See http://sao.mt.gov/legal/securities/pdf/S08_TwoFeathersAmendedII.pdf; http://sao.mt.gov/legal/securities/pdf/S09_SchultzAgreement.pdf

Cross Guns Depo., p. 79, Exhibit 3.) Federal officials are concerned about an improper relationship between Nooney and the Auditor's Office. (Ludwig Depo., p. 126, Exhibit 4.) There is no evidence in the public record indicating that Nooney is an outspoken conservative Christian.

Another case in which criminal charges could have been filed, but were not, involved a pyramid scheme perpetrated by ACN Corporation. (Cross Guns Depo., p. 44, Exhibit 3.) Egan and Laslovich, however, "cut a deal with these people," and even took the extraordinary step of traveling to ACN's headquarters in North Carolina to do so. (*Id.*, p. 44.) Egan explained that "there was concern that [ACN] would come into Montana and be politically powerful in a negative way against this office." (*Id.*, p. 44.) High profile criminal cases (like the Himes case) that would aid Laslovich's campaign for Attorney General, however, were more likely to be filed. (*Id.*, p. 69.)

VII THE AUDITOR'S REFUSAL TO PROVIDE DISCOVERY PERTAINING TO BIASED CHARGING

Himes requested discovery pertaining to selective prosecution in a letter sent to the State on August 23, 2012. (See Defendant's Letter to State dated 8/23/12 and attached as Exhibit 1A to Defendant's Compendium of Evidence.) He offered to stipulate to the entry of a protective order. (Exhibit 1A.) The State responded in a letter dated August 31, 2012. (*Id.*, Exhibit 1B.) The State refuses to provide unredacted files concerning other cases that have been prosecuted criminally or civilly (or not at all). (*Id.*) Without knowing the identities of persons the State has prosecuted, or chosen not to prosecute, it is impossible for Himes to evaluate whether the Auditor's Office treats similarly situated non-Christians differently than him.

ARGUMENT

I HIMES EASILY MEETS THE CONSTITUTION'S THRESHOLD FOR DISCOVERY FOR A SELECTIVE PROSECUTION CLAIM

The decision whether to prosecute a defendant or what charges to file against him or her "generally rest[s] in the prosecutor's discretion." *United States v. Batchelder*, 442 U.S. 114, 124

(1979). This discretion, however, "is subject to constitutional constraints." *Armstrong*, 517 U.S. at 464, quoting *Batchelder*, 442 U.S. at 125. The United States Constitution's guarantee of equal protection is one of the most important of these constraints, and thus "the decision whether to prosecute may not be based on an unjustifiable standard such as race, religion, or other arbitrary classification." *Armstrong*, 517 U.S. at 464. Arbitrary classifications include ones based upon the exercise of First Amendment rights. *State v. Maldonado*, 176 Mont. 322, 329, 578 P.2d 296, 300 (1978); see also *United States v. Crowthers*, 456 F.2d 1074, 1078-80 (4th Cir.1972) (overturning convictions for creating a disturbance at the Pentagon during Vietnam protest because the government had not prosecuted participants in sixteen other events that had the same disruptive effect as the defendants' conduct); *United States v. Steele*, 461 F.2d 1148, 1151 (9th Cir. 1972) (overturning conviction for refusing to answer census questions because defendant had been prosecuted based upon participation in a census resistance movement).

Not only does the Constitution entitle defendants to dismissal of cases arising from selective prosecutions, it also entitles them to discovery of selective prosecution evidence in order to later seek such dismissals. Discovery motions for selective prosecution evidence require a lesser showing than dismissal motions. Obtaining a *dismissal* of charges based on selective prosecution requires "clear evidence" of an equal protection violation. *Armstrong*, 517 U.S. at 464, citing *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926). Obtaining *discovery* for a selective prosecution claim, however, requires defendants to produce only "*some* evidence of both discriminatory effect and discriminatory intent." *Bass*, 536 U.S. at 864, emphasis added; *Armstrong*, 517 U.S. at 469.

Since *Armstrong* involved a federal prosecution, the discovery rule formulated by the Supreme Court in that case arose from the equal protection component of the Due Process Clause of the Fifth Amendment. *Armstrong*, 517 U.S. at 464. As made clear by subsequent state courts, the Equal Protection Clause of the Fourteenth Amendment entitles defendants in state courts to the same discovery rights. See, *e.g.*, *State v. Keene*, 693 N.E.2d 246, 253 n.1 (Ohio 1998) ("the discovery right outlined in *Armstrong* derives from, and is meant to enforce, the Fourteenth Amendment's prohibition of racially discriminatory prosecutions"); *People v. Superior Court (Baez)*, 94

Cal.Rptr.2d 706, 715 (Cal. Ct. App. 2000) (constitutional rule entitling defendants to selective prosecution discovery "is the one set forth in *Armstrong*").[12]

Himes is not yet seeking dismissal based upon selective prosecution. For now, Himes is simply seeking additional discovery to either corroborate or dispel what are reasonable concerns that he has been subject to discriminatory charging standards by the Auditor's Office. He therefore has a lower threshold to satisfy in order to be entitled to discovery of additional selective prosecution evidence, a threshold he can easily meet.

A. There is Significant Evidence of Discriminatory Intent by the State

Discovery of selective prosecution evidence pursuant to the Constitution's guarantee of equal protection requires defendants to show "some" evidence of discriminatory intent by the State. *Bass*, 536 U.S. at 864; *Armstrong*, 517 U.S. at 469. Himes already has more than "some" evidence of discriminatory intent -- he has a truckload.

1. The Routine Use of Anti-Christian Epithets by Decision Makers in the Auditor's Office Shows Discriminatory Intent

Perhaps the most obvious evidence of discriminatory intent in this case is the habitual use of anti-Christian epithets by decision makers in the Auditor's Office. Such evidence is often a smoking gun in employment discrimination cases because "[d]iscriminatory statements may reflect a cumulative managerial attitude among the defendant-employer's managers that has influenced the decision making process for a considerable time." *Ercegovich v. Goodyear Tire & Rubber Co.*, 154 F. 3d 344, 356 (6th Cir.1998).[13]

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[12] While there are some Montana cases involving *dismissal* motions based upon allegations of selective prosecution, (see, *e.g.*, *Maldonado*, 176 Mont. at 329, 578 P.2d at 300; *State v. Koehn*, 1998 MT 234, 966 P.2d 143, ¶¶ 16-22), there do not appear to be any Montana cases involving *discovery* motions pertaining to selective prosecution evidence.

[13] Or, as Himes might put it, "out of the abundance of the heart, his mouth speaks." Luke 6:45 (NKJV).

One of the prosecutors handling Himes' matter, Brett O'Neil, has stated several times that "these right-wing Christians are whack jobs." (Cross Guns Depo., p. 59, Exhibit 3.) Lynne Egan, the person who determines which investigations in the Auditor's Office move forward, (Ludwig Depo, pp. 26, 29, 33, 103, Exhibit 4), and how they are charged, (Cross Guns, pp. 32-33, Exhibit 3), spews bigoted, anti-Christian remarks almost reflexively. She makes "lots of negative comments about Christians in general." (Cross Guns Depo., p. 53, Exhibit 3; Ludwig Depo, pp. 56-57, Exhibit 4 ("I've cited three or four [anti-Christian remarks] to you but there's been a dozen since I worked there.") Egan has a "negative feeling towards" right-wing Christians, (Cross Guns Depo. 53, Exhibit 3), and admits telling employees that the Boy Scouts are "Nazis." (Egan Depo., p. 100.) Her hatred of the Boy Scouts arises from their affiliation with Christian churches. (*Id.,* p. 53.) Egan tells employees that the Christian church is a "negative influence on things" and that all organized religion is a "fairy tale." (Ludwig Depo, pp. 54-55, Exhibit 4.) She ridicules church members who appear in court. (Cross Guns Depo. p. 106, Exhibit 3). Egan's animus towards devout Christians is so pronounced that she becomes physically agitated when they are discussed. (*Id.*, p. 61.) She calls Lindeen's political opponent a "right wing nut case" simply because he is a member of the Assembly of God. (*Id.*, p. 52.) Of particular importance to this case is her smearing of Himes as a "whack job" and a "right-wing Christian." (*Id.*, p. 55.) She has also referred to a federal prosecutor as "such a smart guy. I don't know where he gets, you know, caught up in this Christian stuff." (*Id.*, p. 57.)

Egan's enormous influence in the Office arises in part because of the inexperience of its prosecutors. To her, Laslovich is a "baby lawyer" who "caves" when he feels "out-gunned" and that he "felt that his experience was so limited that he wasn't able to stand up to attorneys with more experience." (Cross Guns Depo., p. 37, Exhibit 3.) Egan's influence is also due to the "free" campaign services she provides during the workday to the Lindeen campaign (and, formerly, to the Laslovich campaign), including collecting campaign contributions from the Post Office and campaign checks brought to the office, (Cross Guns Depo., pp. 20, 21, 25, Exhibit 3), depositing campaign contributions during the workday, (Egan Depo., p. 85, Exhibit 2; Cross Guns Depo., p. 25, Exhibit 3), preparing disclosures to the Commissioner of Political Practices, and maintaining contributor lists for the campaigns. (Egan Depo., pp. 85-87, Exhibit 2.) Egan's influence is

exemplified by Lindeen's responding to Egan's "free" campaign service with a $9,000 annual raise even though there was a salary freeze for state employees. (Cross Guns Depo. p. 21, Exhibit 3.)

This is not a case involving one or two questionable comments by a low-level employee. Rather, decision makers in the Auditor's Office use bigoted anti-Christian epithets almost daily. It can be reasonably inferred that the same state of mind that constantly produces epithets about conservative Christians also taints charging decisions regarding conservative Christians. This evidence, standing alone, entitles Himes to additional discovery regarding selective prosecution.

2. Harassment of Employees in the Auditor's Office Who Are Devout Christians Is Indicative of Biased Charging of Suspects Who Are Devout Christians

Officials in the Auditor's Office match their words with actions in dealing with their Christian employees. The Auditor's Office routinely targets employees who are devout Christians for harassment, prompting a Human Resources staff member to note that "Christians weren't treated too well in the office" and that, for employees, "it was better not to share that you were Christian." (Ludwig Depo., p. 144, Exhibit 4.) Egan falsely slanders devout Christian employees as adulterers in front of other employees. (Cross Guns Depo., pp. 13-15, Exhibit 3; Ludwig Depo., p. 82, Exhibit 4.) She ridicules employees who pray during their breaks and subjects them to rants concerning other employees' pubic hair. (Cross Guns Depo., pp. 16-17, Exhibit 3; see also Exit Letter attached to Ludwig Deposition, Exhibit 4.)

This is how decision makers in the Auditor's Office treat employees who are devout Christians. It is not difficult to infer that targets of their investigations who are devout Christians face similar discrimination.

3. Decision Makers in the Auditor's Office Knew of Himes' Outspoken Conservative Christian Beliefs

The Auditor's Office was well aware of Himes' conservative Christian speech when its prosecutors charged him. Himes' notoriety as an outspoken conservative Christian did not arise just

from the extensive press coverage he has received over the years in the *Helena Independent Record* and other media outlets. Jesse Laslovich, one of the prosecutors assigned to this case, sat on the Senate Judiciary Committee from 2005 to 2010 when Himes testified multiple times before him. (Himes Affidavit, ¶ 4, Exhibit 5.) With regard to one of the bills, (SB 497), then-Senator Laslovich directed questions to Himes during a hearing on the bill. (*Id.*, ¶ 3.)

In her August 2012 deposition, when asked about what she knew of Himes' religious beliefs, Egan stated that "I do not know his religious beliefs." (Egan Depo., p. 103, Exhibit 2.) This testimony is contradicted by her prior references to him as a "whack job" and a "right-wing Christian." (Cross Guns Depo., p. 55, Exhibit 3.) She reviewed documents provided by the Ravalli Sheriff replete with references to Himes' religious beliefs. (See, *e.g.*, State's Discovery Documents, Bates No. 47, attached as Exhibit 8 [Serata's description of filming abortion clinic protests with Himes].) She was also aware of a radio interview in which Himes discussed his religious beliefs -- a transcript of the interview was among the documents produced as part of the State's discovery. (*Id.*, Bates Nos. 298-303.)

Egan's perjured testimony notwithstanding, she and the other decision makers in the Auditor's Office were well aware of Himes' outspoken conservative Christian beliefs. These views made him a despised figure in the Office.

4. <u>The Auditor's Reliance Upon Fabricated Evidence in Charging Himes Also Shows Discriminatory Intent</u>

Egan's reports contain numerous, materially false statements, some of them based upon evidence she fabricated. This is also evidence of bias.

For example, Egan presented a report purporting to describe her interview of Noe Sanchez. (Exhibit 8, Bates No. 788.) According to Egan, Sanchez said he never heard of Duratherm (the corporate entity at issue in this case) and also said that he "was not surprised that [Bryant] might be in trouble." (*Id.*) Sanchez reviewed Egan's report, however, and has submitted an affidavit flatly contradicting it. (See Affidavit of Noe Sanchez, attached to Defendant's Compendium of Evidence as Exhibit 9).

Egan also accuses the "Pastors," *i.e.*, Himes and Bryant, of giving Serata wiring instructions regarding the $150,000 that Serata allegedly lost. In fact, those wiring instructions came from *Bryant*, not Himes. (Exhibit 8, Bates Nos. 95, 99.)

Egan also fingered the wrong man. The first two pages of her report describe the extensive criminal background of James "Jeb" Bryant. (Exhibit 8, Bates Nos. 1-2.) Based on this information, Egan concluded that Himes violated the Securities Act because he omitted disclosing, *inter alia*, Bryant's criminal history. (See Exhibit 8, Bates No. 8.) Bryant, however, has no criminal history. The Department of Justice correctly identified Bryant, included his photograph in its packet, and described him as having a date of birth of November 11, 1960, brown eyes, measuring 6'0", and having no criminal record. (See Exhibit 8, Bates Nos. 18-20, 24.) The individual Egan describes in her report, however, is two years older, blue eyed, several inches shorter, and has a lengthy criminal record. (*Id.*, Bates Nos. 25-39.) Compounding Egan's reckless (or deliberate) disregard for the truth is that the Bates number the State assigned to the correct rap sheet for Jeb Bryant immediately precedes the number for the incorrect rap sheet. (Compare Exhibit 8, Bates No. 24 with Bates No. 25.)

Perhaps these errors are simply the result of ineptitude. Given all the other evidence of bigotry displayed by Egan and other members of the Auditor's Office, however, a reasonable person could view them as purposeful attempts to secure a criminal conviction against a "whack job" conservative Christian.

5. Charging Himes with Six Felonies Despite Lacking Evidence That He Took the Alleged Victim's Money Demonstrates Discriminatory Intent

As explained in detail above, the State has no evidence that any "credit cards in [Himes'] name [were] paid off by the Monarch Beach account." (Amended Information, p. 4.) A $750 check given to Himes *six months* after the alleged scam occurred is the State's only other "evidence" -- if it could be called that -- of financial gain by Himes. No reasonable juror would attribute a payment so small, and so remote in time, to an allegedly illegal sale of securities. Undermining the Auditor's case further is documentary evidence showing this $750 payment did not constitute financial gain for

Himes but, rather, reimbursement for goods and services provided to Bryant that were completely unrelated to the corporate entities at issue in this matter. (Himes Affidavit, ¶¶ 6-9, Exhibit 5.)

The State has no evidence that Himes received any financial benefit from the allegedly stolen monies spent or distributed by Bryant. Charging someone with *six felonies* under these circumstances is grossly unjust and likely the result of a biased charging decision.

6. The Auditor's Retaliation Against Himes For Publicly Criticizing Her Demonstrates Discriminatory Intent

Shortly after the State filed its original Information against Himes on September 26, 2011, Himes appeared on a radio show on KGVO (which broadcasts in the Missoula area) and KLYQ (which broadcasts in the Hamilton area) and referred to Commissioner Lindeen as someone who is "very pro-gay, very pro-abortion" who was bringing a "very weak" case against him because of his opposition to gay-rights legislation. (Exhibit 8, Bates Nos. 298-303.) Lindeen and her prosecutors retaliated against Himes for these remarks in several ways.

First, the Auditor's Office insisted, as a condition of permitting Himes' counsel to interview and depose witnesses in this matter, that Himes be excluded. (Flaherty Affidavit, ¶ 2, Exhibit 7.) This retaliation was petty and unprofessional. Roberta Cross Guns explained that she never excluded parties from depositions because "I believe that it's the defendant's or perpetrator's right to be present." (Cross Guns Depo., p. 73, Exhibit 3.) Besides being petty and unprofessional, the Auditor's exclusion of Himes exemplifies her policy of punishing defendants for engaging in protected speech.

Second, Lindeen's prosecutors added a seventh charge accusing him of violating § 30-10-201(1), MCA, by acting as a "salesperson" *in 2000*. The charge was not only clearly time-barred but completely lacked probable cause.[14] This was not a charge made in good faith. Rather, it was a

[14] See pages 13-14, *supra*.

vindictive response by an office that brooks no criticism of its charging decisions, particularly criticisms from a "right wing whack job."

The Auditor's retaliation against Himes for criticizing her in public is yet more evidence of discriminatory intent by the prosecution. And all the more reason why additional discovery of selective prosecution evidence should be permitted.

7. Laslovich's Need to Placate Democratic Primary Voters Provided an Additional Motive to Prosecute a Prominent Christian "Whack Job"

Politics feeds into the Auditor's decisions relative to which cases to prosecute criminally. High profile criminal cases that would aid Laslovich's campaign for Attorney General were more likely to be filed. (Cross Guns Depo., p. 69, Exhibit 3.) This was because Laslovich "need[ed] to be able to tell the public in Montana that he has trial -- criminal trial experience in order to be the attorney general, because that is the top law enforcement right there, attorney general, and so you have to have some experience." (*Id.*, p. 72.)

While politically motivated prosecutions are a potential danger for any suspect, that danger is heightened when the suspect is an outspoken conservative Christian (like Himes) and one of the prosecutors is in need of prey in order to impress voters in a Democratic Party primary. The Auditor's Office charged Himes in September 2011, three months after Laslovich announced his candidacy for Attorney General. Going after a high profile, "whack job" conservative Christian like Himes undoubtedly burnished Laslovich's credentials with Democratic primary voters.[15]

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[15] Predictably, the press has closely followed this case and, also predictably, emphasized Himes' religious occupation in many of the articles (at least eight so far) about the case. (See, *e.g.*, "Arrest Warrant Issued for Hamilton Pastors," *Ravalli Republic*, Sept. 28, 2011, p. A1, a copy of which is attached as Exhibit 1H; "Additional Charge Added as Harris Himes Heads for Initial Hearing," *Ravalli Republic*, Nov. 23, 2011, A1, a copy of which is attached as Exhibit 1I.)

B. There is Significant Evidence of Discriminatory Effect by the State

Besides showing "some" evidence of discriminatory intent, Himes must show "some evidence tending to show the existence of the discriminatory effect" of the Auditor's anti-Christian bias. *Armstrong*, 517 U.S. at 469. The most obvious evidence would be that showing "similarly situated defendants [who are not outspoken conservative Christians] could have been prosecuted, but were not...." *Id.* at 469. Himes has this – and more.

1. Numerous Suspects Who Are Not Outspoken Conservative Christians and Have Defrauded Victims of Substantial Sums Have Not Been Prosecuted by the Auditor

Even the limited inquiry Himes has been able to make regarding other cases reveals a disturbing pattern: persons who are not outspoken conservative Christians tend to receive civil penalties (or none at all) despite committing crimes involving millions of dollars in losses -- as compared to $150,000 allegedly lost in this case. For example, Nick Cladis aided and abetted Pat Davison, a former gubernatorial candidate later sentenced to prison for securities violations. (Cross Guns Depo., pp. 41-42, Exhibit 3.) Egan, however, met personally with Cladis, who pleaded his case to her while sobbing and convinced Egan not to prosecute him despite having a net worth of $4 million. (*Id.,* p. 41, 42, 47.)

Another example is Daniel Two Feathers. (Egan Depo., p. 115, Exhibit 2; Cross Guns Depo., p. 42, Exhibit 3.) Two Feathers defrauded investors out of $5 million and was ordered by the Auditor's Office to pay $500,000 in restitution on behalf of victims.[16] Rather than prosecute Two Feathers criminally, however, Egan "just kind of dropped it and went on her way." (Cross Guns Depo., p. 42, Exhibit 3.) Federal authorities subsequently prosecuted him instead. (*Id.*, p. 42.)

Rick Young was a suspect referred to the Auditor's Office by the Fergus County Attorney. (Cross Guns Depo., p. 47, Exhibit 3.) Egan did not find the case "interesting," and the Auditor's

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[16] See http://sao.mt.gov/legal/securities/pdf/S08_TwoFeathersAmendedII.pdf; http://sao.mt.gov/legal/securities/pdf/S09_SchultzAgreement.pdf.

Office therefore never acted upon it. (*Id.*, p. 48.) Instead, federal authorities criminally prosecuted Young two years later. (*Id.*, p. 48.)

A more disturbing example of a suspect that could have been criminally prosecuted by the Auditor's Office, but was not, is Bill Nooney. (Cross Guns Depo., pp. 78-79, Exhibit 3.) Nooney participated in much of Two Feathers' criminal activity. (*Id.*, p. 76.) Egan admits receiving multiple complaints against Nooney. (Egan Depo., p. 117, Exhibit 2; see also Ludwig Depo., p. 105, Exhibit 4.) (noting that the Office had received "several complaints" about Nooney). She also admits meeting personally with him on at least three occasions. (Egan Depo. p. 118, Exhibit 2.) Egan expressed concern that prosecuting Nooney would harm his daughter's college education and therefore saw to it that Nooney *received* money from the Office rather than being prosecuted. (Cross Guns Depo., p. 77, Exhibit 3.) She even made false statements to the FBI concerning Nooney's culpability. (Ludwig Depo., pp. 106-108, Exhibit 4; Cross Guns Depo., p. 79, Exhibit 3.) Federal officials are concerned about an improper relationship between Nooney and the Auditor's Office. (Ludwig Depo., p. 126, Exhibit 4.) Potential defendants who have the resources to politically attack the Auditor's Office also receive favorable treatment. (Cross Guns Depo., p. 44, Exhibit 3.)

The examples described above are just the tip of the iceberg. Ludwig alone fielded as many as four written complaints per week. (Ludwig Depo., p. 25, Exhibit 4.) Both he and Egan prepared reports based upon complaints sent to the office; then Egan decided which ones would be investigated further. (*Id.*, pp. 29-30; *id.*, p. 103 (["Lynne was the real gatekeeper on cases going forward or not going forward"].)

Thus, there are significant numbers of matters that were either disposed of civilly or else no action was taken. Egan was instrumental not only in determining whether these cases would be filed criminally or civilly, but also whether they would be investigated at all. (Ludwig Depo., pp. 29-30, Exhibit 4.) The Auditor's Office has no written charging policy (see State's Ltr dated 8/31/12, attached as, Exhibit 11) even though, as Egan acknowledges, all securities cases can be charged either civilly or criminally. (Egan Depo., p. 43, Exhibit 2.). The Office thus places unfettered discretion over cases in the hands of a decision maker who hates conservative Christians and bases her charging decisions on emotions. (Cross Guns Depo., pp. 47, 104, Exhibit 3.)

To be able to properly evaluate the extent to which this bias has tainted prosecutions in the Auditor's Office, and thereby prepare a motion to dismiss for selective prosecution, it is important for Himes to review all of the Auditor's files since Egan assumed the duties of Deputy Securities Commissioner in 2006. The Auditor's insistence that she be permitted to redact the files would make such a review meaningless. Without knowing the identities of those investigated by the Office, Himes cannot ascertain whether these persons were members of the protected class at issue in this case: outspoken conservative Christians. Disclosure of these files to Himes and/or his attorneys is therefore necessary in order to determine how the Auditor's Office treated similarly situated persons who are not outspoken Christians, something that is essential in evaluating a claim of selective prosecution.

2. The Auditor's Refusal to Contact Himes Prior to Charging Him -- Something Done For Other Suspects – Is Also an Effect of Anti-Christian Bigotry

The Auditor's Office has a policy of sending "come-clean" letters to suspects who are unregistered to sell securities --such as Himes-- prior to filing charges against them. (Navarro Depo., pp. 35-36, Exhibit 6.) The purpose of these letters is to give suspects an opportunity to "come clean" by providing information to the State Auditor's Office in response to complaints received by alleged victims. (Cross Guns Depo., pp. 63-64, Exhibit 3.) Suspects usually benefit when they respond positively to a "come-clean letter. (*Id.*, pp. 66-67.)

Egan initially claimed that, prior to filing charges, she attempted to contact Himes by leaving a voice mail identifying herself and asking him to return her phone call. (See Egan Transcript (3/21/2012), pp. 27-28, attached as Exhibit 1G to Defendant's Compendium of Evidence.) In a later deposition, however, she admitted that she neither sent a come-clean letter to Himes nor ever attempted to contact him. (Egan Depo., pp. 111-12, Exhibit 2.)

The consequences of this discrimination cannot be overstated. Himes is a 70-year old decorated veteran with no prior criminal conviction. (Exhibit 8, Bates No. 22.) As stated earlier,

Himes did not take money from the alleged victim. Himes was not a signatory on the bank account to which the allegedly stolen funds were wired. He did not disperse any of those funds or even know what became of them. Had Himes been given the same opportunity as other suspects to speak with the Auditor's Office prior to a charging decision being made -- and if he had been heard by a non-bigoted decision maker in that Office, assuming there is one -- it is inconceivable he would have been subsequently charged with six (later, seven) felonies.

Himes has more than adequately met the requirement of showing "some" evidence of discriminatory intent by the Auditor's Office and "some" evidence of discriminatory effect. The United States Constitution's guarantee of equal protection therefore entitles him to additional discovery in order to prepare a motion to dismiss based upon selective prosecution.

II ALONG WITH THE FEDERAL CONSTITUTION, MONTANA LAW ENTITLES HIMES TO DISCOVERY OF SELECTIVE PROSECUTION EVIDENCE

Montana's criminal discovery statute contains a "catch-all" provision entitling defendants to discovery of evidence for which they have a "substantial need in the preparation of the case...." § 46-15-322(5), MCA, emphasis added.[17] Besides being needed for the "preparation of the case," the selective prosecution evidence sought by Himes satisfies the other requirements contained in § 46-15-322(5), MCA. He has a "substantial need" for the evidence, particularly evidence pertaining to

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[17] Section 46-15-322(5), MCA, states in its entirety as follows:

> Upon motion showing that the defendant has substantial need in the preparation of the case for additional material or information not otherwise provided for and that the defendant is unable, without undue hardship, to obtain the substantial equivalent by other means, the court, in its discretion, may order any person to make it available to the defendant. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. The prosecutor may not be required to prepare or disclose summaries of witnesses' testimony.

how the Auditor's Office deals with similarly situated suspects who are not outspoken Christians, because of the requirements imposed by the U.S. Supreme Court for dismissal of cases based upon selective prosecution. *Armstrong*, 517 U.S. at 465. The evidence he needs is not available from any source other than the Auditor's Office. Section 46-15-322(5), MCA, therefore entitles Himes to the discovery he seeks.

III EGAN'S DESIGNATION AS AN EXPERT WITNESS FOR THE STATE PROVIDES SEPARATE BASES FOR PRODUCTION OF THE DISCOVERY REQUESTED BY HIMES

A significant difference between this case and most other selective prosecution cases is that the decision maker responsible for determining whether defendants should be charged criminally, Lynne Egan, has also been designated as an expert witness for the prosecution. This bizarre arrangement raises a number of problems for the Auditor's Office.

First, it presents a conflict. "An expert witness is not an advocate." *Secura Ins. Co. v. Public Service Corp.*, 457 Wis.2d 730, 734 (Wisc.App.1990). Rather, experts must "give their <u>*unbiased*</u> opinion in order to assist the trier of fact in understanding the relevant evidence. *Stencel v. Fairchild*, 174 F.Supp.2d 1080, 1085-86 (C.D.Cal. 2001), emphasis added. By her own admission, Egan advocates for criminal charges in certain cases, such as this one. (Egan Depo., p. 43, Exhibit 2.) Both whistleblowers have testified that she not only *advocates* for criminal filings, but *decides* which cases merit criminal charges. (Cross Guns Depo., pp. 32-33, Exhibit 3; Ludwig Depo, p. 156, Exhibit 4.) Egan's testifying as an unbiased witness in a case in which she has directed criminal charges to be filed -- particularly a case involving a "whack job" conservative Christian -- is problematic, to say the least.

Second, any evidence pertaining to Egan's anti-Christian bigotry can be "used to impeach the Government's witnesses by showing bias or interest" and is therefore "evidence favorable to the accused." *United States v. Bagley*, 473 U.S. 667, 676 (1985), citing *Brady v. Maryland*, 373 U.S. 83, 87 (1963). Evidence pertaining to Egan's anti-Christian bias is therefore not only discoverable as selective prosecution evidence, but is also subject to mandatory disclosure as *Brady* evidence.

The selective prosecution discovery sought by Himes also overlaps with much of the evidence that Egan must provide as part of her duties as an expert witness. Some obvious examples include documents from her employee file as well as information pertaining to her compensation as an expert and, particularly, the puzzling $9,000 annual raise she received when she began assisting the Laslovich and Lindeen campaigns.

Discovery of this evidence is all the more crucial given the failure by the Auditor's Office to comply with this Court's scheduling order regarding expert witnesses. Egan has not yet even prepared an expert report in this matter, (Egan Depo, p. 51, Exhibit 2), and was unable to answer basic questions about the case at her recent deposition. (*Id.*, pp. 61-62, 64-68.)

IV DESCRIPTION OF EVIDENCE NEEDED BY HIMES

In his letter to the Auditor's Office on August 31, 2012, Himes requested various categories of evidence needed for preparation of a motion to dismiss. (Exhibit 1A.) He also offered to stipulate to the entry of a protective order. While the Auditor's Office agreed to some of these requests (*e.g.*, depositions of certain employees), it has refused most of them. The following are descriptions of evidence Himes needs (and is legally entitled to) in order prepare a dismissal motion:

A. Evidence Pertaining to the Auditor's Treatment of Similarly Situated Suspects Who Are Not Outspoken Conservative Christians

As stated previously, evidence pertaining to the government's treatment of similarly situated defendants who fall outside of the protected class at issue (in this case, outspoken conservative Christians) is essential to evaluating a selective prosecution claim. *Armstrong*, 517 U.S. at 469. The State refuses to provide this evidence without redacting the suspects' identities. This makes the information useless because it would be impossible for Himes to determine whether the other cases involved outspoken Christian conservatives.

As a criminal defendant, Himes has discovery rights under the federal constitution, as interpreted by *Armstrong*, to selective prosecution evidence. This information is also subject to

disclosure as exculpatory evidence under *Brady*. As stated previously, Egan is not only a decision maker regarding case-filing, she is also an expert witness in this matter. Himes is entitled to all evidence pertaining to her bigotry against conservative Christians, which includes other case files showing a pattern of discrimination against outspoken conservative Christians and/or favoritism towards persons falling outside of that protected class.

B. Contact Information Pertaining to Former Employees

Himes has requested contact information for former employees of the Auditor's Office who have left since Egan assumed the duties of Deputy Securities Commissioner. The State has objected "as to lack of relevancy and the lack of knowledge the former employees will have about this case." (Exhibit 1B.) This response is inadequate for at least two reasons.

First, the Auditor's Office offers no explanation as to why former employees would be ignorant of Himes' case. Both of the whistleblowers who have already come forward in this matter, Alan Ludwig and Roberta Cross Guns, were aware of at least some of the details concerning Himes' case.

Second, and more importantly, in preparing his selective prosecution motion, Himes is entitled to evidence showing not just how Egan handled his case but also how she handled other, similarly situated cases. Ludwig identified a number of employees and former employees whom Egan has treated negatively. (Ludwig Depo., pp. 70-71, Exhibit 4.) Himes is entitled to investigate what they may know regarding Egan's bigotry and misconduct.

C. Egan's Employee Files

As stated earlier, Egan not only influences investigative and charging decisions in the Auditor's Office, she has been designated by the State as its expert witness on a variety of topics. Her work experience as reflected in her employee file is therefore discoverable, as is evidence pertaining to compensation, which includes her recent raise and the reasons for it. For example, if Egan's salary and raise are even partly attributable to the Office's success rate at trial, (the Auditor's Office is at least partially funded by monies it receives from cases it prosecutes), this creates a

conflict that Himes is entitled to explore and about which the jury is entitled to hear. Evidence pertaining to such bias implicates Himes' constitutional right to due process under *Brady* as well as his Sixth Amendment confrontation rights. *United States v. Abel* 469 U.S. 45, 50 (1984) ("the Confrontation Clause of the Sixth Amendment requires a defendant to have some opportunity to show bias on the part of a prosecution witness").

Any complaints or grievances by other employees concerning Egan -- especially those concerning religious bias -- are also highly relevant. Whatever privacy rights state law gives to Egan regarding this evidence are trumped by Himes' Sixth Amendment right to confront his accusers. *Cf. Davis v. Alaska*, 415 U.S. 308, 318-19 (1974) (upholding right to cross-examine a prosecution witnesses about juvenile offenses to show bias despite statute protecting juvenile matters from disclosure). Undermining the Auditor's arguments about privacy rights even further is the fact that her prosecutors did not respond at all to Himes' offer to stipulate to a protective order for his discovery request. (Exhibit 1B.)

CONCLUSION

Selective prosecution of a citizen because he or she expresses opinions the government deems offensive is one of the greatest injustices that can occur in our judicial system:

> A prosecutor stands a fair chance of finding at least a technical violation of some act on the part of almost anyone....It is in this realm—in which the prosecutor picks some person whom he dislikes or desires to embarrass, or selects some group of unpopular persons and then looks for an offense, that the greatest danger of abuse of prosecuting power lies.[18]

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[18] Attorney General Robert H. Jackson, Remarks at the Second Annual Conference of United States Attorneys Held in the Department of Justice Building, Washington, D.C. (Apr. 1, 1940), *reprinted in The Federal Prosecutor*, 24 J. Amer. Jud. Soc'y 18, 18-19 (1940).

This may well be such a case. Himes is entitled to find out, and respectfully requests that this Court order the Auditor's Office to let him discover the truth.

DATED: September 22, 2012

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Attorney for Defendant Harris Himes

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Attorneys for Defendant Harris Himes

FILED
DEBBIE HARMON, CLERK
SEP 24 2012
DEPUTY

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT
RAVALLI COUNTY

STATE OF MONTANA, Plaintiff, vs. HARRIS HIMES, Defendant.	))))))))))	Case No. DC 11-117 [Assigned to the Honorable Loren Tucker] **COMPENDIUM OF EVIDENCE IN SUPPORT OF DEFENDANT'S MOTION TO COMPEL SELECTIVE PROSECUTION EVIDENCE; EXHIBITS 1-9**

TO THE COURT AND COUNSEL FOR THE STATE:

Defendant Harris Himes submits this Compendium of Evidence in support of his Motion to Compel Production of Selective Prosecution Evidence. The Compendium contains the following items of evidence:

Exhibit 1: Affidavit of Matthew Monforton

Exhibit 1A: Letter from Defense Counsel to the State (dated 8/23/12)
Exhibit 1B: Letter from the State to Defense Counsel (dated 8/31/12)

Exhibit 1C: *Missoulian* article (dated 4/13/10)
Exhibit 1D: *Helena Independent Record* article (dated 2/19/11)
Exhibit 1E: *Helena Independent Record* article (dated 1/11/11)
Exhibit 1F: *Missoulian* article (dated 8/5/11)
Exhibit 1G: Pertinent Portion of Transcript of Interview of L. Egan (3/21/11)
Exhibit 1H: *Ravalli Republic* article (dated 9/28/11)
Exhibit 1I: *Ravalli Republic* article (dated 11/23/11)

Exhibit 2: Pertinent Portions of the Deposition Transcript of Lynne Egan

Exhibit 3: Pertinent Portions of the Deposition Transcript of Roberta Cross Guns

Exhibit 4: Pertinent Portions of the Deposition Transcript of Alan Ludwig

Exhibit 5: Affidavit of Harris Himes

Exhibit 5A: Costco Receipt (dated 11/30/08)
Exhibit 5B: Letter from Ill. Sec. of State (dated 12/5/08)

Exhibit 6: Pertinent Portions of the Deposition Transcript of Patrick Navarro

Exhibit 7: Affidavit of Patrick Flaherty

Exhibit 8: Pertinent Portions of State's Discovery

Exhibit 9: Affidavit of Noe Sanchez

DATED: September 21, 2012

_____
Matthew Monforton
Attorney for Defendant Harris Himes

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that a copy of the foregoing was duly served upon the respective attorneys for each of the parties entitled to service by depositing a copy in the U.S. mail, postage paid, addressed to each at their last known address as shown below, on the 21st day of September, 2012.

Jesse Laslovich
Brett O'Neil
Special Deputy Ravalli County Attorneys
Special Assistant Montana Attorneys General
Office of the Commissioner of Securities and Insurance
Montana State Auditor
840 Helena Avenue
Helena, MT 59601

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matthewmonforton@yahoo.com

Attorneys for Defendant Harris Himes

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT
RAVALLI COUNTY

STATE OF MONTANA, Plaintiff, vs. HARRIS HIMES, Defendant.	Case No. DC 11-117 [Assigned to the Honorable Loren Tucker] **AFFIDAVIT OF MATTHEW MONFORTON**

STATE OF MONTANA)
: ss
County of Gallatin)

Matthew G. Monforton, after being first duly sworn, deposes and states as follows:

1) I am counsel for Defendant Harris Himes in the above entitled matter. I have firsthand knowledge of the facts contained in this Affidavit and, if called to testify at a hearing or trial, could and would testify truthfully to the following:

EXHIBIT 1

2) All of the exhibits attached to this Affidavit are true and correct copies of the originals, as are all other documents attached to Defendant's Compendium of Evidence.

FURTHER AFFIANT SAYETH NAUGHT

DATED this 21st day of September, 2012.

Matthew Monforton
Affiant

STATE OF MONTANA)
) :ss
County of Gallatin)

On this 21 day of September, 2012, before me, a Notary Public in and for the state and county aforesaid, personally appeared Matthew Monforton, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

SARAH HANSEN NOTARIAL SEAL STATE OF MONTANA
SARAH HANSEN
Notary Public
for the State of Montana
Residing at:
Bozeman, Montana
My Commission Expires:
May 10, 2016

NOTARY PUBLIC for the State of Montana
Residing at: Bozeman
My commission expires: May 10, 2016

EXHIBIT 1

MONFORTON LAW OFFICES, PLLC

A PROFESSIONAL LIMITED LIABILITY COMPANY
32 KELLY COURT
BOZEMAN, MONTANA 59718

TELEPHONE (406) 570-2949
FACSIMILE· (406) 551-6919
E-MAIL: matthewmonforton@yahoo.com

Licensed in Montana and California

August 23, 2012

Jesse Laslovich
Office of the Comm'r of Securities and Ins.
840 Helena Avenue
Helena, MT 59601

Via U.S. Mail & Email: JLaslovich2@mt.gov

Re: *State v. Himes* (Case No. DC 11-117)

Dear Jesse:

In light of the substantial evidence we have discovered in the last few weeks pertaining to anti-Christian animus in the State Auditor's Office, we have grave concerns that Mr. Himes has been the victim of a selective prosecution. We are therefore asking that your office provide complete discovery regarding the following categories of information:

- all documents (including electronically stored documents such as emails) and other information pertaining to the charging of Mr. Himes, including all communications with person(s) outside of the State Auditor's Office, such as law enforcement agencies, private attorneys, and the media;

- all documents (including electronically stored documents such as emails) and other information pertaining to instances of alleged securities violations that were brought to the attention of the State Auditor's Office and prosecuted criminally since Lynne Egan assumed the duties of Deputy Securities Commissioner in 2006;

- all documents (including electronically stored documents such as emails) and other information pertaining to instances of alleged securities violations brought to the attention of the State Auditor's Office and adjudicated civilly or administratively since Lynne Egan assumed the duties of Deputy Securities Commissioner in 2006;

- all documents (including electronically stored documents such as emails) and other information pertaining to instances of alleged securities violations that were brought to the attention of the State Auditor's Office for which no action was taken since Lynne Egan assumed the duties of Deputy Securities Commissioner in 2006;

- all documents (including electronically stored documents such as emails) and other information pertaining to policies of the State Auditor's Office regarding the criminal prosecution of securities violations that have been in force since Lynne Egan assumed the duties of Deputy Securities Commissioner in 2006;

EXHIBIT 1A

- Copies of all referral forms referenced by Ms. Egan on page 38 of her deposition generated by the State Auditor's Office since she assumed the duties of Deputy Securities Commissioner in 2006;

- The names, titles, and last known contact information regarding all former employees of the State Auditor's Office who have left the Office since Lynne Egan assumed the duties of Deputy Securities Commissioner in 2006 (we are willing to stipulate to the entry of a protective order regarding this information);

- The complete employee file for Lynne Egan as well as all information pertaining to any criminal background she may have (we are willing to stipulate to the entry of a protective order regarding this information);

- The complete employee file for Brett O'Neil as well as all information pertaining to any criminal background he may have (we are willing to stipulate to the entry of a protective order regarding this information);

- The complete employee file for you as well as all information pertaining to any criminal background you may have (we are willing to stipulate to the entry of a protective order regarding this information);

- All documents (including electronically stored documents such as emails) and other information pertaining to the raise Lynne Egan referenced on pages 150-151 of her deposition;

- All time sheets, time cards or other documents reflecting hours worked by Monica Lindeen, Lynne Egan, and you since the commencement of Ms. Lindeen's re-election campaign for State Auditor and your campaign for Attorney General;

- All documents (including electronically stored documents such as emails) and all other information pertaining to any complaints or grievances made by any employee or former employee pertaining to religious animus in the State Auditor's Office (we are willing to stipulate to the entry of a protective order regarding this information);

- All documents (including electronically stored documents such as emails) and all other information pertaining to any complaints or grievances made by any employee or former employee regarding Lynne Egan;

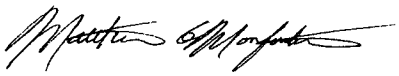
- Copies of all "come clean" letters, as defined by Mr. Navarro on pages 35-36 of his deposition, Ms. Egan on pages 125-126 of her deposition, and Ms. Cross Guns on pages 63-64 of her deposition, that have been issued by the State Auditor's Office since Ms. Egan assumed the duties of Deputy Securities Commissioner in 2006

- We also need to depose two of your employees, Nita Holman and Tari Nyland, who have been identified by other witnesses as having information pertaining to anti-Christian animus in your office.

We recognize that several of these requests fall outside the scope of the prosecution's statutorily imposed discovery obligations under § 46-15-322(1), MCA. Nevertheless, we believe that the already significant amount of evidence we have marshaled regarding selective prosecution by the State Auditor's Office entitles Mr. Himes to additional discovery to confirm or dispel this concern.

We look forward to your office's cooperation in providing this discovery. Please feel free to discuss this matter with me if you have any questions.

Very truly yours,



Matthew G. Monforton

MGM:dm

cc: Pat Flaherty

COMMISSIONER OF SECURITIES & INSURANCE

MONICA J. LINDEEN
COMMISSIONER

OFFICE OF THE MONTANA
STATE AUDITOR

August 31, 2012

Matthew Monforton
Monforton Law Offices, PLLC
32 Kelly Court
Bozeman, MT 59718

Re: Your letter dated August 23, 2012 (State v. Himes)

Dear Mr. Monforton:

The Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), is in receipt of your letter dated August 23, 2012, in which you made various discovery requests. This shall serve as the CSI's response. We have taken the liberty of numbering your requests in the order you presented them. You have asked for the following:

(1) All documents relating to the charging of the Defendant. The State has provided you with all such documents. Please note the state has supplemented its initial discovery on August 31, 2012, to include a recently discovered certificate of authority for Monarch Beach Properties.

(2) All documents relating to alleged securities violations that were criminally prosecuted by the CSI since 2006. The State objects to this request as overly broad and burdensome. To the extent you or Mr. Flaherty desire to examine the boxes of files the CSI has retained since 2006, you are welcome to do so anytime Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m.

(3) All documents relating to alleged securities violations that were pursued administratively by the CSI since 2006. Please see immediately preceding response.

(4) All documents relating to alleged security violations in which no action was taken. Please see immediately preceding response, although we object to this request to the extent you seek to review confidential criminal justice information.[1]

[1] For requests 2, 3, and 4, the CSI also objects to your obtaining confidential personal private information which will have to be redacted by the CSI prior to your examination. To the extent you seek to review the boxes of files for requests 2, 3, and 4, the CSI respectfully requests that it be reimbursed for its costs to redact the information.

Phone: 1-800-332-6148 / (406) 444-2040 / Main Fax: (406) 444-3497
Securities Fax: (406) 444-5558 / PHS Fax: (406) 444-1980 / Legal Fax: (406) 444-3499
840 Helena Ave., Helena MT 59601 Website: www.csi.mt.gov E-Mail: csi@mt.gov

(5) All documents pertaining to policies of the CSI regarding the criminal prosecution of securities violations since 2006. As was testified, no policies exist.

(6) Copies of all referral forms used by Ms. Egan since 2006. Please see response to request number two and footnote one.

(7) Names, titles, and last known contact information regarding all former employees of the CSI who have left the CSI since 2006. The CSI objects to this request as to relevancy and the lack of knowledge the former employees will have about this case. The CSI also has a duty to protect the privacy information of its former employees.

(8) Complete employee file of Ms. Egan, including her criminal background. The CSI objects to this request as to relevancy and because this information includes confidential private information.

(9) Complete employee file of Mr. O'Neil, including his criminal background. Please see immediately preceding response.

(10) Complete employee file of Mr. Laslovich, including his criminal background. Please see response to request number eight.

(11) All documents relating to the raise Ms. Egan received by the CSI. Please see response to request number eight.

(12) All time sheets, time cards, or other documents reflecting hours worked by Ms. Lindeen, Ms. Egan, and Mr. Laslovich since the commencement of Ms. Lindeen's reelection campaign and the beginning of Mr. Laslovich's former campaign for Attorney General. Please see response to number eight. Additionally, the CSI objects to the vagueness of this request, as the commencement of each respective campaign is not adequately defined.

(13) All documents relating to complaints or grievances made by any employee or former employee pertaining to religious animus in the CSI. Please see response to request number eight.

(14) All documents relating to complaints or grievances made by any employee or former employee regarding Ms. Egan. Please see response to request number eight.

EXHIBIT 1B

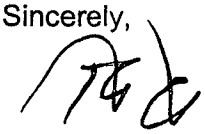
(15) Copies of all "come clean" letters since 2006. Please see response to request number two.

You have also advised that you would like to depose Nita Holman and Tari Nyland. Ms. Holman is currently on medical leave, but the CSI anticipates that she will return by mid-September. Ms. Nyland is available during the week of September 17, 2012.

Finally, in addition to the above objections, the CSI also objects to your requests on the basis that they fall outside the scope of Mont. Code Ann. § 46-15-322(1).[2] The CSI also respectfully disagrees with your conclusions that a "significant amount of evidence" exists showing that the Defendant is being selectively prosecuted or that "anti-Christian animus" exists at the CSI.

Please contact me at (406) 444-2040 or BO'Neil@mt.gov if you have any questions.

Sincerely,



BRETT O'NEIL
Attorney

cc: Pat Flaherty

[2] This excludes request number one.

Missoulian

TUESDAY, April 2010

www.missoulian.com

ANTI-DISCRIMINATION ORDINANCE

Deep rifts at hearing

Transgender woman Armen Memic of Missoula attempts to fit in with opponents of the proposed anti-discrimination ordinance outside Missoula City Council Chambers Monday night in Missoula. Hundreds turned out to let their voices be heard on both sides of the issue.

MICHAEL GALLACHER/Missoulian

EXHIBIT 10

Residents pack City Council Chambers to offer comment

By KEILA SZPALLER
of the Missoulian

Urging him to halt his "ignorant and hurtful" crusade, the daughter of one of the most outspoken critics of Missoula's proposed equality ordinance came out Monday night as a member of the lesbian, gay, bisexual and transgender community.

INSIDE

■ Protests, rallies draw hundreds before hearing
Page A4

"Dad. I strongly disagree with the way you have been portraying the LGBT community," said Taryn Nash, who identified herself as an LGBT member to her father for the first time during the public meeting of the Missoula City Council. "You have gone too far. I will not sit back any more and be quiet. I love you because you are my dad, but I have lost respect for you."

Nash's father, Tei Nash, is chairman of NotMyBathroom.com, the group formed to defeat the anti-discrimination ordinance, fearing for the safety of families. He apparently had left the overflowing City Council Chambers before she spoke, but on

See **HEARING,** *Page A4*

MICHAEL GALLACHER/Missoulian

Katherine Marie Bentley spoke in favor of the ordinance in Council Chambers on Monday evening. Those in attendance were allowed three minutes to speak for or against the ordinance.

Video: Watch footage from Monday's rally and City Council meeting by going to this story on **Missoulian.com.**

EXHIBIT 1C

Hearing

the live television feed, she told her father he risked losing her forever.

"You need to realize this crusade you are on is wrong, and it affects me personally," said Taryn Nash, who broke from her studies in Spokane to testify. "Right now I am ashamed to call you my father."

In the standing-room-only Council Chambers, cheers and tears erupted throughout more than three hours of public comment on the anti-discrimination ordinance. (The hearing was still in progress at press time late Monday night.)

Opposed as "barbaric" on one hand from Tei Nash and lauded as an "historic step" on the other, the measure drew a larger audience than any council meeting in at least the past three years.

The ordinance aims to protect people from discrimination in employment and housing because of "actual or perceived ... sexual orientation, gender identity or expression." It has drawn overwhelming response from the Missoula community and beyond.

MICHAEL GALLACHER/Missoulian

Hamilton preacher Harris Himes spoke at length about how he thought the ordinance was unconstitutional and would bankrupt the city of Missoula with legal fees.

MICHAEL GALLACHER/Missoulian

Councilman and co-sponsor of the anti-discrimination ordinance Dave Strohmaier listens to the public's comments Monday night.

The room had filled up well before the meeting began at 7 p.m., with people standing along the walls and some sitting cross-legged on the floor. One woman wore a rainbow flag draped over her shoulders, and another carried a small flag.

Mayor John Engen asked the audience to allow people who live in Missoula – constituents – to speak first. When people applauded early on, Engen warned that he would recess the meeting if they clapped for any speaker – in favor or opposed.

"Nobody is going to applaud tonight on either side," Engen said. "What it does is it ramps up the tension in the room, and there's plenty of that already."

Some leaders of local nonprofit groups threw their weight behind the ordinance, among them the Poverello Center and the Jeannette Rankin Peace Center. A Forward Montana representative noted she had 1,700 petitions to drop off in favor of the proposal.

Many pastors and religious leaders spoke, both for and against the ordinance. It would be the first of its kind in Montana but one of some 129 such local government ordinances across the country.

Ron Thiessen, a Missoula pastor, said he believes in harmony and has been glad to hear discrimination doesn't happen often against people who are part of the LGBT community. But he said he doesn't believe the council should advance such a political agenda.

"I do not mock their pain, but social policy is not the place to resolve this discord in their lives," Thiessen said.

Iris Schmitt broke down in tears as she told the council how hard she tries to protect her children. Schmitt, who works at a school, said she teaches her children family values. She turns off cable television to protect her children, and she would love and seek help for a child who was gay.

"It's not appropriate behavior, and if they're born that way, there is counseling and there is help," Schmitt said.

Dustin Hankinson, of Missoula, described some of the opposing arguments as "insane." Hankinson said some of them made it sound like a pack of gay men were running around trying to capture people.

"We are America. Freedom," Hankinson said. "The arrow of freedom points to more freedom. It does not point away from freedom. We cannot claim to be the paragon of freedom and liberty and still maintain that it is absolutely acceptable to oppress people for who they are. It's contradictory."

Anne Harris, a licensed counselor, parent and grandparent, also urged the council to adopt the measure and called for "a clear statement from this body." Harris ended her remarks by telling the council she herself is a transgender woman and would like to tell people she lives in a community that supports LGBT folks.

"I and my family are proud to be from Missoula, Montana," Harris said. "Our civic pride will only increase."

Some members of the public explained how the ordinance would affect them personally. Chris Lockridge of Missoula said he's identified his partner as a "roommate" when filling out paperwork to rent a home. When his partner's mom died, he couldn't admit it to his supervisor.

"I was talking to my boss about getting time away from work and she asked me why. I lied," Lockridge said. "I was afraid."

EXHIBIT 1C

PETITIONER'S EXHIBIT F 77

Independent Record

Citizens line up to testify for rights

FEBRUARY 19, 2011 12:00 AM • BY CHARLES S. JOHNSON IR STATE BUREAU

Social conservatives supported a bill Friday to nullify Missoula's ordinance that protects residents from discrimination because of their sexual orientation and gender, while human rights advocates lined up against it.

At issue was House Bill 516, by Rep. Kristin Hansen, R-Havre, to prohibit local governments from enacting ordinances or other policies like Missoula's that include, as a protected class from discrimination, any groups not included under the Montana Human Rights Act.

The other bill, HB514, by Rep. Edie McClafferty, D-Butte, would expand the Montana Human Rights Act to prohibit discrimination based on gender identity or expression and sexual orientation. This time, human rights groups testified for that bill, while social conservatives opposed it.

The result was a pair of hearings that were at times tense before the House Judiciary Committee. The panel took no immediate votes on them.

A Democratic lawmaker protested one witness's use of the word "abomination" in his testimony to describe homosexuality.

Some Democrats also objected to a decision by committee chairman, Rep. Ken Peterson, R-Billings, to not allow people unable to testify because of time constraints to at least stand and say their names. However, they figured out a way around it by having more than 50 opponents stand as Rep. Diane Sands, D-Missoula, read each of their names from the sign-up list.

Missoula enacted such an ordinance in April 2010 to protect gay, lesbian, bisexual and transgender people from employment, housing and other forms of discrimination or perceived discrimination because of their sexual orientation or gender identity.

"The crux of my testimony today is that I believe that the Montana Human Rights Act preempts the city of Missoula from doing this," Hansen said on behalf of her HB516.

State law already provides an established set of procedures for people to file discrimination complaints with the Montana Human Rights Commission, for investigators to look into the charges, for the commission to consider them and for an appeals process to court.

EXHIBIT 1D

"Montana's businesses, nonprofits and other entities are entitled to the predictability of having a single forum for discrimination cases," the Havre lawyer said.

But opponent, Niki Zupanic, policy director of the ACLU of Montana, raised federal and state constitutional questions about the bill.

The Montana Constitution and legal precedents clearly provide that a charter city like Missoula "has a presumption of authority to act to respond to local needs," Zupanic said. "Absent a clear prohibition, there is no prohibition in our current law."

Leading the support for Hansen's bill were two Bitterroot Valley conservatives who were outspoken opponents of the Missoula ordinance last year.

Harris Himes, representing the Montana Eagle Forum, called the Missoula ordinance "unconstitutional on its face."

"There are those of us who would not rent to gay and lesbian people for religious reasons," said Himes, a Hamilton pastor.

Pressed later by Rep. Ellie Hill, D-Missoula, what those religious reasons are, Himes said: "It is God himself who says that homosexuality is an abomination, and he has various punishments for that too."

Hill asked what those punishments are, and Himes quoted Leviticus, saying that homosexuals "surely shall be put to death."

Dallas Erickson of Montana Citizens for Decency through Law said, "This law in Missoula means that a person with a penis can now go into the showers where the people with vaginas have gone."

Erickson said he knows Ravalli County residents who won't take their children into Missoula businesses "because they don't know if they're going to be confronted in the restroom with a different gender."

Leading the opposition to the bill was Dave Strohmaier, a Missoula City Council member who co-sponsored the ordinance.

"I respectfully but strongly urge you to table this bill," he said. "Sadly, discrimination against (lesbian, gay, bisexual and transgender) members of our community is alive and well, which is precisely why I co-sponsored our ordinance."

Strohmaier said he takes "very seriously the rights granted to self-governing municipalities by the Montana Constitution" and urged lawmakers to respect the Missoula ordinance and the civil rights it ensures.

Bozeman Mayor Jeff Krauss urged defeat of HB516, citing the city's ordinance requiring equal treatment regardless of sexual orientation.

Ryan Morton, a gay man from Missoula, said he pays $40 a month for his gym membership for

EXHIBIT 1D

the use of all the facilities.

"But in Helena, if the owners found out that I was gay, they could refuse me entrance to the locker rooms and showers without repercussions," he said. "And I pay for those services. I've paid for those facilities, and I'm not a criminal. I'm not a pervert."

Meanwhile, McClafferty's bill drew testimony in support from six people, while five opposed it.

EXHIBIT 1D

PETITIONER'S EXHIBIT F 80

Independent Record

Bill to protect fetuses draws on abortion debate

JANUARY 11, 2011 11:41 AM • ASSOCIATED PRESS

HELENA - The sponsor of a bill making it illegal to kill an unborn child says the proposal has nothing to do with abortion - even though abortion foes and supporters lined up to take different positions on the measure.

The bill sparked familiar arguments over abortion between old foes at a legislative hearing Tuesday. It is expected to clear the Republican-controlled House Judiciary Committee. The panel's chairman said a vote could come later this week.

Groups opposed to abortion said Kalispell Rep. Keith Regier's bill is needed to prosecute those who kill an unborn baby, perhaps during a crime against the expectant mother. They said House Bill 167 excludes legal abortions.

"I would like to mention there is a far higher authority here. God hates those who shed innocent blood," said Harris Himes, a pastor and activist with the conservative Eagle Forum. "This unborn baby is an innocent victim and those who kill it should be punished."

Regier, a Republican, said he thinks it makes sense to criminalize the death of a fetus because it should count as a separate crime, such as in cases when the expectant mother is murdered. He said several dozen other states have similar laws.

The measure defines an "unborn child" as a "human who is conceived but not yet born" and adds the term to the state homicide statutes. It aims to exclude injuries caused during standard medical care and lawful procedures.

Groups largely in favor of abortion rights say the bill is an attempt to put politically charged language into law.

They worried it could carry unintended consequences, such as by exposing a women's medical record to public scrutiny during prosecution and opening up doctors involved in procedures not considered customary to prosecution. The bill's opponents argued there are better ways to prevent violence against women.

"The Montana Legislature should focus on prosecuting violence against pregnant women without political overtones," said Alexandra Corcoran, with NARAL Pro-Choice Montana. "We can do so without becoming entangled in the abortion debate."

EXHIBIT 1E

Missoulian

Ravalli County commissioners OK federal funds for family planning clinic for 1 year

AUGUST 05, 2011 6:00 AM • BY WHITNEY BERMES RAVALLI REPUBLIC

HAMILTON - After hours of emotional testimony, the Ravalli County commissioners voted 3-2 Thursday to accept federal funding and keep open the doors of the county's family planning clinic.

But the vote came with a caveat: The clinic must find alternative funding sources within the next year.

"I am really surprised and truly grateful that this went through because it was so important for the citizens of the county," health department director Judy Griffin said, choking back tears behind a beaming smile. "I can't say how grateful I am. I am over the top with support I got. That makes me cry on its own."

Well more than 100 citizens crammed into the commissioners' meeting room, spilling into the hallway, to listen to more than 3 1/2 hours of debate over Title X funding for the family planning clinic.

Commissioners were up against an Aug. 8 deadline to sign a task order granting $39,932 to the clinic, which provides birth control, emergency contraceptives, pregnancy and pap tests, testing for sexually transmitted diseases, nutrition education and counseling on a sliding scale.

The clinic serves more than 460 patients, 80 percent of whom are adults. Of those clients, 78 percent are at or below the poverty level. Had commissioners chosen to deny the federal funds, the clinic would have faced closure and some health department workers would have lost their jobs.

At the end of the lengthy and emotional meeting, Commissioner Matt Kanenwisher made a motion to simply accept the federal money. The motion failed 4-1, with Commission Chair J.R. Iman casting the only vote in favor.

Immediately after that vote, Commissioner Greg Chilcott made a motion to accept the grant for this year, with the stipulation that the board commit to finding alternative funding sources by the following fiscal year and beyond.

That motion passed 3-2, with Chilcott, Iman and Commisssioner Suzy Foss voting in favor. Kanenwisher and Commissioner Ron Stoltz cast the dissenting votes.

EXHIBIT 1F

***

Kanenwisher said his biggest concern with the family planning program stemmed from the clinic's policy of not notifying parents when their children use the medical services.

"The bar for depriving a parent of their rights should be extremely high," Kanenwisher said. "Especially given the option that the county has the ability to provide a benefit to the county citizens which does not entail violating that right and interfering with that sacred duty, I have heard nothing here today which convinces me to sacrifice that relationship for another's benefit."

Foss echoed Kanenwisher.

"That is 100 percent my stance. This is about parental rights," she said, adding she was open to supporting the program with money from different sources.

Stoltz added a simple follow-up.

"The only comment I have to make is that Matt sums it up right," Stoltz said.

Chilcott said while he believes it is wrong to put the state between a child and their parents, he felt the clinic provides important services, such as breast and pelvic exams and pre-cancer screenings.

"Those are things you don't get other places without money," Chilcott said. "There's more to this program. It's not just about providing birth control and emergency contraceptives to kids."

***

Almost 50 people took their turn at the microphone during public comment. From doctors and nurses, to nonprofit directors and pastors, the issue of family planning hit home on both sides of the issue.

An overwhelming majority of Thursday's speakers urged the commissioners to accept federal funds for the clinic. The room was filled with handmade signs bearing messages like "Commissioners, give up your government health care" and "Title X saves lives."

Many gave personal, and oftentimes emotional, testimony about how family planning has helped them and people they have known.

Stacey Umhey, director of Hamilton's Supporters of Abuse Free Environments, remembered her experiences with family planning.

"I planned my family. I couldn't have done that without a family planning clinic," Umhey said.

Elizabeth Neff of Hamilton said she was "shocked and appalled" that the issue had even come up.

"To think that children can go talk to parents assumes they have parents to talk to," Neff said.

EXHIBIT 1F

PETITIONER'S EXHIBIT F 83

"Consider the children who do not have the perfect lifestyle. ... It is your job to protect all of us."

Christina Dunbar said not only sexually active teenagers and adults use the clinic's services.

"It is a vital medical care facility to women in this community," Dunbar said.

Former Ravalli County Attorney George Corn told commissioners that poor families and women would take the biggest hit from the loss of the clinic.

"They will suffer because you stood for your principles," Corn said. "They will pay the price of your principle."

A handful of speakers supported denying federal funds.

Harris Himes, pastor for the Big Sky Christian Center, called the issue a biblical contest.

"To vote to accept these funds is to ignore God's mandate," Himes said. "Stand for God."

Nancy Ballance, a Hamilton school board member, urged commissioners to stand for their principles.

"Let's look for additional funds, but let's not tie ourselves to the strings of federal funds," Ballance said.

Reporter Whitney Bermes can be reached at 363-3300 or at whitney.bermes@ravallirepublic.com.

EXHIBIT 1F

Okay – we are going on the record and this is March 21st at about 5 to 11. Wednesday. We are in the office of the insurance?

COMMISSIONER OF SECURITIES AND INSURANCE. WE CALL OURSELF THE CSI

Wow. Like Crime Scene

YEAH.

Investigators. Okay. And, uh, I am Pat Flaherty. I am representing Harris Himes who is charged with, uh, some crimes. And present is Jesse Laslovich and Brett O'Neil, the attorneys for CSI and we are going to record this interview with your permission everyone. Is that alright?

Correct.

YES.

Okay, so, Lynn, I hear that you are a good employee here in the securities field, but that's all I know. But I would like to get to know you, what you do, how long you have done it, how you got to be here.

OKAY.

Can you kind of go back and give me a little thumbnail CV

OF MY TENURE WITH THE AGENCY, OR PRIOR TO THAT?

Prior to that, and then especially with the agency.

OKAY. I WORKED FOR D.A.DAVIDSON AND COMPANY AS AN OPERATIONS MANAGER FROM 1980 TO 1990.

Where at?

IN HELENA. THE HELENA BRANCH OFFICE. I WENT BACK TO COLLEGE AND GOT AN ACCOUNTING DEGREE AT CARROLL, UM, I LEFT D.A. IN 1990. I PASSED THE UNIFORM CPA EXAM IN DECEMBER OF 1991.

So you are a CPA?

I'M NOT PRACTICING AS A CPA, BUT I HAVE A DEGREE IN ACCOUNTING AND I PASSED THE UNIFORM EXAM. I HAVEN'T KEPT MY LICENSE CURRENT, BECAUSE I DON'T DO PUBLIC ACCOUNTING.

EXHIBIT 1G

WELL YOU SAID INVEST AFFINITY FRAUD, YOU MEAN INVESTIGATE AFFINITY FRAUD?

When you investigate. Did I say invest?

YEAH.

Thank you for reading my mind and correcting that.

UM.

We talked about that earlier, yeah.

ANYTIME WE INVESTIGTE ANY ALLEGATION OF POTENTIAL WRONGDOING OR WE BELIEVE THAT THERE COULD BE WRONGDOING WE SEARCH TO A LOGICAL CONCLUSION.

Does that include going to the affinity with the one that's taking advantage of a person.

IT DEPENDS. IT CAN AND THIS MONTH IT DOESN'T. IT'S ALL ON A CASE BY CASE BASIS.

How do you determine whether or not to go to the person that is the perpetrator, or alleged perpetrator?

AGAIN IT DEPENDS ON THE SITUATION. AVAILABILITY OF THE INDIVIDUAL. A LOT OF TIMES INDIVIDUALS REACH OUT TO US. THEY CONTACT US AND SAY, YOU KNOW, I'VE HAD PEOPLE CALL AND SAY I WANT TO CONFESS, I'VE BEEN DOING THIS AND THAT, STARTS THE INVESTIGATION. SO AGAIN IT'S UNIQUE TO EVERY SITUATION.

All right, so there's no written handbook or protocol it's just as each case comes along you investigate it on its own merits?

EXACTLY.

Did you ask Harris Himes for his response to these charges that are being made here?

I ATTEMPTED TO REACH MR. HIMES BEFORE, UM, I CONCLUDED MY REPORT AND DID NOT GET A RESPONSE BACK. SO, AFTER HE'S BEEN CHARGED, NO, HE'S REPRESENTED BY COUNSEL. I DO NOT REACH OUT TO PEOPLE AFTER THEY'VE HAD COUNSEL.

But how did you try to reach him before?

BY TELEPHONE.

How many times did you call?

UH, ONCE OR TWICE.

Did you leave a voice mail message?

I BELIEVE I DID, YES.

Did you state the reason for the call?

NO, I JUST ASKED TO HAVE HIM CALL ME BACK. I IDENTIFIED MYSELF, WHO I AM, WHO I'M WITH AND ASKED FOR A RETURN PHONE CALL.

So you would have said that – do you have a phone log or anything like that that would show you called him?

I DON'T KEEP A PHONE LOG, NO.

Do you know when you called him?

PRIOR TO MY WRITING THE REPORT. I NEVER SPOKE TO HIM SO I DID NOT WRITE A CONTACT REPORT.

Okay. And is that the same with Bryant?

I DIDN'T HAVE A PHONE NUMBER FOR MR. BRYANT.

Did you try to contact Bryant?

I DIDN'T HAVE A WAY TO CONTACT HIM. I DIDN'T HAVE A PHONE NUMBER FOR HIM.

Now, Lynn, I understand that you are critical, from the securities law standpoint, that, you know, these documents don't properly disclose what should be in a perspective and under section

204 AND 205

205, thank you, there's not full disclosure and, and you're upset with that, okay. Understanding all of that and not wanting you to revisit that, you're an expert witness. And you know expert witnesses can be asked hypothetical questions.

EXACTLY, YEAH.

And so, hypothetically, let's assume

Best photos of summer – Life in the Bitterroot, Section B

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Arrest warrants issued for Hamilton pastors

LAURA LUNDQUIST
Ravalli Republic

A warrant has been issued for the arrest of two Hamilton pastors accused of theft, fraud and conspiracy following a yearlong investigation.

District Judge James Haynes issued bench warrants Tuesday for Harris Himes and James "Jeb" Bryant after attorneys with the state Office of the Commissioner of Securities and Insurance filed charges against the pastors.

The men stand accused of six felony charges, including theft, fraudulent practices and conspiracy to commit the same.

According to court records, a local man, ultimately the alleged victim, learned in December 2007 that he would receive a large inheritance. He told Himes, a pastor at Big Sky Christian Center, that he would like to invest in something that would provide enough income to allow him to do ministry work full time.

The victim said Himes and Bryant claimed to be partners in Duratherm Building Systems, a company which allegedly manufactured structural insulated panels. Himes told the victim he would receive a good return on any investment, according to court records.

The state investigation later revealed that the company is not registered as an investment property with the CSI.

In March 2008, Bryant gave a sales pitch to the victim, saying the company could buy its last piece of equipment, a glue machine, if it could just raise $150,000. Bryant and Himes allegedly told the victim he would receive a 20 percent minimum return for two years, with a 5 percent ownership and other perks, such as use of a beach house in Mexico, for a longer-term investment.

Investigators acquired subsequent emails between the victim and the pastors that included further promises and instructions on where to wire the money.

See **PASTORS**, *Page A5*

PETITIONER'S EXHIBIT F 87

EXHIBIT 1H

FROM PAGE A1

PETITIONER'S EXHIBIT F 88

Pastors

Continued

Himes allegedly told the victim to create a personal corporation in order to wire the money, which the victim did in May 2008. In June, as instructed, the victim wired $150,000 to Harris Bank in Chicago on behalf of Monarch Beach Properties.

The victim was told Monarch Beach Properties was "a type of parent corporation," but investigations revealed the wiring instructions went to an apartment complex in Maryland while the Harris Bank records show the mailing address as a Hamilton post office box. Monarch Beach Properties is not registered in Maryland.

The victim said he never received a statement of ownership in the panel company, a prospectus or a receipt of his purchase. He never received any monetary returns, according to court records.

In July 2008, the victim met Bryant in Texas to help with transportation across the Mexican border. One month after arriving in Texas, they traveled to Mexico to a site where the panel company supposedly planned to build a factory. It turned out to be an empty building that was not owned by the company or the two pastors, according to court papers.

The victim claimed Bryant left him in Mexico soon thereafter, and the victim returned to Texas alone.

The victim requested that Himes and Bryant buy him out of the company but they haven't, even though the two said they'd help him sell his share. They stopped returning his calls a year ago. The victim then filed a complaint with the state and an investigation began.

The CSI requisitioned bank statements, confirming the victim sent $150,000. The money went to the accounts of Himes, Bryant, and to pay off a Monarch Beach Properties credit card that lists both Himes and Bryant as signers. None of the money went to Duratherm Building Systems, according to court records.

CSI attorney Brett O'Neil filed the charges from Helena after the investigation also revealed that neither Himes nor Bryant are registered to sell securities in Montana.

Reach reporter Laura Lundquist at 363-3300 or laura.lundquist@ravallirepublic.com.

EXHIBIT

Additional charge added as Harris Himes heads for initial hearing

LAURA LUNDQUIST
Ravalli Republic

Harris Himes will appear in Ravalli County District Court on Dec. 7 to enter his initial plea to six felony charges filed on Sept. 23, including theft, fraud and conspiracy, and a seventh charge added recently.

Since the original charges were filed, more people have come forward with accusations against Himes. So last week, Brett O'Neil, attorney for the state Office of the Commissioner of Securities

See HIMES, Page A8

11/23/2011

Himes

Continued

and Insurance, filed an amended motion that added an additional felony count of failure to register as a salesperson.

According to court records, an investigation revealed that Himes conducted a series of meetings with several Ravalli County residents between 2000 and 2004. At these meetings, Himes allegedly advised people to make group investments in the commodities market.

In February 2000, one victim claimed he gave Himes an investment of $10,000 and Himes allegedly said he would receive $1,000 to $2,000 a month on his investment. The victim received a letter, signed by Himes, that stated the money was investing in a program that would "help in both the Lord's work and (the victim's) retirement."

Two year's later, the victim had still seen no return on his investment. When the victim requested his money back, Himes allegedly told him it was with three men in California. A year later, the victim tried again, but Himes told him the money was gone.

This story is reminiscent of the original situation that prompted a yearlong investigation by the Office of the Commissioner of Securities and Insurance. The original charges stemmed from a 2008 series of incidents where Himes and codefendant James "Jeb" Bryant allegedly promised a man a 20 percent return on his $150,000 investment and 5 percent ownership in their company, Duratherm Building Systems. After getting the run-around, the victim claimed he received no monetary return, receipts or certificate of ownership and couldn't get his money back.

After a warrant was issued for his arrest, Himes turned himself in and was released on $10,000 bail on Sept. 28.

He then called into KGVO radio's "Talkback" show and told listeners he would not represent himself, even though Himes is an attorney.

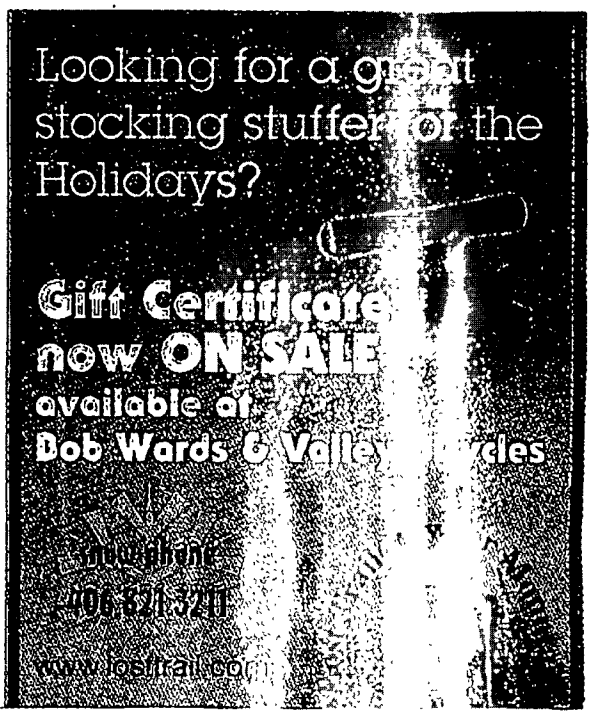
Himes went on to claim that gay and pro-abortion activists may be behind the charges against him and Bryant. Himes further claimed that State Insurance Commissioner Monica Lindeen may also have come after him because of political disagreements they've had in the past.

A few days later, Himes filed a motion to have Ravalli County District Judge James Haynes disqualified from hearing his case. Haynes bowed out and offered the case to District Judge Jeffrey Langton, who refused based on previous interactions with Himes.

Jefferson County District Judge Loren Tucker has accepted the case. Himes' brief Dec. 7 appearance will be in Jefferson County as a convenience to Loren, but most other hearings will be in Ravalli County.

But Himes won't be appearing before Tucker alone. Himes was able to find counsel; on Nov. 7, Great Falls attorney Patrick F. Flaherty signed on to represent Himes. Flaherty has practiced law for 35 years and specializes in Indian law, personal injury and prisoners' rights. During that time, he has appealed cases as far as the Montana Supreme Court.

Reach reporter Laura Lundquist at 363-3300 or laura.lundquist@ravallirepublic.com.



1 MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT
2 RAVALLI COUNTY
3
4 STATE OF MONTANA,
5 Plaintiff,
6 vs. CAUSE NO. DC-11-117
7 HARRIS HIMES,
8 Defendant.
9
10
11 DEPOSITION UPON ORAL EXAMINATION OF
12 LYNNE EGAN
13
14
15 BE IT REMEMBERED, that the deposition upon oral
16 examination of LYNNE EGAN, appearing at the instance of
17 Plaintiff, was taken at the offices of the Securities and
18 Insurance Commissioner, 840 Helena Avenue, Helena,
19 Montana, on Tuesday, August 14, 2012, beginning at the
20 hour of 10:05 a.m., pursuant to the Montana Rules of Civil
21 Procedure, before Jan M. Baldensperger, Court Reporter and
22 Notary Public.
23
24
25

1 APPEARANCES

2

3 ATTORNEY APPEARING ON BEHALF OF THE PLAINTIFF,

4 STATE OF MONTANA:

5 Mr. Jesse Laslovich, Esq.

6 Office of the Montana State Auditor

7 840 Helena Avenue

8 Helena, Montana 59601

9

10 ATTORNEY APPEARING ON BEHALF OF THE DEFENDANT,

11 HARRIS HIMES:

12 Mr. Matthew G. Monforton, Esq.

13 Monforton Law Offices, PLLC

14 32 Kelly Court

15 Bozeman, Montana 59718

16

17

18

19

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21

22

23

24

25

1 I N D E X

2

3 EXAMINATION OF LYNNE EGAN BY: PAGE

4 Mr. Matthew G. Monforton, Esq. 4, 147

5 Mr. Jesse Laslovich, Esq. 121, 151

6

7 E X H I B I T S

8 DEPOSITION EXHIBITS: PAGE

9 Exhibit 36 Lynne Egan's Investigative

10 Report. 52-53, 57,

11 60, 123

12 Exhibit 37 Serata Investments Schedule

13 (Prepared by Lynne Egan). . . 62-63, 80, 82

14 Exhibit 38 Alan Ludwig's Investigative

15 Report - Reynolds/Adkins. . . 132-133

16

17

18

19

20

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23

24

25

1 WHEREUPON, the following proceedings were had
2 and testimony taken, to-wit:
3 ********
4
5 LYNNE EGAN,
6 called as a witness herein, having been first duly
7 sworn, was examined and testified as follows:
8
9 EXAMINATION
10 BY MR. MONFORTON:
11 Q. Could you state and spell your full name
12 for the record.
13 A. Lynne Egan. L-y-n-n-e, E-g-a-n.
14 Q. How would you like me to address you
15 today?
16 A. "Lynne."
17 Q. Okay, Lynne. I'm Matthew Monforton, and
18 I'm one of the attorneys representing Harris Himes
19 in the matter of State vs. Himes, which is a
20 criminal matter that's currently pending out of
21 Ravalli County.
22 Have you ever had your deposition taken
23 before?
24 A. Yes, I have.
25 Q. How many times?

1 any other promotions?
2 A. Yes. In approximately June of 2006, I
3 was made the acting deputy securities commissioner.
4 And when Monica Lindeen came on board January 1st of
5 2009, I was made the deputy securities commissioner.
6 Q. The "acting" part dropped off in 2009?
7 A. Yes.
8 Q. Tell me how your duties changed when you
9 became deputy securities commissioner.
10 A. Well, from -- from the acting to the
11 formal deputy, they didn't change at all.
12 Q. How about when you became acting deputy
13 securities commissioner? How did your duties
14 change?
15 A. I then became solely responsible for the
16 oversight of the securities department. There was
17 no longer the dual chief of staff, deputy securities
18 commissioner. I moved from answering only to the
19 commissioner and the deposit chief of staff. I did
20 no -- I no longer had a deputy securities
21 commissioner over me.
22 My duties were primarily -- primarily the
23 same; however, if I had a disciplinary issue, I
24 would have just involved HR and likely not had a
25 deputy. There wasn't a deputy after -- after I

1 became the formal deputy.
2 Q. Did any kind of disciplinary issues occur
3 after your promotion to acting deputy securities
4 commissioner -- commissioner or when you became
5 deputy securities commissioner?
6 A. I don't recall. No, I don't think so.
7 Q. Now, I understand Mr. Flaherty
8 interviewed you a few months ago. Is that correct?
9 A. That is correct.
10 Q. And I want to warn you in advance. I
11 have some questions that will probably seem
12 repetitive.
13 My understanding is that that interview
14 was an informal interview and was not under oath.
15 Is that correct?
16 A. I do not believe I was sworn in.
17 Q. Okay. And I don't believe we had a court
18 reporter present. So we've got something of a
19 transcript but not -- not a formal transcript. So
20 if my questions are repetitive at times, it's not
21 meant to irritate you. It's just to make sure we've
22 got your testimony on the record and under oath and
23 we've got a clear record of what you've said.
24 All right. I think you told
25 Mr. Flaherty at one point during the interview that

1 "I am second under Monica Lindeen." Is that
2 correct?
3 A. In regard to securities regulation.
4 Q. Okay. And tell me what you mean by
5 you're second under Ms. Lindeen. Or maybe you've
6 just answered the question.
7 A. Well, Monica Lindeen is the commissioner
8 of securities. I'm the deputy commissioner of
9 securities. So in regard to securities regulation,
10 Monica, and I'm her deputy.
11 Q. Since 2009, is there anyone that you've
12 answered to in this office other than Ms. Lindeen?
13 A. Yes.
14 Q. Who -- who would that -- who would that
15 be?
16 A. It would be the chief of staff.
17 Q. And since 2009 -- starting in 2009, was
18 that Mr. Schweitzer?
19 A. Yes, it was.
20 Q. Okay. And then January -- starting in
21 January of this year, it became Mr. Schafer; is that
22 correct?
23 A. Mr. Schweitzer left in March of 2011, so
24 there were two individuals acting from March of 2011
25 until Mr. Schafer came on board in January of 2012.

1 administrative in nature.
2 Q. Do you ever make any recommendations to
3 your legal department as to whether a matter should
4 be pursued administratively or criminally?
5 A. I do, yes.
6 Q. How do you express those opinions?
7 A. In verbal discussions.
8 Q. Are those kind of opinions ever put into
9 writing?
10 A. When I complete an investigative report,
11 I identify possible violations. "Possible
12 violations." Those are my opinions. And I cite the
13 statute in which I believe a possible violation may
14 have occurred and why I believe that.
15 And because it's the securities act,
16 we're a criminal justice agency, I -- I suppose any
17 possible violation that I identify could be criminal
18 in nature. So I do articulate in writing possible
19 violations, which every one could be criminal in
20 nature.
21 Q. In your reports, do you make any kind of
22 statements to the effect of "These violations should
23 be pursued criminally"?
24 A. In my investigative report?
25 Q. Yes.

EXHIBIT 2

1 remuneration or a commission with regard to the
2 securities act?
3 A. In my mind, a commission is a direct
4 consequence -- monetary or nonmonetary -- for the
5 solicitation of an investor. Other remuneration
6 would be receiving proceeds from the investment for
7 the direct benefit of the promoter or promoters.
8 Q. I'm going to take a short break.
9 (Off the record)
10 BY MR. MONFORTON:
11 Q. Ms. Egan, we've discussed briefly some of
12 the opinions that you believe you might be asked to
13 give if the Himes matter goes to trial.
14 Is there a report in which you've
15 expressed those -- the opinions that you've
16 described a moment ago?
17 A. I have a draft report in progress. I
18 haven't finalized a report.
19 Q. When do you believe that that draft
20 report will be finalized?
21 A. I don't know. Within 30 days.
22 Q. Okay. Is there any kind of initial
23 report that you've issued with regard to the various
24 subjects you plan to opine upon?
25 A. Only the draft report. I -- I draft a

1 see it on yours, so that's correct.
2 Q. And with regard to what we've had marked
3 as Exhibit 36, aside from the handwriting at the top
4 of the right-hand corner, which I will represent to
5 you is my handwriting, is this a report that you
6 prepared?
7 A. Absent the handwriting and the Bates
8 numbering, it's a report that I prepared.
9 Q. When did you report -- prepare this
10 report?
11 A. On or about April 20, 2011.
12 Q. I want to refer you to page 7 of what
13 we've marked as Exhibit 36. And you'll notice, at
14 the top half of the page, there's several bullet
15 points describing the reasons that Pastor Bryant and
16 Pastor Himes may have violated Section
17 30-10-301(1)(b). Do you see the area I'm referring
18 to?
19 A. I do.
20 Q. I want you to read into the record the
21 last bullet point.
22 A. "Omitted the issuer's background and/or
23 history including but not limited to any regulatory
24 or criminal action issued against the issuer or its
25 officers and directors, among other things."

1 purposes that directly benefited both of the
2 respondents.
3 The -- the one direct payment I found to
4 Mr. Himes was $750, I believe. And that's, again,
5 just off the top of my head. And then approximately
6 in excess of $50,000 was sent to three credit card
7 companies: American Express, Chase and Discover.
8 And I was able to obtain credit card statements from
9 Discover and American Express, and there were
10 charges -- both the respondents were credit card
11 holders with both of those credit card companies,
12 and there were personal charges on those credit
13 cards and expenses unrelated to Duratherm.
14 Q. All right. I want to start with the $750
15 amount that you mentioned. Tell me where that comes
16 from.
17 A. It came from a bank, Harris Bank, owned
18 and controlled by -- well, a bank account registered
19 to Monarch Beach Properties at Harris Bank.
20 Q. This was a check written on the Monarch
21 Beach account?
22 A. I believe it was a check. I don't -- I
23 can't say for certain it was a check. It may have
24 been a wire. But it -- I believe it was a check.
25 Q. Do you remember the date that that check

1 was issued?
2 A. No.
3 Q. Instead of making you suffer, why don't
4 we try to make it a little easier for you.
5 A. You're expecting me to have too good of a
6 memory.
7 Q. I'm going to mark this next document as
8 Exhibit 37. Lynne, I'm going to ask you to take a
9 moment and tell me if you recognize that document.
10 (Whereupon, Exhibit No. 37 was marked for
11 purposes of identification.)
12 THE WITNESS: This appears to be a spreadsheet
13 that I prepared in regard to records received from
14 Harris Bank.
15 BY MR. MONFORTON:
16 Q. Does this document refresh your
17 recollection as to the $750 payment that you
18 referenced earlier?
19 A. It does.
20 Q. And is that -- is that the amount
21 that's -- or the notation made on what looks like
22 the bottom of the first set of numbers with a date
23 of December 22, 2008, Check 1011, $750, Harris
24 Himes? Is that --
25 A. It does --

1 Q. Okay.
2 A. -- yes.
3 Q. When I look at the top of that set of
4 numbers on Exhibit 37, it indicates a wire deposit
5 on June 6 in the amount of $150,000.
6 Is that the $150,000 that Mr. Serata --
7 that originated from Mr. Serata and that went to the
8 Monarch Beach account?
9 A. Yes.
10 Q. And it is your opinion that the $750 that
11 was paid from the account six months later
12 constitutes remuneration or a commission from that
13 $150,000 deposit by Mr. Serata?
14 A. Yes.
15 Q. What do you base that opinion on?
16 A. Based on the fact I use the FIFO --
17 Q. I think I know what that is --
18 A. First --
19 Q. -- just --
20 A. -- in, first out accounting. And, again,
21 this does not have the running balance. When we
22 schedule bank records, we do a running balance of
23 the bank account.
24 So accounting for the 150,000 that came
25 in $750 of the 150,000, on a FIFO basis, went

1 directly to Mr. Himes and did not go to Duratherm,
2 so it is my opinion that is indirect remuneration
3 from Mr. Serata in regard to his investment.
4 Q. Does your reliance on FIFO depend on
5 whether or not there are additional monies in the
6 account besides the $150,000 allegedly deposited by
7 Mr. Serata?
8 A. If I recall correctly, there was
9 approximately $12,000 in this account prior to the
10 money coming in from Mr. Serata. I would have to
11 see the full bank schedule.
12 I don't know if much, if anything, came
13 in during the time period that this clocked out to
14 run. But I do take into consideration existing
15 funds on a FIFO basis.
16 Q. So if there is -- if -- if there was
17 $12,000 to start off with on June 6 and then there's
18 a deposit of $150,000 on June 6, then there would be
19 approximately 162,000 in the account?
20 A. Yes.
21 Q. And if there's a $750 payment made six
22 months after the fact, what enables you to determine
23 whether that $750 came out of Serata's $150,000
24 deposit or the initial 12,000 that was in the
25 account?

1 A. That's why I use FIFO accounting, first
2 in, first out.
3 Q. Is FIFO the basis that you're relying
4 upon to opine that the $750 check issued in December
5 2008 in fact came from the $150,000 deposit in June
6 of 2008?
7 A. Yes.
8 Q. Is there any other basis or any other
9 grounds that you're relying upon to make that
10 opinion?
11 A. Again, I -- I did the schedule over a
12 year and a half ago --
13 Q. Understood.
14 A. -- I don't believe there was much
15 additional money coming in, if any money coming in.
16 I think that Monarch Beach Properties' bank account
17 for the entire time period after 6/6, once the
18 12,000 had clocked out, I think that was it or -- or
19 virtually it.
20 So by the time you get to December of
21 '08, the only money in that account would be Serata
22 money. But I would have to look back at my bank
23 records. I'm basing this on memory.
24 Q. Fair enough. Your recollection is that
25 after the $150,000 deposit in June of 2008, there

1 were no additional deposits into the Monarch bank
2 account that we've been referring to?
3 A. I remember there were a couple, I
4 believe, reverses where there would be a charge and
5 then a credit back -- bought something, brought it
6 back. But, again, that's -- it's too long ago for
7 me to remember every single item --
8 Q. Fair enough.
9 A. -- but I remember there were few if no
10 actual deposits. There were some deposits as a
11 result of a credit.
12 Q. Can you testify or can -- do you believe
13 you can -- can give an opinion at trial, beyond a
14 reasonable doubt, that that $750 that was paid to
15 Mr. Himes -- allegedly paid to Mr. Himes in December
16 2008 in fact came from the Serata monies that were
17 deposited in June of 2008?
18 A. I can't say sitting here right now,
19 without going back and revisiting my schedule, that
20 I can, beyond a reasonable doubt, say that it
21 came -- I would want to go back and refresh my
22 memory.
23 Q. What additional things would you be
24 looking for in order to refresh your -- your memory
25 to make that determination as to whether that

1 750,000 -- excuse me -- $750, beyond a reasonable
2 doubt, came from Mr. Serata's account -- I'm
3 sorry -- Mr. Serata's deposit?
4 A. I would just have to go back over bank
5 records.
6 Q. What would you be looking for in those
7 bank records to --
8 A. I'd be looking to ensure that there were
9 no additional funds, that there were no additional
10 withdrawals. I would reverify my cross-footing on
11 the balance, go back -- if you -- if I'm going to
12 beyond a reasonable doubt -- beyond a reasonable
13 doubt, I want to make sure I'm beyond a reasonable
14 doubt.
15 Q. Absolutely. And that's -- that's what
16 we're -- that's what I -- that's why I'm asking the
17 question.
18 A. Right.
19 Q. Be more specific, if you could, as to
20 what those bank records -- what you would be looking
21 for in those bank records to enable you to make a
22 determination as -- as to whether that $750 paid to
23 Mr. Himes in December of 2008, beyond a reasonable
24 doubt, came from the Serata monies?
25 A. I would again want to look and see if

EXHIBIT 2

1 additional funds came in, verify the balance, and --
2 I'm -- I'm very comfortable saying it -- I wrote it,
3 and I -- when I did it, I was comfortable. But
4 you've got me going beyond a reasonable doubt now.
5 I want to go back and double-check.
6 Q. Okay. Aside from looking to see if
7 additional monies had come into the account after
8 June of 2008, after the Serata deposit, what other
9 things would you be looking for in order to enable
10 you to make that beyond a reasonable doubt --
11 A. I would --
12 Q. -- opinion?
13 A. I'm sorry. I would go back and -- and
14 look at the check again, make sure that it was
15 actually cashed by Harris Himes, deposited to
16 Mr. Himes's personal bank account or cashed by him
17 with his signature, and make sure -- which it
18 wouldn't be the case -- make sure it didn't get
19 returned for one reason or another.
20 And clearly the amount came out of the
21 bank account because, when scheduling, I foot to the
22 bank balance. But I would double-check beyond a
23 reasonable doubt.
24 I would look at the financial instrument.
25 I would verify the -- the date that Mr. Serata's

1 letterhead for her, and I baked for fund-raisers.
2 I've put up some signs, done -- baked for
3 fund-raisers. I've made some phone calls. I've
4 helped with thank-you notes to contributors. And
5 I've helped her with some financial aspects of her
6 campaign.
7 Q. Tell me about the financial aspects of
8 the campaign that -- in which you provided
9 assistance.
10 A. I've kept a list of contributors --
11 contributors for her, phone lists in Excel. I
12 volunteer on an as-needed basis. If -- if she has a
13 request and I can help, I've done it in regard to
14 the financial things.
15 Q. Have you actually handled any of the
16 monies that have been contributed to Ms. Lindeen's
17 campaign?
18 A. I have made deposits for her, yes.
19 Q. How often do you do that?
20 A. On an as-needed basis.
21 Q. Tell me what as-needed is.
22 A. Oh, maybe a couple of times a month I've
23 made deposits for her.
24 Q. What's a typical amount that those
25 deposits would be?

1 A. There's no typical amount.
2 Q. Give me a high amount.
3 A. Well, the maximum contribution anybody
4 can make is $310 --
5 Q. Do you --
6 A. -- for an individual contributor.
7 Q. Let me rephrase the question. When you
8 make deposits, do they typically consist of one
9 check from one contributor or more than that?
10 A. There can be one check. There can be
11 multiple checks.
12 Q. Tell me what the biggest amount -- the
13 biggest deposit you've made in terms of money to --
14 on behalf of Ms. Lindeen.
15 A. Two or three thousand.
16 Q. What's the average size of the deposit
17 you -- that you would typically make for Ms.
18 Lindeen?
19 A. There's really no average.
20 Q. Have you served as the treasurer for
21 Ms. Lindeen's campaign?
22 A. No.
23 Q. Who is -- who is the treasurer for
24 Ms. Lindeen's campaign, if you know?
25 A. I know her first name is Margaret. I

EXHIBIT 2

1 don't know.
2 Q. Do you know what, if any, tasks Margaret
3 performs for the campaign?
4 A. I do not know. I do know she's the
5 treasurer, but I've never met her.
6 Q. Besides making deposits on behalf of
7 Ms. Lindeen's campaign, what other kind of financial
8 services have you provided for Ms. Lindeen's
9 campaign?
10 A. I've helped her put together her C5 and
11 her C7.
12 Q. And are those documents filed with
13 Political Practices?
14 A. Yes.
15 Q. How often do you do that?
16 A. On an as-needed basis.
17 Q. Can you be a little more specific?
18 A. Well, it -- it depends on the time of
19 year. If she needs assistance doing it, I'll help
20 her do it.
21 Q. How often do those forms have to be
22 filed?
23 A. Well, the calendar is set forth, I think,
24 a year before. I've helped candidates over the last
25 ten years as, you know, a volunteer.

EXHIBIT 2

1 It's more frequently this year. I can't
2 tell you exactly how often, but it seems like
3 there's a lot more reporting periods than there ever
4 were in the past. Maybe -- maybe ten reports in a
5 year. I don't -- I would be guessing, though.
6 Q. In the past year, have you participated
7 in preparing all ten of those reports for
8 Ms. Lindeen's campaign with different numbers?
9 A. I have helped with a majority of them,
10 but not the first -- not the first part of last
11 year. I did not.
12 Q. Do you do the entire preparation of those
13 documents? Does someone assist you? How does that
14 work?
15 A. Well, I have -- well, Monica has a
16 staffer that works for her. She's got somebody
17 that's hired by the campaign.
18 Q. Who is this individual?
19 A. His name is Morgan Cosgrove.
20 Q. How do you and Mr. Cosgrove divvy up the
21 chores with regard to Political Practices --
22 A. I --
23 Q. -- forms?
24 A. -- I just volunteer. He's an employee of
25 her campaign -- or independent contractor, I

1 believe. We -- he does the work for her. I just
2 volunteer on an as-needed basis when I have time in
3 my life to help.
4 Q. Tell me specifically how you assist
5 Mr. Cosgrove on those occasions when you do.
6 A. He will make requests of me for putting
7 together an Excel spreadsheet, helping him get
8 information off of Campaign Tracker. He'll send me
9 an e-mail and ask if I can help him. I don't see
10 him very often.
11 Q. Any other financial services or financial
12 activities that you perform -- that you have
13 performed for the Lindeen campaign, other than what
14 you've just -- just discussed?
15 A. I don't believe so. I've contributed
16 myself, but I -- I can't recall any -- any right
17 now.
18 Q. Did anyone ask you to participate in
19 Ms. Lindeen's campaign?
20 A. No. I volunteered.
21 Q. How did that come about? Did you
22 approach Ms. Lindeen and say that you were
23 available?
24 A. I had done -- I had helped other people
25 in the past, and I -- I don't remember. I think I

1 just offered to -- to volunteer, to help her with
2 her campaign.
3 Q. What was her response when you offered?
4 A. "Thank you."
5 Q. When did that happen?
6 A. I would say probably the spring of last
7 year.
8 Q. Have the activities that you've described
9 with regard to Ms. Lindeen's campaign -- have you
10 been performing those up until present day?
11 A. Yes.
12 Q. Have you done any of those activities on
13 state time, state premises, or using state
14 equipment?
15 A. No.
16 Q. Have you ever had discussions with
17 Ms. Lindeen with regard to her campaign on state
18 time or on state premises?
19 A. Yes. Only on state premises, never on
20 state time.
21 Q. And by "state premises," what do you
22 mean?
23 A. I -- I have talked to her in the office,
24 on a break, about matters. I've told her that I was
25 going to drop off something I had baked during a

1 this building that their child is a Boy Scout, and
2 they come in and they're selling their goods and
3 wares. And I would never say no to a child. I buy
4 every year.
5 And I think the product is extremely --
6 usually it's popcorn or caramel corn -- the product
7 is extremely over-priced. And I don't really care
8 for the organization of the Boy Scouts.
9 So in passing, I -- I -- I will admit
10 that I've made the comment "I don't care for the Boy
11 Scout organization," and I truly made that comment.
12 Q. You compared the Boy Scout organization
13 to Nazis?
14 A. I compare it to an organization that
15 doesn't practice tolerance and is discriminatory,
16 and I -- a poor -- a poor comment, but yes, I did
17 make that statement.
18 Q. Okay. So I just want to make sure the
19 record is clear. You -- you have compared the Boy
20 Scout organization to Nazis?
21 A. Neo-Nazis. And I apologize if I offended
22 anybody with that. I have said that in the past.
23 Q. Who have you said that to?
24 A. I believe I've said it in passing
25 whenever I've purchased Boy Scout goods. My spouse,

1 I don't know what my comment was, but it -- I didn't
2 like what I heard, and I don't know what I said, but
3 I would have had a negative -- I had a negative
4 response to hearing that statement.
5 I didn't know who Harris Himes was. I
6 never met him, never seen him.
7 Q. Is it possible that at some point you
8 have made a reference to Mr. Himes based upon his
9 religious beliefs or your perception of his
10 religious beliefs.
11 A. I do not know his religious beliefs. No,
12 I don't think so.
13 Q. Do you know who Kurt Alme is?
14 A. Yes, I do.
15 Q. And who is Mr. Alme?
16 A. He was a -- an assistant U.S. attorney
17 that was -- worked under Bill Mercer. We prosecuted
18 the Tom O'Neill case federally with Kurt. I believe
19 he's now with the Yellowstone Boys Ranch
20 organization as maybe a -- I'm going to guess. I
21 shouldn't guess. But I think he's a fund-raiser.
22 Q. Have you at any time made any references
23 about Mr. Alme with regard to his religious beliefs?
24 A. No.
25 Q. You're certain of that?

1 occur?
2 A. Thursday, August 9.
3 Q. So within the last week?
4 A. Yes.
5 Q. Okay. How about any other activities --
6 strike that.
7 Have you discussed any other activities
8 that Ms. Nyland has allegedly engaged in outside of
9 the office, besides what you've already testified
10 to?
11 A. Not that I can recall.
12 Q. Was there ever an instance in which you
13 discussed Ms. Nyland having a sexual relationship
14 outside of the office?
15 A. I was told that Ms. Nyland had a sexual
16 relationship outside of this office.
17 Q. What specifically were you told?
18 A. That she had a relationship with a former
19 attorney in this agency.
20 Q. Who was telling you this information?
21 A. I believe it was Cindy Palmer.
22 Q. What specifically did Ms. Palmar tell you
23 about Ms. Nyland?
24 A. Just that this attorney was living at
25 Cindy Palmer's home and that Ms. Nyland I believe

1 she said came over or -- I don't really recall what
2 Ms. Palmer told me. She did talk about a possible
3 relationship that Ms. Nyland had with this attorney.
4 Q. What specifically did Ms. Palmer say with
5 regard to this relationship?
6 A. I don't recall. It's been over a year.
7 Q. Who is the attorney that was allegedly
8 involved in this situation?
9 A. Russell Wheat.
10 Q. When Ms. Palmer told you about this
11 situation, what was your reaction?
12 A. Disbelief.
13 Q. What did you say to Ms. Palmer?
14 A. That I was surprised. But I -- I'm
15 always surprised when I hear something like that.
16 Q. Did you ask Ms. Palmer to not make those
17 kind of statements?
18 A. Probably not.
19 Q. Do you think those kind of statements are
20 appropriate with regard to the workplace?
21 A. I don't think Ms. Palmer told me that in
22 the workplace.
23 Q. Where did she tell you that?
24 A. I believe we were traveling together.
25 Q. You were somewhere outside the office?

1 A. Yes.
2 Q. Did you convey this information that you
3 heard about Ms. Nyland to anyone in the office?
4 A. I don't believe I did.
5 Q. Are you certain of that?
6 A. I -- I don't recall doing it.
7 Q. Is it possible that you did?
8 A. You know, anything's possible. I don't
9 recall.
10 Q. Has anyone in the auditor's office ever
11 counseled you about your interactions with
12 employees?
13 A. No.
14 Q. Ms. Lindeen has never talked to you about
15 your interactions with employees?
16 A. No.
17 Q. How about Ms. Holman? It's H-o-l-m-a-n.
18 Is that her --
19 A. Holman, yeah. You know, I did -- I think
20 I've only -- I've met with Nita on a couple of
21 occasions with regard to employees.
22 And did she counsel me? I wouldn't
23 describe what she did as counseling. I went to her
24 as an HR specialist. She got me information. But
25 she never provided counseling.

EXHIBIT 2

1 would prompt you to reach out to that alleged
2 wrongdoer?
3 A. If we get a complaint about a
4 broker-dealer firm that is doing business in the
5 state and I look and find they're not licensed, I
6 will send a letter asking them to tell me how
7 they're doing business in the state without
8 licensure in Montana. They'll respond, and we'll
9 remedy the -- the wrongdoing.
10 Q. Did you ever send out a letter to either
11 Mr. Bryant or Mr. Himes with regard to Mr. Serata's
12 allegations?
13 A. No.
14 Q. What was the reason for that?
15 A. The matter came to our agency about a
16 year and ten months after it had been referred to a
17 sheriffs's department, so it -- it wasn't a timely
18 matter. And as I previously stated, I generally
19 only do that if I think that the problem is ongoing
20 and I need to get it stopped right away.
21 This was rather old when I got it, and I
22 only had the one investor, Mr. Serata. I had no
23 reason to believe that the respondents were offering
24 securities to or from Montana at the time, so I --
25 my reaching out asks the issuer or the respondents,

1 the promoters, to disclose all business and tell
2 them to stop doing business.
3 I didn't think that was the case here. I
4 had no reason to believe they were making additional
5 investment offers.
6 Q. So you believed, when you first heard
7 of -- when you first became aware of Mr. Serata's
8 complaint, that the wrongdoing had occurred over a
9 year prior, and that was the reason for not
10 attempting to contact either Mr. Bryant or -- or
11 Mr. Himes?
12 A. I believe it had occurred three years
13 prior to me becoming aware of it, and I had no
14 reason to believe that the two individuals were
15 still offering securities to or from Montana.
16 Q. Just so the record is clear: There was
17 no attempt to contact either of these gentlemen by
18 you?
19 A. Right.
20 Q. Let me ask you about a previous matter
21 that your office has handled. I believe it's the
22 ACN case. Does that ring a bell?
23 A. Yes, it does.
24 Q. Give me a brief description of that case.
25 A. ACN was a multilevel marketing company

EXHIBIT 2

1 that came in and started doing business in Montana
2 without filing here first. MLM companies have to --
3 are required to simply put us on notice that they're
4 doing business in Montana. We started getting
5 complaints from people who had purchased -- had
6 gotten involved in ACN, and they were unhappy.
7 I believe Mr. Ludwig handled the matter,
8 and he investigated it to a logical conclusion, and
9 the agency took appropriate action based on his
10 investigation.
11 Q. What was the action that the agency took?
12 A. I believe the agency issued a Notice of
13 Proposed Agency and a Cease and Desist Order [sic],
14 if I recall correctly.
15 Q. Was there a point in time in which ACN
16 threatened to engage in negative advertising, for
17 lack of a better term, with regard to Ms. Lindeen?
18 A. I don't -- I don't recall if -- if they
19 did. I -- they didn't make that comment to me. But
20 by the time an agency action was taken, legal was
21 handling it, not the department.
22 Q. Had you ever heard of threats being made
23 by ACN against either Ms. Lindeen or against --
24 against your office?
25 A. A negative advertising campaign? That

1 doesn't ring a bell, doesn't -- I don't recall that.
2 Q. Okay. My question is more general. Do
3 you recall any kind of -- had you heard or been
4 aware of any threats made by ACN either against
5 Ms. Lindeen or against the office in general?
6 A. I -- I -- they may have -- I think they
7 lawyered up. I don't even recall -- their in-state
8 counsel, I believe, was Lynne Deola. I don't recall
9 that, no.
10 Q. Give me a brief summary on the Two
11 Feathers case, if you're familiar with it.
12 A. Daniel Two Feathers was a former federal
13 felon -- well, I guess you can't be a former felon.
14 He's a federal felon. He was in prison from about
15 1996 to 1999 for operating a securities scam. He
16 moved to Montana in early 2000 sometime and started
17 his scam up again.
18 In the fall of '08, we started getting
19 complaints from people who had invested with Mr. Two
20 Feathers and were not getting the promised returns
21 that he promised them. The agency investigated it
22 to a logical conclusion, took action -- I think it
23 was in probably October of 2008 -- and we
24 referred -- the feds got involved because we had an
25 investor in Switzerland, I believe, and most of the

1 investors were outside the state of Montana. So we
2 took administrative action at the state level, and
3 the FBI and the U.S. attorney's office got involved
4 and did a federal action in that matter.
5 Q. Was there any reason you could not have
6 brought a criminal action against Mr. Two Feathers
7 on behalf of your office?
8 A. I don't bring criminal charges, so I
9 can't answer that question.
10 Q. Okay. So the answer is: No, you don't
11 know of any reason --
12 A. I do not know --
13 Q. Okay. You've got to let me finish my
14 question. So the answer is: No, you do not know of
15 any reason why the auditor's office or someone in
16 the auditor's office could not have brought criminal
17 charges with regard to Two Feathers?
18 A. I do not know why we could not have
19 brought criminal charges.
20 Q. The same question with ACN: Is there any
21 reason that you know of that would have prevented
22 the auditor's office from bringing criminal action
23 against ACN?
24 MR. LASLOVICH: Objection, foundation.
25 THE WITNESS: I can't -- I do not know.

1 BY MR. MONFORTON:
2 Q. Do you know who Bill Nooney is?
3 A. Yes, I do.
4 Q. Tell me who that person is.
5 A. He is an individual that lives in
6 Missoula that has a company where he appears to do
7 hard-money lending. It's called William Nooney
8 Investments. I'm just guessing on the name. It's
9 got his name incorporated in the name. His -- his
10 business name has his name incorporated in it. It's
11 William Nooney or Nooney Investments. I don't know
12 the exact name of his business, but he is a
13 businessman in Missoula.
14 Q. How has Mr. Nooney come to your
15 attention?
16 A. He first came to my attention as a victim
17 in the Two Feathers matter. He was an investor
18 with, I believe, Shawn Swor, possibly Dan Two
19 Feathers. Shawn Swor and Dan Two Feathers had an
20 investment scheme. He was a victim in Two Feathers.
21 Then about a year later the agency got a
22 complaint from somebody who had invested with Bill
23 Nooney. So he was a victim in the Two Feathers
24 matter, and then we have an open investigation in
25 regard to Mr. Nooney for soliciting investors in a

1 scheme.
2 Q. When was that investigation opened?
3 A. I don't recall.
4 Q. Is that an investigation that you're
5 handling?
6 A. Mr. Ludwig initially handled it. I am
7 now handling the matter.
8 Q. Has there been more than one complaint
9 lodged with your office against Mr. Nooney?
10 A. I believe there have, but I'd -- I'd have
11 to verify that. I believe there's more than one.
12 Q. Have any of the alleged victims of
13 Mr. Nooney expressed any concern to you about how
14 that matter is being handled?
15 A. One of the victims refused to talk to me.
16 Q. Who is that?
17 A. The last name was McGowan. I don't
18 remember the first name. He didn't want to talk --
19 I called -- I called the victims, I reached out to
20 the victims, after reviewing bank records, seeing
21 who had invested in -- or who had invested.
22 He didn't want to talk to me because he
23 was paranoid, I guess, is what he told me. And then
24 later on he talked to Bill Nooney, and Bill said,
25 "Cooperate with them," and so he called me back.

1 So he did express to me an unwillingness
2 to answer questions and speak with me, but he did an
3 about-face and has been -- has since provided me
4 with everything I need and answered questions that
5 I've had questions -- or answered the questions that
6 I asked him.
7 Q. How many times have you visited with
8 Mr. Nooney?
9 A. Probably two or three, and then his
10 attorney.
11 Q. Who is his lawyer?
12 A. Bill Van Canagan. And I think Bill is
13 his attorney.
14 Q. How many times have you visited with
15 Mr. Nooney's attorney?
16 A. At least once face-to-face, and a couple
17 of times on the telephone.
18 Q. How about telephone conversations with
19 Mr. Nooney? Do you recall how many you've had of
20 those?
21 A. I don't know if I've had any telephone
22 conversations with him. I've met with him on a
23 face-to-face basis.
24 Q. Have you had any interactions with either
25 the FBI or any other federal law enforcement with

EXHIBIT 2

1 MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT
2 RAVALLI COUNTY
3
4 STATE OF MONTANA,
5 Plaintiff,
6 vs. CAUSE NO. DC-11-117
7 HARRIS HIMES,
8 Defendant.
9
10
11 DEPOSITION UPON ORAL EXAMINATION OF
12 ROBERTA CROSS GUNS
13
14
15 BE IT REMEMBERED, that the deposition upon oral
16 examination of ROBERTA CROSS GUNS, appearing at the
17 instance of Plaintiff, was taken at the offices of the
18 Securities and Insurance Commissioner, 840 Helena Avenue,
19 Helena, Montana, on Tuesday, August 14, 2012, beginning at
20 the hour of 2:06 p.m., pursuant to the Montana Rules of
21 Civil Procedure, before Jan M. Baldensperger, Court
22 Reporter and Notary Public.
23
24
25

1 APPEARANCES
2
3 ATTORNEY APPEARING ON BEHALF OF THE PLAINTIFF,
4 STATE OF MONTANA:
5 Mr. Jesse Laslovich, Esq.
6 Office of the Montana State Auditor
7 840 Helena Avenue
8 Helena, Montana 59601
9
10 ATTORNEY APPEARING ON BEHALF OF THE DEFENDANT,
11 HARRIS HIMES:
12 Mr. Matthew G. Monforton, Esq.
13 Monforton Law Offices, PLLC
14 32 Kelly Court
15 Bozeman, Montana 59718
16
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1 I N D E X

2

3 EXAMINATION OF ROBERTA CROSS GUNS BY: PAGE

4 Mr. Matthew G. Monforton, Esq. . . . . .

5 Mr. Jesse Laslovich, Esq. . . . . .

6

7 E X H I B I T S

8 DEPOSITION EXHIBITS: PAGE

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1 WHEREUPON, the following proceedings were had
2 and testimony taken, to-wit:
3 ********
4
5 ROBERTA CROSS GUNS,
6 called as a witness herein, having been first duly
7 sworn, was examined and testified as follows:
8
9 EXAMINATION
10 BY MR. MONFORTON:
11 Q. Could you state and spell your name for
12 the record, please.
13 A. My name is Roberta Cross Guns. The first
14 name is spelled the traditional, old-fashioned way.
15 The last name, capital C, r-o-s-s, capital G, u-n-s,
16 two words, one name, no hyphen.
17 Q. How do you prefer that I address you
18 today?
19 A. I don't care, as long as I know you're
20 talking to me.
21 Q. All right. I will refer to you as
22 "Roberta." And you can call me either "Matt" or
23 "Matthew."
24 I'm representing Harris Himes in the
25 matter of State vs. Harris Himes, which is a

EXHIBIT 3

1 The second person, of course, was Alan
2 Ludwig. He was gossiped about pretty constantly.
3 Before that, Leah, whose last name escapes me right
4 now, was also a victim of some of that, so...
5 Q. Was there an employee by the name of Tari
6 Nyland that was a subject of any of this gossiping?
7 A. Oh, yeah.
8 Q. Tell me what you know about gossip
9 concerning Tari Nyland?
10 A. Well, as I was walking by Lynne's office
11 one day, she asked me to come into her office,
12 which, of course, I did. And she said to me that
13 she had been told by Cindy Palmer that there was
14 somebody in the office who had been going to Cindy
15 Palmer's house and -- late at night, crying, and
16 would go into the house and meet with a former
17 attorney who worked here, Russell Wheat, and that
18 then they would go upstairs -- this is all, like I
19 said, third-hand, but Lynne's telling it to me --
20 that then there would be the squeaking of bed
21 springs and that there was hanky-panky going on
22 upstairs, and did I want to know who that was. I'm
23 like, "No, not really."
24 And she goes, "Well, it was Tari Nyland."
25 Q. When did this conversation take place?

1 A. I would say probably a year ago. I don't
2 have an exact, you know...
3 Q. Your -- your best approximation is --
4 A. Yeah --
5 Q. -- all we're looking for.
6 A. -- that's as good as I can get. It might
7 have been a little less than a year ago, but I would
8 say about a year ago.
9 Q. What's your knowledge as to Ms. Nyland's
10 marital status at the time that this conversation
11 took place between you and Ms. Egan?
12 A. Well, Tari Nyland and I are -- are good
13 friends, and I'm also good friends with her husband,
14 and there was -- there were family issues, but they
15 weren't -- they weren't between Tari and her
16 husband --
17 Q. Ms. Nyland was --
18 A. -- it had to do with children.
19 Q. I'm sorry. You have -- go ahead and
20 finish your answer.
21 A. Yeah, it had to do with Tari and her
22 children. She has a child that has some mental
23 health issues.
24 Q. Ms. Nyland was married at the time that
25 Ms. Egan made these remarks about her?

1 A. Yes. She's been married for 25 years, I
2 think, to the same man.
3 Q. Do you know anything about Ms. Nyland's
4 religious beliefs?
5 A. I do. She's a -- what I would describe
6 as a good practicing Christian. I believe she
7 attends an Assembly of God church. I'm not 100
8 percent sure of that, but I think that's what it is.
9 Q. What was your response after Ms. Egan
10 informed you of Ms. Nyland's alleged activities?
11 A. I had nothing to say to Lynne because I
12 know anything that's said to her comes right back
13 out, and it's usually not in the form that it was
14 given to her, so I don't -- I try not to engage her
15 in conversation.
16 So I went and talked to Ms. Nyland about
17 it. And, of course, she was shocked because she's
18 actually never been to Cindy Palmer's home.
19 Q. Did Ms. Nyland say anything else to you
20 about -- about the allegations made about her?
21 A. Well, she was, of course, hurt, but that
22 was as far as it went.
23 Q. Do you know if any action was ever taken
24 with regard to Ms. Egan's comments about Ms. Nyland?
25 A. I'm sure they weren't. No, nothing was

1 done. I know that -- people in this office have
2 been afraid of Lynne Egan for a long time, and I've
3 seen her do things that I -- again, I considered
4 pretty unethical.
5 We had a handicapped, disabled man
6 working here. He had a brain injury. He was a
7 part-time employee. She decided she didn't like him
8 and took steps to have him fired.
9 Q. Who was this individual?
10 A. You know, I wish I could remember his
11 name, but I -- I honestly can't remember his name.
12 Q. What kind of things did -- did Ms. Egan
13 do to have this person removed or terminated?
14 A. She was a supervisor, and so she
15 documented -- you know, went to great lengths to
16 document things that he didn't do right. And they
17 brought in a -- a job coach and tried to help him,
18 you know, succeed at the job, but she was determined
19 to have him go.
20 And the only reason I know that, again,
21 is because of the things that she would say in the
22 hallway and how she didn't like him. And he had a
23 goatee, and she made the comment several times how
24 it -- that goatee just looked like pubic hair and
25 she didn't like it.

1 Q. She said that to you directly?
2 A. Yes.
3 Q. Did she say that to anyone else?
4 A. Yes.
5 Q. Who else?
6 A. Michelle Huftel and -- I don't remember
7 who all was with -- I think Leah -- Kailey is her
8 last name -- Leah Kailey was working here at the
9 time.
10 Q. You mentioned a moment ago that people in
11 the auditor's office feared Ms. Egan. Is that -- is
12 that your testimony?
13 A. Yes.
14 Q. What do you base that on?
15 A. People telling me that they were afraid
16 of her; that they, you know, didn't want to have
17 interaction with her because she could be pretty --
18 I guess "ruthless" is the right word.
19 Q. Who are the people who told you that?
20 A. Well, let's see. I know that Nita Holman
21 has said that.
22 Q. I think I know who she is, but who --
23 A. She's the human resource officer. I know
24 that John Forsman has told me that. I believe --
25 I'm not 100 percent sure, but I believe Carol has

1 because her printer wasn't working at home. It was
2 a 70-page report.
3 Q. Did she ask you to print it on state
4 equipment?
5 A. Oh, yeah. Sure. Because I was here at
6 the state office.
7 Q. Did you comply with that request?
8 A. Yes.
9 Q. Can you think of other instances when
10 Lynne has used state time or state equipment to
11 perform private work?
12 A. Well, there were lots of times when --
13 when she was doing the expert stuff where she would
14 be on the phone and -- you know, if -- if he
15 couldn't reach her on her cell phone, he would call
16 her office here.
17 There were -- you know, when John
18 Morrison was here -- and certainly, now, with Monica
19 and Jesse both -- she's acted as the treasurer for
20 their campaigns. I know that contributions have
21 come through the front door.
22 I know that -- unfortunately, most
23 recently, she couldn't wait to tell me that she had
24 gotten a significant raise. This is during a time
25 when there's a freeze on pay increases for state

1 employees. And she's not exempt. She is a
2 classified employee. And she got this significant
3 raise about the same time she took on the duties of
4 treasurer for Monica Lindeen and Jesse Laslovich.
5 Q. Do you remember approximately that date?
6 A. I don't.
7 Q. Let's start with Ms. Lindeen's campaign.
8 What kind of activities are you aware of that
9 Ms. Egan performed for Ms. Lindeen's campaign using
10 either state time, state premises, or state
11 equipment?
12 MR. LASLOVICH: Objection, foundation and
13 speculation.
14 BY MR. MONFORTON:
15 Q. If you know.
16 A. I don't know, other than the treasurer
17 position that she had. I know that occasionally a
18 check would come through the front door and land on
19 her desk. I didn't personally see who the check was
20 from, but she would say, "Oh, this is for Monica,"
21 and stick it in the drawer and not worry about it.
22 And, you know, those seem pretty minor.
23 I think the thing that bothered me the most was
24 the -- the raise that she got, because there was no
25 change in her duties. There was no real reason for

1 a significant, as she described it, raise other than
2 becoming the treasurer.
3 Q. Aside from assembling contributor checks
4 that came into the office, are you aware of any
5 other activities that Lynne did on behalf of
6 Ms. Lindeen's campaign on state time or on state
7 premises?
8 MR. LASLOVICH: Objection, foundation and
9 speculation.
10 THE WITNESS: Well, I would say the creation of
11 the fraud movie that they did, the fraud film, the
12 second fraud film. The first one was done by John
13 Morrison, but it was at the end of his term, when he
14 wasn't running for office.
15 Monica's film was made, you know, sort of
16 in the midst of the campaign, really, for this
17 second term, and Lynne worked very closely on that.
18 BY MR. MONFORTON:
19 Q. What is it about that film that leads you
20 to believe it was on behalf of Ms. Lindeen's
21 campaign?
22 A. We already had a film for education --
23 education purposes about fraud and what that means.
24 We had lots of other tools. In fact, the first
25 fraud movie was only a couple of years old. It

1 wasn't like it had been ten years ago. And none of
2 the laws had really changed. There was nothing new
3 in the film. The new thing was Monica and Jesse
4 Laslovich.
5 Q. Be more specific. What do you mean by --
6 A. Well, they were --
7 Q. -- that the film -- the film concerning
8 Ms. Laslovich -- Ms. -- Ms. Lindeen and
9 Mr. Laslovich?
10 A. It was an opportunity for them to promote
11 the work that they had done for the office. It
12 wasn't as much of an educational piece as, I think,
13 people have been told.
14 Now, I realize that's my opinion about
15 it. That's all you get in here is my opinion about
16 it. But I think it's -- the timing was most
17 unfortunate in my mind.
18 Like I said, Mr. Morrison did his at the
19 end of his term. These guys did this film and
20 introduced Jesse and talked about his cases, his
21 criminal cases.
22 Q. Did this film include any kind of
23 description of other cases handled by other
24 attorneys in the auditor's office?
25 A. No. And I -- I guess, to -- to be fair

1 to Jesse, the first fraud film was about my two
2 cases, but I wasn't running for office.
3 Q. When was that film made involving your
4 cases?
5 A. It was the end of John Morrison's term,
6 because we then took them on sort of a road show,
7 much like Monica has done with this latest film.
8 And -- and Monica tagged along on all -- a lot of
9 those and was introduced by John Morrison as the new
10 candidate. So whenever she was campaigning for the
11 first term, which -- four years ago? Three and a
12 half years ago? I don't know.
13 Q. The time when Mr. Morrison introduced
14 Ms. Lindeen as a candidate for the office of state
15 auditor, was Ms. Lindeen employed by the auditor's
16 office in any fashion?
17 A. No.
18 Q. When these introductions were made by
19 Mr. Morrison during these road show events, were
20 those road show events sponsored by the auditor's
21 office?
22 A. Yes.
23 Q. Do you recall Lynne Egan making any kind
24 of deposits on behalf of either -- well, I'll start
25 over. Strike that.

1 Do you -- do you have any recollection of
2 Lynne Egan making any kind of bank deposits on
3 behalf of the Lindeen campaign?
4 A. Yes.
5 Q. How many times did that occur?
6 MR. LASLOVICH: Objection, foundation and
7 speculation.
8 THE WITNESS: I'm not certain how many times,
9 but, you know, fairly often. A couple of times a
10 week she would say, "Ah, I've got to run to the
11 bank. I've got to go and" -- you know, she told me
12 what she was doing.
13 And then she would also go check the
14 mail, because they had post office boxes down here
15 at the downtown post office where contributions come
16 in. And then she would come back to work.
17 BY MR. MONFORTON:
18 Q. When Ms. Egan told you that she was going
19 to the bank to make deposits on behalf of
20 Ms. Lindeen's campaign --
21 A. Um-hum.
22 Q. -- was that during the workday?
23 A. Yes.
24 Q. Was she here on state premises when she
25 told you that?

1 A. Yes.
2 Q. What was the time period in which she was
3 engaging in those kind of activities? And by
4 "activities," I mean the depositing of contributor
5 funds.
6 A. I'm more interested in what you mean by
7 "time period." Do you mean time of the day? Do you
8 mean -- what do you mean by that?
9 Q. Good point. Time period as in month,
10 year --
11 A. Well --
12 Q. -- that --
13 A. -- I left in January, so it was before
14 that.
15 Q. When did these events start occurring?
16 A. I would say probably October of 2011.
17 Q. To your knowledge, were there any
18 meetings that took place on state time and on state
19 premises involving Ms. Lindeen's campaign?
20 MR. LASLOVICH: Objection, foundation,
21 speculation.
22 THE WITNESS: That's a little bit of a tricky
23 question because whether it's on state time, you
24 know, it depends on whether that's recorded as work
25 time.

1 So I'm confident enough in Lynne that she
2 probably took time out of her pay schedule -- in
3 other words, she didn't record this time -- so it
4 probably wasn't state time. But I'm also confident
5 that meetings occurred on the premises during the
6 workday regarding the campaign.
7 BY MR. MONFORTON:
8 Q. What do you base that on?
9 A. The closed door. Go down and Monica's in
10 there, and Jesse's in there, and the door is closed.
11 And then, you know, when they'd leave, the comments
12 from Lynne, you know, "We're putting something
13 together. We're going to have a fund-raiser."
14 "Okay."
15 Q. How long would these meetings typically
16 last?
17 MR. LASLOVICH: Objection, foundation and
18 speculation.
19 BY MR. MONFORTON:
20 Q. If you --
21 A. I honestly don't know, because I worked
22 on this floor, and they moved securities downstairs
23 a couple of years ago. So if I walked by, you know,
24 and the door is closed -- it was an unusual event
25 for Lynne to close her door, so when you see that

1 more accurate description of what we did.
2 Q. Do you have an estimate as to how many
3 matters you handled on an administrative basis
4 during your time in the auditor's office?
5 A. I don't.
6 Q. More than ten?
7 A. Oh, yeah.
8 Q. More than 50?
9 A. Probably.
10 Q. More than 100?
11 A. Maybe. Jesse might know. He has a
12 better handle on that than I do. I just did the
13 work. I don't -- I didn't keep track, honestly.
14 Q. Who determined whether a case would be
15 handled administratively or criminally? Was that
16 your determination?
17 A. Not usually. Usually that came from the
18 deputy, either the insurance commissioner -- deputy
19 insurance commissioner or the deputy securities
20 commissioner. I don't know, honestly, how much
21 involvement chief legal had in those decisions --
22 Q. Okay.
23 A. -- I really don't.
24 Q. To your knowledge, did Ms. Egan have --
25 have any influence or say in whether cases were

1 handled criminally?
2 MR. LASLOVICH: Objection, speculation,
3 foundation.
4 THE WITNESS: Well, until Mr. Laslovich
5 appeared on the scene, yes, she had significant.
6 After that, I don't know what happened. I don't
7 know if she continued to have that say or not
8 because I didn't -- I asked to be, as you know,
9 relieved of doing any securities cases. But up
10 until then, up until I stopped doing securities
11 cases, it was pretty much her determination what she
12 wanted to do.
13 I mean, essentially, she's the client or
14 the representative for the client. The client is
15 really the people of Montana. But, you know, for a
16 live body, that's your -- that's your client.
17 BY MR. MONFORTON:
18 Q. How did you know that Ms. Egan made
19 determinations with regard to whether cases are
20 filed criminally or administratively?
21 A. Because I worked so closely with her.
22 Like I said, I was essentially the attorney for the
23 securities department. And for a number of years,
24 the only criminal activity, other than Tracy
25 Henderson, which was a fluke in a lot of ways --

1 all.
2 He worked in the Datsopoulos firm, and
3 then he went to the AG's office. I don't believe he
4 had had any trial experience, other than maybe
5 sitting as second chair, which is experience,
6 certainly, but I'm not sure that even that occurred.
7 BY MR. MONFORTON:
8 Q. Did Lynne Egan ever discuss with you
9 Jesse Laslovich's trial experience?
10 A. Yes, on several occasions.
11 Q. What did she say?
12 A. And, in fact, I relayed some of that
13 information to Jesse because I was concerned about
14 how she was talking about him. He's the chief
15 legal. I believe, regardless of his experience, he
16 should have had some degree of respect.
17 She talked about how he was a baby
18 lawyer, how they had been in negotiations and she
19 felt like he had caved -- her word -- because he
20 felt out-gunned. He felt that his experience was so
21 limited that he wasn't able to stand up to attorneys
22 with more experience.
23 And having had those same experiences,
24 you know, I commiserated with Mr. Laslovich because
25 it doesn't matter. You know, sometimes you give

1 is talking to clients, and they're kind of going
2 back and forth in an inappropriate way.
3 So we charged Pat here administratively
4 and would go after UBS and get a pretty good 4 1/2
5 million dollars in restitution and hand off our
6 investigation to the feds, and they'd prosecute him
7 criminally.
8 But then, when Nick Cladis came up and he
9 came and met with us -- in fact, I think Stan
10 Kaleczyc was his attorney. And he sat pretty much
11 right where you're at and cried, sobbing. We had to
12 get a box of Kleenex. And Lynne just backed off
13 and didn't want to pursue much with him.
14 We asked him for a personal financial
15 statement to sort of assess how much he could put
16 out for either restitution or as a fine, and Lynne
17 determined we should just fine him -- I don't
18 remember exactly how much it was. And then his
19 personal financial statement came in, and he's worth
20 over, you know, $4 million, and she didn't want to
21 touch it because that was his retirement. I'm like,
22 "So what?" you know. People were harmed because of
23 his actions and his being in cahoots with Pat
24 Davison.
25 Then she wound up inviting him into the

1 first fraud film. I -- I'm not really sure what
2 that's all about, but I felt like he should have
3 been subject to the same fate that Pat Davison was
4 subject to because he engaged in the same types of
5 activities. He was helping to keep it inside the
6 UBS office. He didn't drag it outside. And there
7 was a lot of client crossover.
8 BY MR. MONFORTON:
9 Q. He should have -- Mr. Cladis should have
10 been charged criminally, in your opinion?
11 A. Right.
12 Q. Were you involved in the Two Feathers
13 matter?
14 A. Yes, I was.
15 Q. Is that another case that, in your
16 opinion, could have been prosecuted criminally by
17 the auditor's office?
18 A. It is being prosecuted criminally, I
19 believe, by the feds. That's actually the case
20 where Lynne became disenchanted with the FBI because
21 they brought in a new agent to work on the case, and
22 she was very unhappy with him and talked about maybe
23 going to a state criminal prosecution but decided
24 not to and just kind of dropped it and went on her
25 way.

1 A. Oh, yes.
2 Q. Tell me about that.
3 A. Well, it's a case of a company out of
4 North Carolina that was basically operating what I
5 considered a pyramid scheme in Montana and other
6 states, and other states had looked at prosecution
7 both administratively and criminally. And I believe
8 we had a pretty good case for -- at least
9 administrative case.
10 And Lynne and Jesse and Jameson Walker
11 flew to North Carolina and cut a deal with these
12 people at the same time that Alan Ludwig and I were
13 in depositions down here at the Motl firm on that
14 very case.
15 We weren't told what was going to happen.
16 We weren't told that a settlement was in the wind.
17 And I -- I -- my biggest disappointment was that
18 we -- we, the State of Montana, traveled to
19 North Carolina to make a deal, not the other way
20 around.
21 My concern about this case -- and I had
22 spoken to a gentleman who contacted us, who held
23 himself out as an expert, particularly with regard
24 to ACN and other similar pyramid schemes. He had
25 told me that lots of states backed off because of

1 the political power that this company wielded.
2 Q. Describe what you mean by the political
3 power that ACN supposedly had.
4 A. Well, they --
5 MR. LASLOVICH: Objection, foundation,
6 speculation.
7 THE WITNESS: Based on what he told us, they
8 had significant money, and they had actually
9 threatened other state officials, not in Montana --
10 whether they threatened anybody here, I don't know,
11 but they had threatened officials in other states,
12 you know, that they were going to come in and have
13 the laws changed, that they were going to do
14 negative ads against an elected official to try to
15 keep them from being reelected, that sort of thing.
16 And one of the very few conversations I
17 had with Lynne about that case is she told me that
18 very thing, that there was concern that they would
19 come into Montana and be politically powerful in a
20 negative way against this office.
21 BY MR. MONFORTON:
22 Q. Did she mention anything else about these
23 concerns that she had with ACN?
24 A. No. At that point, we were barely
25 speaking, so I was surprised she even told me that.

1 And, like I said, I was the attorney
2 assigned to the case, but I was not involved in the
3 settlement at all. I didn't even know it was in the
4 wind, so...
5 Q. Is it unusual -- or was it unusual,
6 during your time in the auditor's office, for
7 lawyers from the auditor's office to travel to the
8 office of a defendant or a subject of an
9 investigation?
10 A. Yeah, it was pretty unusual, particularly
11 because one of Lynne's big complaints around here is
12 she didn't like our investigators from the insurance
13 side going anywhere. All this investigation can be
14 done on the phone. That was her mantra practically.
15 You can do everything you need to do by telephone or
16 through e-mail or searching records using the
17 computer. You didn't need to travel at all.
18 And even in the Two Feathers case -- I
19 mean, we had calls from people in Poland, in South
20 Africa. Believe me, we did not travel there. We
21 didn't even go to Two Feathers' home or office. We
22 didn't go to Shawn Swor, who was the co-defendant
23 there -- we didn't go to his home or office. We did
24 everything from here.
25 So, yes, it was highly unusual to travel

1 that far. It may be -- I think it's the only time
2 I've ever seen it in 12 years.
3 Q. Did Lynne -- Lynne Egan ever explain to
4 you what factors she relied upon in determining
5 whether a matter should be handled criminally versus
6 administratively?
7 A. You know, I don't think she had, like, a
8 checklist, didn't have any set concept about that.
9 It is my opinion that she makes those decisions
10 based on her emotions. So if she's upset with
11 somebody or not upset with somebody, that sort of
12 determined how things went.
13 Nick Cladis is a good example of that
14 when he sits here and cries and she's like, "Oh,
15 poor man." Instead of, "No, I don't care if you
16 cry. You harmed people." It was disheartening to
17 see that, that she could be swayed through emotions.
18 I know that -- also, if she felt like a
19 case wasn't classy enough or sexy enough or
20 whatever, she wouldn't -- wouldn't touch it.
21 We had a call from the county attorney in
22 Fergus County, Tom Meissner, with regard to a
23 gentleman over there named Rick Young. And we did
24 talk to him. We made a phone call. She asked me to
25 come and sit in on it, which happened a lot. I'd

1 sit in on the phone call.
2 And the guy -- he was -- he was pretty
3 crazy. He kept telling us, "Hold on. Hold on.
4 I've got to pick up the red phone over -- yes,
5 Mr. President." And he was just nuts. But two
6 years later Nevada -- the feds went after him and
7 prosecuted him criminally.
8 We didn't do anything. We just -- it was
9 not interesting enough to her, so we didn't do
10 anything, even though we worked closely with Tom
11 Meissner on other cases.
12 In fact, there was a criminal case over
13 there or two, but we did a -- what do you call
14 it? -- a deferred prosecution.
15 Q. What -- what case was that? Do you
16 recall?
17 A. Yes. Let's see. It was Grupo Economico,
18 and the guy's name was -- I can't remember his name.
19 He was a Canadian national. We actually had him
20 arrested in here. He came in to do -- to talk to us
21 with his attorney, and we had him arrested here.
22 Q. Do you remember when this happened?
23 A. Five or six years ago. Jerry Stier,
24 S-t-i-e-r, was the investigator on the case, so --
25 and he's been gone three or four years.

1 A. Well, one of them was Tari Nyland. Like
2 I said, Tari -- I think it's well known in the
3 office that she's a practicing Christian. And in
4 her discussion about this alleged affair, she
5 commented on how -- "Well, you know, she's a good
6 Christian." You know, dismissed it and has made
7 lots of negative comments about Christians in
8 general. And the right-wing Christian particularly
9 offend her, whoever that may be. Candidates mostly
10 is who she's talking about when I've -- when she's
11 discussed those things with me.
12 Q. What kind of comments has she made about
13 right wing --
14 A. Well --
15 Q. -- what she describes as right-wing
16 Christians?
17 A. Well, she has a negative feeling toward
18 them. I -- you know, can't remember exactly
19 specific words, you know. And if I try to quote
20 them to you, it will be wrong. But there is no
21 doubt in my mind that she has a very negative
22 feeling toward what she describes as a right --
23 well, one of them is Martin Bower. He was a
24 defendant. We managed to prosecute him
25 administratively.

1 Q. What have you heard?
2 A. I heard, you know, from Alan and others
3 who worked closely -- in close proximity that, you
4 know, she had made denigrating comments. And I'm
5 not surprised by it because, you know, he's also a
6 sort of self-proclaimed pastor or leader in a church
7 down in the Bitterroot, and the Bitterroot is a
8 stronghold for right-wing, you know -- both
9 Republican and Christian and -- so I'm not
10 surprised. I would -- I would not doubt that she
11 had made the comments that were relayed to me?
12 Q. What -- what were the specific comments
13 relayed to you?
14 A. You know, that he's a whack job and
15 he's a -- I guess that's probably the most
16 denigrating thing. He's a right-wing Christian.
17 Q. Have other people relayed that to you
18 besides Alan Ludwig?
19 A. You know, I don't remember specifically.
20 Jameson Walker may have said something as well about
21 it, but that's -- I had so little involvement in the
22 case that I really don't specifically remember.
23 It was particularly hurtful to Alan
24 because he's also a practicing Christian. He's
25 strong in his faith. And I think it's hurtful for

1 Q. Preaching?
2 A. -- exactly that, no. He was a public
3 speaker on, yes, being a Christian and that sort of
4 thing, much like Judy Martz. I think they kind of
5 did some of the same circuit where they would be --
6 they're not really evangelistic types. It's just
7 like, you know, this is the way to have a good life.
8 I know he works with the Yellowstone Boys
9 and Girls Ranch and -- so she was a little bit
10 offended by his Christian side. But because she
11 worked with him and respected the work he did, she
12 kept that to a lower rumble than maybe some others.
13 Q. How did she express to you that she was
14 offended by Mr. Alme's religious beliefs?
15 A. Oh, just comments like, "You know, he's
16 such a smart guy. I don't know where he gets, you
17 know, caught up in this Christian stuff."
18 Which is interesting to me because she
19 was raised in a Lutheran church, and her father was
20 Mormon. And I know she's baptized Mormon because
21 we -- we kind of have that in common. I also was
22 raised in the Mormon faith and -- although I'm not
23 baptized, so I cannot go into the temple. She can.
24 So I always found it interesting that she was so
25 opposed to Christian activity.

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1 I -- I know that she was opposed to, for
2 instance, Boy Scouts because of their affiliation
3 with -- with Christianity. And it's interesting
4 because they're -- the Mormon faith is a big
5 promoter of Boy Scouts, lots of Boy Scout activity
6 and troops and so on. And she calls them little
7 Nazis and --
8 Q. She called who little Nazis?
9 A. Boy Scouts. They're little Nazis.
10 And -- for all kind of reasons. They don't accept
11 gays. They don't -- which I'm not sure she would
12 accept gays either, to tell you the truth, but I --
13 I don't know.
14 I just know that she has a lot of
15 negative comments about Boy Scouts and vehement.
16 Not just, you know, passing comments. She really
17 hates Boy Scouts, and she hates them because of
18 their affiliation with Christian churches.
19 Q. Are there other people that Ms. Egan has
20 made remarks about with regard to their religious
21 beliefs besides who we've discussed in the last few
22 moments?
23 A. I can't honestly remember right now any
24 specifics.
25 Q. Do you recall her making any comments

1 about Dereck Skees with regard to Mr. Skees'
2 religious beliefs?
3 A. I'm -- no. I don't even know who that
4 is. Again, I stopped working with her, you know, a
5 year and a half ago.
6 Q. Other than Ms. Egan, are there other
7 people in the auditor's office who have made remarks
8 with regard to people's religious beliefs?
9 A. I would say possibly Brett O'Neil. He
10 has, I believe, a bad taste in his mouth. He grew
11 up in Texas, down there in the Bible belt, and I
12 think he's made some, you know, passing comments.
13 Not as vehement, and I didn't work with him very
14 much, so I, you know, didn't spend a lot of time
15 with Brett, but I know he's made some negative
16 comments.
17 Q. What specifically has Mr. O'Neil said?
18 A. Just sort of the same kind of stuff.
19 That, you know, "These right-wing Christians are
20 whack jobs."
21 Q. How many times have you heard Mr. O'Neil
22 make that kind of a comment?
23 A. Maybe two or three. Again, I didn't
24 spend a lot of time with Mr. O'Neil.
25 Q. Any other kind of religious-based

1 comments by Mr. O'Neil that you can recall?
2 A. No.
3 Q. How about with Mr. Laslovich?
4 A. Not that I recall. I actually believe
5 he's a practicing Christian. He maybe Catholic.
6 I'm not sure. But I think he goes to church. And I
7 don't think he publicly has made -- at least not in
8 the office, you know -- made comments about people's
9 faith.
10 Q. Have you ever had discussions with
11 coworkers in the office, the auditor's office, about
12 anti-Christian remarks?
13 A. You know, that's kind of a tough question
14 because while I have many good friends here, I think
15 many of them are not sure about my own faith. One
16 of the first things Alan told me was, "Well, I'm a
17 Christian, you know."
18 And I'm like, "Okay. Where are we going
19 with this?"
20 So I don't think -- I think the things
21 that I've heard were, again, because the things that
22 came out of Lynne's mouth were vehement. I mean,
23 they weren't just passing comments. I -- I don't
24 recall others even discussing religion.
25 Q. When you say Lynne comments were

1 vehement, what do you mean by that?
2 A. It wasn't just a passing comment that,
3 you know, she didn't like Christians. It was
4 usually strongly worded. Usually, you know, when
5 she gets upset about things, she becomes agitated,
6 physically moving, and, you know, this sort of
7 thing. Her body language is very negative. So it's
8 not just a passing comment about people being
9 Christian or not Christian.
10 You know, that may have been one of the
11 things she said about Jesse as well, her concerns
12 about his involvement with the Catholic church
13 because she really doesn't like Catholics either --
14 Q. Tell me what you --
15 A. -- made comments about Catholics and, you
16 know -- negative comments about Catholics. Which
17 was interesting because in the Pat Davison case, one
18 of the victims was the Billings Catholic Schools,
19 and I think she had some difficulty, you know,
20 dealing with that, because I think, in some corner
21 of her mind, she really -- maybe she didn't -- they
22 deserved to be punished rather than accepting that
23 they might be victims.
24 Q. Tell me what you recall about Lynne Egan
25 making remarks about the Catholic church.

1 A. I recall her making a comment about
2 Jesse. "Well, you know -- you know he's a
3 Catholic."
4 "No, I didn't know," because it's not
5 important to me.
6 Q. Was that in a derogatory way or --
7 A. Yes, very derogatory. Like I said, when
8 we were doing the Pat Davison case, because of his
9 involvement in the Catholic church -- there's
10 certainly lots of financial fraud that we see.
11 There's an affinity involved there, and a lot of it
12 has to do with churches.
13 It's not always a church, but a lot of
14 times it's a church. And his involvement with the
15 Catholic church and the -- and the Catholic schools
16 got him a lot of victims. And I'm not sure that --
17 well, I know that Lynne was not -- if it had just
18 been the Billings Catholic Schools, I'm not sure we
19 would have gone down the road the way we did. I'm
20 not sure that she would have pushed for a criminal
21 prosecution. I just feel like she's -- she's very
22 anti-Catholic.
23 She talked about it in relationship to
24 John Mudd when he was here, who is also a practicing
25 Catholic. Very negative comments about the -- I

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1 believe John Morrison might be. I know we were in
2 depositions in Minneapolis, and John flew from there
3 back to Helena for his oldest daughter's First
4 Communion. It leads me to believe he might have
5 been Catholic. I don't know. She has made comments
6 over the years about the Catholics and how she
7 doesn't like them.
8 Q. Has she said anything specific as to why
9 she doesn't like Catholics?
10 A. They're paternalistic, which is odd for a
11 woman to say that. But they're paternalistic.
12 They're very political. They're very judgmental.
13 You know, in her mind, this is the way it plays out,
14 so -- and I think she -- that's generally her
15 concern with Christians in general is that she feels
16 like they're judging.
17 Q. When you were handling cases for the
18 auditor's office, did you have occasion to issue
19 what has been previously described as a come-clean
20 letter?
21 A. Me?
22 Q. Yes.
23 A. No. Those come from Lynne or someone in
24 her bureau or department.
25 Q. Do you have any knowledge as to the

1 factors that would play into whether a come-clean
2 letter would be issued by Lynne or not?
3 MR. LASLOVICH: Objection, foundation and
4 speculation.
5 THE WITNESS: Based on my, you know, ten years
6 of working with her, what I saw and what I believed
7 was it, again, was somewhat of an emotional
8 decision. Not always. You know, there were times
9 when I think she was just looking at the facts that
10 she had been told by a victim or an alleged victim
11 and went forward with a come -- what she called the
12 come-clean letters. I don't know why she calls them
13 that, but -- so that they give the person -- the
14 alleged perpetrator an opportunity to say here's
15 what happened.
16 And sometimes, you know, she would have a
17 short laundry list, and other times it would be much
18 longer, depending how much she wanted to punish
19 them.
20 BY MR. MONFORTON:
21 Q. What would happen if a subject or an
22 alleged wrongdoer responded spoked to a come-clean
23 letter by, in essence, coming clean or communicating
24 with the office?
25 MR. LASLOVICH: Objection, speculation and

1 But, again, that came to us -- to us
2 through the police department. He came in and said,
3 "Yep, I did it. I took all that money, and I built
4 a house with an auditorium in it so I could show
5 movies."
6 And we -- Art Avignone represented him,
7 and we came to a nice resolution. We went to Judge
8 Tucker and said, "Here's what we're going to do."
9 We went into chambers and talked about it, and he
10 got a deferred prosecution -- or a deferred
11 sentence. And the judge was actually very pragmatic
12 about the whole thing and said, "Now, are you sure
13 you can make these payments, because you have to pay
14 this woman back." She was an elderly ranch widow.
15 And that's -- he -- he agreed to it.
16 We had the hearing, and he went on his
17 way. He spent 30 days in jail and went off and
18 never heard from him again. I mean, I shouldn't say
19 never heard, but found out that he complied with
20 everything and was released from the prosecution,
21 so...
22 Q. Based on your years of experience in the
23 auditor's office, did it generally benefit people
24 who received a come-clean letter to respond
25 positively to such letters?

1 A. Oh, sure. Yeah.
2 Q. We talked a little bit about
3 Mr. Laslovich's experience, the trials that he's
4 done in this office.
5 What is your overall impression of
6 Mr. Laslovich?
7 A. Let's see --
8 Q. And, yes, you are being compelled.
9 A. That's a difficult question from -- for a
10 lot of reasons, and maybe the most important reason
11 is that I believe that all of us have to start
12 somewhere as lawyers, and we have to try to grow and
13 progress.
14 I think -- I think Jesse is earnest in
15 his desire to do that, but I think he is extremely
16 politically motivated, and that has caused me -- it
17 caused me a great deal anxiety while I worked here
18 to see him do things for political purposes rather
19 than, you know -- for me, I talk about the moral
20 high ground a lot, and I try to take the moral high
21 ground. I'm not always perfect. I don't do that
22 100 percent of the time, but I try. And I have a
23 bad taste about what happened here with the
24 political motivation for doing some of the case work
25 that was done.

1 Q. Tell me how, in your opinion, political
2 motivations have played a role in how matters are
3 handled by this office?
4 A. When Jesse started here, he had very
5 little, if any, trial experience. As you know, I
6 have 20 years, and I've been a trial lawyer from the
7 minute I hit the floor. I've done lots of trials.
8 I've done lots of judge trials, I've done lots of
9 administrative trials, and lots of jury trials. I
10 have a wealth of experience. And not only that,
11 pretty successful. I win a lot. And I win because
12 I know how, and it came from hard experience, but I
13 figured it out.
14 I believe Mr. Laslovich can do the same
15 thing. I told him, when he first came on board as
16 the chief legal, that I would like to mentor the
17 other attorneys because I'm tired of litigating. It
18 wears you out as, you know.
19 Q. So I've heard.
20 A. Yeah. Well, you know, we have -- we're
21 the No. 1 profession for suicides. We have a high
22 rate of alcoholism, lots of divorce, you know,
23 because of the ruling nature of litigation. And not
24 all attorneys are litigators, and the ones who
25 aren't are actually much healthier than those of us

1 who are litigators.
2 I believe that right away Mr. Laslovich
3 was looking for a pretty high profile criminal case
4 because he's going to run for the AG's office.
5 There is absolutely no other reason for him to do
6 that because there's plenty of work to do here.
7 Plenty of work. There's no reason for him not to
8 ask for my help in prosecuting these cases, whether
9 it's Art Heffelfinger or whether it's Don Couinard
10 or whoever it is that he's decided he's going to
11 prosecute. There's -- there's no reason for him not
12 to ask me to sit second chair, in fact, except that
13 he doesn't want somebody with more experience. He
14 wants to appear to be the experienced attorney.
15 This is -- and this is all my opinion.
16 What actually goes on in Jesse's mind I have no
17 clue, you know -- well, I have some clue but not
18 much of one --
19 MR. LASLOVICH: No, you don't.
20 THE WITNESS: -- and I -- there are things
21 about Mr. Laslovich that I really like and that I
22 really respect, but his --
23 BY MR. MONFORTON:
24 Q. Tell me the things you like about him.
25 A. I like that he's willing to -- to step up

1 when something goes wrong. I feel like he's willing
2 to say, "I shouldn't have done that." I could be
3 wrong about that, but I think that he has that kind
4 of ethic.
5 I like that he has a good work ethic. He
6 shows up every day, you know. He's in the office
7 doing stuff. I don't, as I've said before -- and
8 this is my own issue -- I don't like the political
9 motivations for what he does because I think he
10 could have been so much better -- a better attorney,
11 a better human, a better person all around -- if he
12 had not chosen the political route.
13 And I feel that way about a lot of
14 people. But, you know, because it spilled over into
15 my life, it caused me a lot of anxiety.
16 And when he was involved in the
17 Heffelfinger case particularly -- and this is where,
18 I guess, I get a little crossways and a little upset
19 about what happened, is that Lynne invites me to sit
20 and watch because she knows my experience, and she
21 knows it well. I basically taught her how
22 litigation worked. She taught me securities, and I
23 taught her litigation. And she asked me to come and
24 sit and watch.
25 And one day -- and partly because she

1 you know, you should maybe think about that and not
2 be so hard-nosed.
3 And that was -- to me, the only reason to
4 take that hard position of "I'm not giving on this
5 issue of a jury" is because he wants to do some --
6 he wants to appear on the television in front of a
7 jury. It's a great thing. We've seen it -- we've
8 seen it many times. We're Americans. We like that
9 stuff.
10 He had so little experience. I
11 believe -- and I will believe it to my dying day --
12 that he was doing that for political purposes.
13 Q. Are you aware of any -- any kind of
14 commercials or other political advertisement that
15 came from the Laslovich campaign in which trials
16 done by Mr. Laslovich were featured in?
17 A. You know, I don't watch TV. I believe
18 probably the Heffelfinger case was in there
19 somewhere, but I don't know. No, I don't know.
20 I do know that he needs to be able to
21 tell the public in Montana that he has trial --
22 criminal trial experience in order to be the
23 attorney general, because that is the top law
24 enforcement right there, attorney general, and so
25 you have to have some experience.

1 Q. Did you do depositions involving cases in
2 the auditor's office?
3 A. Sure.
4 Q. Is that pretty common?
5 A. I wouldn't say it was really common, but
6 it was done enough times that, yeah, we did some.
7 Q. Were there any of those cases in which
8 you said, "I don't want the subject or the defendant
9 participating in the deposition"?
10 A. No, never. I believe it's the
11 defendant's or perpetrator's right to be present.
12 Q. How about --
13 A. It didn't happen very often, but, you
14 know -- because they're boring. Sorry, but they
15 are.
16 Q. Did you ever ask that an alleged
17 wrongdoer or defendant be excluded in any kind of
18 interviews in any of the cases that you handled for
19 the auditor's office?
20 A. Well, we would do interviews with our
21 investigators, but it wasn't -- it was before any
22 charging document had been filed.
23 After that, you know -- again, it kind of
24 goes to that ethic thing. I try to take the moral
25 high ground, and it's all about fair play. So, yes,

1 come, be present if you want to.
2 Generally, they don't. And generally,
3 you know, attorneys don't want them there because
4 they're going to hear stuff that's going to put them
5 through the roof, and then they're going to get
6 emotional and say stuff. You know, they want them
7 to be quite --
8 Q. No, I don't know.
9 A. -- but I would never tell somebody that
10 they couldn't bring their client or that they
11 couldn't be present for a deposition or some
12 interview, other than, you know, if it's for my
13 purposes of trial preparation, you know. Certainly.
14 Q. Roberta, just a couple of more questions
15 for you.
16 Do you have any party affiliation?
17 A. I do.
18 Q. What would that be?
19 A. I'm a Democrat. Some people might
20 describe me as a liberal Democrat.
21 Q. Why do you --
22 A. I love our president, just so you know.
23 Q. How long have you been a liberal
24 Democrat?
25 A. All my voting life.

1 Q. Do you have any opinions on the issue of
2 same-sex marriage?
3 A. Yes.
4 Q. What's your opinion?
5 A. I love my partner.
6 Q. Okay. It doesn't exactly answer my
7 question.
8 A. I believe that people have the right to
9 be married, that gender should have nothing to do
10 with it, because marriage is really a legal
11 contract, and it creates rights for people to be
12 present when their loved one is at the doctor, in
13 the hospital dying, whatever the situation is.
14 Now, I realize that's not everyone's
15 opinion, but that's my opinion, and that's what I
16 believe -- why I believe people should be able to be
17 married regardless of gender.
18 Q. Let me ask this in a -- in a less polite
19 way. Do you have a political axe to grind against
20 either Ms. Lindeen or Mr. Laslovich or anyone else
21 in the auditor's office?
22 A. No.
23 Q. Off the record --
24 A. I believe --
25 Q. Oh, sorry. Go ahead.

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1 A. -- I believe that we are aligned
2 politically. I believe that -- I know that Jesse's
3 a Democrat. I know that Monica's a Democrat. They
4 may not be as liberal as I am, but they might be.
5 Q. Let's go off the record.
6 (Off the record)
7 BY MR. MONFORTON:
8 Q. I'm done writing, but I have a couple of
9 more questions for you, Roberta.
10 Are you familiar with the name Bill
11 Nooney?
12 A. Yes.
13 Q. Tell me how you know that name.
14 A. He was originally viewed as a victim in
15 the Two Feathers case. And then, as we went along,
16 it was discovered that maybe he was a perpetrator,
17 not just a victim.
18 And that happens a lot when we are in
19 financial fraud cases, particularly with schemes.
20 Pyramid schemes and things like that, you'll find
21 people who are apparent victims who then become
22 perpetrators, so --
23 Q. Were you involved in Mr. Nooney's matter?
24 A. I was a little bit, just initially, but
25 then -- I don't know who took over in the end. And

1 it's my understanding that, you know, we got some
2 money back.
3 I had the presence of mind to freeze some
4 funds that were being held in various investment
5 firms. And as that money was released to us by
6 order of the court, we disbursed it.
7 And normally, when we have somebody who
8 then becomes a perpetrator, they don't get to be
9 involved in the restitution. But for some reason,
10 he got his restitution amount and -- even though he
11 had committed fraud against others and probably owed
12 others restitution.
13 Lynne handled that part of it. I don't
14 know if she had another attorney take over on Bill
15 Nooney, but I know that he got some money. She was
16 like, "Well, he has a daughter who's going to
17 college." Well, lots of people do.
18 If they're bad guys -- you know, Pat
19 Davison's daughter was 13 when we sent him to prison
20 for ten years. That's probably not very fair
21 either. But, you know, that's how it works.
22 So I believe he got some restitution
23 money. I believe that was out of the norm. I'm not
24 sure why. I don't honestly know what happened.
25 Q. From your knowledge of Mr. Nooney's case,

1 is Mr. Nooney someone who could have been prosecuted
2 criminally?
3 MR. LASLOVICH: Objection, speculation,
4 foundation.
5 THE WITNESS: Yes.
6 BY MR. MONFORTON:
7 Q. Do you have any knowledge as to why that
8 has not occurred?
9 A. I do not. It's interesting in that
10 particular case. We had a guy, Eric Schultz, who
11 was from Bozeman, who, once we sort of ferreted out
12 who was involved -- and we saw him as a perpetrator,
13 but before we could even contact him, he had
14 contacted the FBI, and they called us. And we went
15 right over here to the federal courthouse and sat in
16 on an interview.
17 And they assured him, you know, that they
18 would take into consideration, first of all, his
19 acceptance of responsibility, which is critical in
20 the scheme of federal sentencing, and the fact that
21 he had assisted the investigation. And he gave them
22 names and dates and lots of information.
23 He was a pretty minor player in the
24 overall picture. Shawn Swor and Daniel Two Feathers
25 were the main bad guys. They had gone all over the

1 place and found victims in a lot of places. Eric
2 Schultz had a few people. And it was mostly his
3 money that we froze. We actually caught up with it
4 through this convoluted mess. Some of it went to
5 the Bahamas, and then it went -- came back up into
6 the U.S. So he wound up going to prison for two
7 years.
8 Q. Mr. Schultz?
9 A. Mr. Schultz. He's the only person that I
10 know of in this whole case that went to prison, and
11 he's the guy who cooperated.
12 Bill Nooney, at the point we realized he
13 was also engaging, should have been brought into the
14 prosecution, but he wasn't. I don't know why.
15 Q. What's your knowledge as to the
16 relationship between the auditor's office and
17 federal officials?
18 A. Well, when I was here, there was a pretty
19 good relationship up until, like I said, the new
20 agent came on board. Kevin Damuth came on board as
21 the new FBI agent, and things kind of deteriorated
22 there.
23 He wasn't acting as fast as maybe we
24 thought he should. And certainly, Lynne didn't like
25 him at all. And I had -- frankly, had my own

1 A. Come on.
2 Q. You also testified that you weren't sure
3 that Ms. Egan would accept gays either. And this --
4 the context was you were testifying about the Boy
5 Scouts and little Nazis and --
6 A. Um-hum.
7 Q. -- and because they don't accept gays.
8 And then you said, "I'm not sure she'd accept gays
9 either." Do you remember that?
10 A. Yes, I do.
11 Q. Why -- why would -- why do you think
12 that?
13 A. You know, I -- I've known Lynne for a
14 long time, and I don't know that she's ever said it
15 on state premises, but I know she's made comments to
16 me about people who are gay.
17 Q. Derogatory comments?
18 A. Yes.
19 Q. You testified, too, that Lynne makes
20 emotional decisions on cases she investigates.
21 A. That's true.
22 Q. Can you give me some specific examples?
23 A. I think I've given some during my
24 testimony. I think Nick Cladis is a prime example.
25 I -- James Andrews is another example. We did

1 prosecute him, but in the end, she threw up her
2 hands. "Well, you know, he's in Arizona, and I
3 don't care."
4 She wasn't particularly enamored of the
5 victim, and that has a lot to do with it. Maybe
6 more than the defendant, but sometimes it's the
7 defendant. If she finds the defendant particularly
8 repulsive, then she wants to go after them. If
9 they're -- which is why she liked going after Pat
10 Davison.
11 There were times when we were prosecuting
12 Tom O'Neill where she would back off a little bit
13 because she felt sorry for him. But a lot --
14 she's -- you know, a lot of her decisions are
15 emotional.
16 Q. Anything -- any other cases?
17 A. Robert Seaman. He was a -- ran a hedge
18 fund out of Bozeman. We had him come over. And she
19 was pretty sure his wife didn't know what he had
20 done and made him come over here with his wife so
21 she could tell his wife. I'm not sure why that's
22 important, but that's what she made him do.
23 To me, that's an emotional response,
24 instead of this is what the case is about. He -- we
25 know he did bad acts. Why are you dragging his

1 wife -- his poor wife sat in here and cried through
2 the whole thing, could hardly speak. It's really
3 not necessary. We weren't prosecuting her. But she
4 was mad at him, so...
5 Q. Anyone else?
6 A. Martin Bower is an example. Like I said,
7 his -- people from his church would come, and she'd
8 just snicker and kind of point at them and talk
9 about them. And to me, it's not -- that's an
10 emotional response. It's not professional. It's
11 not impartial to where we're just looking at the
12 facts of the case. And she eventually became
13 uninvolved in the case even though it's a securities
14 case. She kind of moved on.
15 Q. Is it your opinion that Ms. Egan
16 investigates cases based on her emotions rather than
17 based on what the facts are as she finds them?
18 A. That's an interesting question, Jesse,
19 because it depends on how the case comes into the
20 office, and you know they come in in all different
21 ways. Sometimes the person who has been harmed, you
22 know, comes in.
23 An example is a former investigator, Mike
24 McKee, came in. He was part of the auction rate
25 securities mess. He was one of the -- we were the

1 MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT
2 RAVALLI COUNTY
3
4 STATE OF MONTANA,
5 Plaintiff,
6 vs. Cause No. DC 11-117
7 HARRIS HIMES,
8 Defendant.
9
10 VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF
11 ALAN LUDWIG
12
13
14 BE IT REMEMBERED, that the videotaped
15 deposition upon oral examination of ALAN LUDWIG,
16 appearing at the instance of Defendant, was taken
17 at the offices of Fisher Videoconferencing, Court
18 Reporting & Videography, 503 East Mendenhall,
19 Bozeman, Montana on Tuesday, July 31, 2012,
20 beginning at the hour of 9:15 a.m., pursuant to
21 the Montana Rules of Civil Procedure, before Kasey
22 L. Fisher, Court Reporter - Notary Public.
23
24
25

1 APPEARANCES
2 ATTORNEY APPEARING ON BEHALF OF THE
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25 Videographer: Laura Fisher

1 I N D E X

2 EXAMINATION OF MR. ALAN LUDWIG BY: PAGE:

3 Mr. Matthew Monforton, Esq.....6,207

4 Mr. Jesse Laslovich, Esq.....159

5

6 E X H I B I T S

7 DEPOSITION EXHIBITS: PAGE:

8 Exhibit 34 Motion for Leave to File

9 Information and Affidavit

10 In Support.....130,139,202

11 Exhibit 35 5/1/2012 Alan Ludwig's

12 Employee Exit Comments.....141

13

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1 WHEREUPON, the following proceedings were
2 had and testimony taken, to-wit:
3 * * * * * * * *
4 VIDEOGRAPHER: This is the video
5 deposition of Alan Ludwig taken in the Montana
6 Twenty-First Judicial District Court, Ravalli
7 County. Cause No. DC-11-117. State of Montana
8 versus Harris Himes.
9 Today is July 31, 2012.
10 The time now is 9:15 a.m.
11 We are present at the offices of Fisher,
12 503 East Mendenhall in Bozeman, Montana.
13 The court reporter is Kasey Fisher and
14 the video operator is Laura Fisher of Fisher Court
15 Reporting.
16 The deposition is being taken pursuant to
17 Notice.
18 And I would now ask the attorneys to
19 identify themselves, who they represent and where
20 they're participating from.
21 MR. MONFORTON: Matthew Monforton
22 appearing on behalf of Harris Himes, present in
23 Bozeman.
24 MR. LASLOVICH: Jesse Laslovich appearing
25 on behalf of the State of Montana, present in

1 phone. Often it would be encouraging them to
2 gather information so that we could determine
3 whether there was a cause for an action.
4 Q. Can you give me an estimate in early 2009
5 as to how many written complaints you would field
6 on a weekly basis?
7 A. That's really -- it -- it really varied.
8 I would say a maximum of four a week. I would --
9 Q. Maybe some weeks where you -- I'm sorry.
10 Go ahead.
11 A. I would keep track of it on a spreadsheet
12 so at the end of the year one could see how many
13 calls had resulted in complaints. So in other
14 words, I wouldn't put a call on the spreadsheet,
15 but after it became a complaint it would be on the
16 spreadsheet.
17 Q. Would there be some weeks where you
18 wouldn't receive any written complaints?
19 A. Yes.
20 Q. All right. You also mentioned that you
21 prepared investigative reports when you were
22 working for the auditor's office, correct?
23 A. Yes.
24 Q. Tell me what the circumstances would be
25 that would cause you to prepare an investigative

1 report.
2 A. An investigative report would be when a
3 complaint had been received and information had
4 been obtained from wherever the nature of the
5 complaint was.
6 Inappropriate handling by a broker,
7 somebody who wasn't a broker but they'd gotten
8 somebody to invest. Enough documentation that it
9 supported a pretty good picture of what was
10 occurring with the situation. Dates and times,
11 when and where things occurred, parties involved.
12 And then the compl -- the invest -- the
13 report would follow an outline that Lynne Egan
14 would -- had determined would be an appropriate
15 format.
16 Q. Was this like a standard -- standard
17 format that she had?
18 A. It changed a few times over the years.
19 But more or less there would be a first segment
20 that spelled out the situation, then a section
21 that would explain documentation or whatever
22 supporting evidence had been pulled. And then
23 Lynne did never like to say conclusions, but --
24 but how those things worked together and why it
25 appeared there was a problem.

EXHIBIT 4

1 Q. Am I correct in assuming that an
2 investigative report would be prepared by you
3 after you received contact from someone and there
4 was extra information?
5 Am I -- let me rephrase that question.
6 How many of your contacts that you'd
7 fielded from regular Montana citizens would end up
8 resulting in an investigative report by you?
9 A. I would guess 1 out of 8 to 1 out of 10.
10 Q. And of those -- of the 90 percent -- or
11 80 to 90 percent that didn't result in an
12 investigative report, what would happen with --
13 with those contacts?
14 A. Sometimes people would never provide the
15 information we asked of them for whatever reason.
16 Sometimes the information would be provided but it
17 would be determined it was outside the statute of
18 what our office operated on. In those cases they
19 would receive a close letter. I was instructed to
20 always send a close letter.
21 And -- and it would be a matter of me
22 sending the letter and also calling them to
23 discuss the situation so they got firsthand over
24 the phone why they were receiving a close letter.
25 And sometimes they were informal enough

1 that they could be handled by contacting say a
2 broker or a home office because there was an
3 irregularity let's say in a statement but it was
4 simply resolved when the brokerage realized the
5 problem.
6 Q. Was it your policy to make sure that
7 the -- the some kind of closing letter went out
8 with regard to every contact that did not result
9 in an investigative report?
10 A. In the event that the contact resulted in
11 enough information that anything could even be put
12 together towards a contact report, then a closing
13 letter would be -- a close letter would be sent
14 out. Sometimes there just wasn't enough to even
15 determine that a close letter could be sent out.
16 Q. Would that be because someone didn't
17 leave a contact information -- that be --
18 would that -- would that be a problem?
19 A. Or they never put forward enough
20 information that we could pursue the matter.
21 Q. Okay. During the time that you were
22 working in the auditor's office, were there other
23 individuals doing the same kind of work for the
24 securities division that you were doing?
25 A. Lynne -- Lynne Egan and I worked fairly

EXHIBIT 4

1 separately. I could take a call and work the
2 matter to the point that I would do a report and
3 send it to her via e-mail without her involvement.
4 And likewise she would often work on a case not
5 even informing me, but doing a report on it and
6 pursuing it. But the two of us were the only two
7 who worked to develop a -- a product that would be
8 used by the office to take further action.
9 Q. Did you have discretion to determine
10 whether a specific contact should turn into an
11 investigative report as opposed to a closing
12 letter being sent or did someone else make that
13 decision?
14 A. I -- I think I understand your question
15 and here's what would happen: Lynne or I would
16 take a call and develop a report. The report
17 itself would not guarantee that the investigation
18 would go somewhere.
19 An inves -- I could write an investiga --
20 investigative report, but beyond sending it to
21 Lynne it might not go anywhere.
22 Lynne would be the determiner of what
23 matter would actually become an investigation.
24 She would assign a case number to matters that she
25 thought needed to be pursued to the point that

EXHIBIT 4

1 they would go up the chain and become a legal
2 matter.
3 Q. Let me ask my question this way: Did you
4 have sole discretion to send out a closing letter,
5 to decide for yourself this isn't going anywhere,
6 I'm going to send this -- this caller a closing
7 letter and be done with it?
8 A. Yes, and I would always CC Lynne in the
9 event there was a question. And, actually, if it
10 was questionable at all, if it wasn't clear-cut, I
11 would present it to her and ask her what she
12 thought regarding it.
13 Q. Would there be any contacts at all where
14 you would unilaterally make the decision to send a
15 closing letter and not inform Lynne?
16 A. Yes.
17 Q. Okay. And how -- give me a percentage if
18 you can -- if you can as to how many times that --
19 that happened?
20 A. I'm always using fractions instead of
21 percentages --
22 Q. That's quite all right.
23 A. -- but I would say 1 in 5 to 1 in 8.
24 Q. 1 out of 5 to 1 out of 8 would be the
25 number that you closed on your own initiative or

EXHIBIT 4

1 the other way around?
2 A. Yes.
3 Q. That you closed on your own initiative?
4 A. On my own initiative. Sorry.
5 Q. Okay. Sometimes my questions aren't as
6 clear as they should be, so....
7 And as far as those contacts that turn
8 into investigative reports, would it be your
9 determination that an investigative report should
10 be made or would it be Lynne or someone else in
11 the office saying to you, Hey, Alan, please
12 prepare an investigative report on this contact?
13 A. If there -- if there appeared to be
14 sufficient evidence of a problem I would put
15 together a report on my own for further
16 consideration by Lynne.
17 Q. Would there be times when you would be
18 asked by Lynne Egan or someone else to prepare an
19 investigative report?
20 A. Because we worked in such a separate
21 fashion, the only time I can think of is one in
22 which an old case, Jack Cross, had been worked on
23 by several people without results. And Lynne
24 asked me if I could take all of the information
25 that had been put together from previous

EXHIBIT 4

1 investigations and documentation, and I think even
2 a deposition, and put it together into a report.
3 But that's the only time I can recall
4 when she asked me to actually prepare an
5 investigative report on a matter that I wasn't
6 already working on.
7 Q. Do you remember when that happened
8 approximately?
9 A. Probably two years ago.
10 Q. I think you might have answered this, but
11 I -- I just want to make sure I'm clear. What
12 kind of factors or red flags, if you will, would
13 trigger in your mind the idea that an
14 investigative report needed to be made as opposed
15 to not making an investigative report?
16 A. Well, the statutes for the state were
17 always used as the basis. Some could be as
18 clear-cut as a person who was not an investor, was
19 not approved to solicit people for investments for
20 securities, soliciting people for their money.
21 Some could be an irregularity by an
22 investment advisor who it appeared from reviewing
23 account statements that money had been misdirected
24 or misinvested.
25 Something that showed enough of an

1 irregularity that the matter needed to be under
2 review by the office.
3 Q. Would it be fair to say that if the --
4 the more clear-cut a violation appeared to be the
5 more likely you would be to prepare an
6 investigative report? Would that be accurate?
7 A. Yes.
8 Q. What would happen after you prepared an
9 investigative report?
10 A. Every report I did I would attach to an
11 e-mail and send to Lynne Egan.
12 Q. And what was the purpose of sending these
13 reports to Lynne Egan?
14 A. Lynne would determine which report went
15 forward for action and assign a case number to it.
16 Q. And very briefly, who is Lynne Egan?
17 A. Lynne Egan is the -- was my boss and the
18 deputy securities commissioner for the state
19 auditor's office.
20 Q. Why don't you go ahead and spell that for
21 the....
22 A. Lynne, L-y-n-n-e, Egan, E-g-a-n.
23 Q. Would it be accurate to describe her as
24 the -- the number two person in the office?
25 A. In -- at the state auditor's office, I --

1 evaluation and she responded with a written
2 response to me.
3 Q. In that written response to you, did she
4 evaluate -- or did she elaborate as to her belief
5 that you were being rude to people?
6 A. She gave reference to one case in each
7 matter regarding the rudeness to the victim, the
8 attorney and the subject who I had been rude to.
9 They were not firsthand accounts.
10 Q. Did you believe her statements to be
11 accurate?
12 A. I believe that an attorney could be upset
13 with me for requesting information his client
14 needs to provide that he's not diligent in
15 providing to me. I would not consider that
16 rudeness.
17 I believe that a subject in my asking
18 them for information in which they were soliciting
19 for investments when they weren't registered for
20 investments, did they might think I was rude
21 because I was pushing them for information they
22 would provide to the state.
23 The information on the victim as I came
24 to understand many months later was secondhand and
25 totally inappropriate. And pluralized is a case

1 our life along the tenants of what we think should
2 be Christlike.
3 Q. Did you express these set of beliefs or
4 make it clear that you held these set of beliefs
5 to Ms. Egan?
6 A. Beyond set of beliefs, she was aware of
7 what church I went to. She was that aware of my
8 faith.
9 Q. What church did you go to?
10 A. This -- Neighborhood Assembly of God.
11 Q. And you had expressed to her in some form
12 or fashion the set of beliefs that you've just
13 described a moment ago?
14 A. Again, without proselytizing, things
15 would come up in situations where a person would
16 respond in a certain way. We've had people in our
17 office who've had cancer and in their dealings
18 with it she may have mentioned that they were
19 Christians and how they were dealing with it. And
20 I would respond that I was a Christian.
21 There was a case where I walked in the
22 office one day and she was happy and said, Monica
23 Lindeen's been given a Christmas present. And I
24 said, Why is that. And she said, Derek Skees is
25 running against her. And I said, Who's Derek

1 Skees. And she said, He's a right wing nutcase.
2 And I said, Why is he a right wing
3 nutcase. And she said, Well, look at his bio
4 here, it says faith, Assembly of God. And I said,
5 Lynne, I go to Neighborhood Assembly of God. And
6 instead of apologizing, she went back to her
7 computer and acted like I'd left the room.
8 So she's either indifferent or hostile
9 towards my religion.
10 Q. Do you remember approximately the date
11 that that discussion occurred?
12 A. Well, I guess it probably occurred the
13 day Derek Skees announced he was running for
14 office. I -- I don't -- I'm not political, I
15 didn't even know who he was. December, January,
16 sometime in the winter, I think. I don't know.
17 Q. Winter of 2010, 2011? If you know.
18 A. Winter of 2011.
19 Q. You believe that comment was made shortly
20 after Mr. Skees publically announced his
21 candidacy?
22 A. Yes.
23 Q. Where did this discussion take place?
24 A. In her office. I came in to talk to her
25 about a case and she wanted to share that with me.

1 Q. Had you said or mentioned anything
2 involving politics prior to her making that
3 comment?
4 A. No.
5 Q. Was there anyone else in Ms. Egan's
6 office --
7 A. No.
8 Q. -- when she made that comment?
9 Has Ms. Egan ever made any other comments
10 about Mr. Skees?
11 A. She did at some point after his being
12 involved in running for office at one time say
13 something about him being a joke. But I don't
14 recall what the original context was. She was
15 talking to somebody else, I think.
16 Q. Do you recall anyone else in the state
17 auditor's office making comments about Mr. Skees?
18 A. No.
19 Q. You mentioned earlier there were several
20 anti-Christian remarks. Can you recall any others
21 that were made in the office?
22 A. News events would cause Lynne to comment
23 on them from a perspective of the church's being a
24 negative influence on things. And so one comment
25 I remember her -- hearing her say was that the

1 Catholic Church was a leading cause of child
2 abuse.
3 I remember hearing her say that the
4 churches had turned the Boy Scouts into a group of
5 Nazis for not allowing gays.
6 Q. Let me stop you right there. What --
7 when did -- do you recall when that comment was
8 made?
9 A. I would say over the last four years
10 she's probably commented on at least three times
11 on her being bothered by the fact that the Boy
12 Scouts are Nazis. And most recently some case --
13 I guess some case was being determined nationally
14 and it bothered her.
15 Q. Do you recall if other people were
16 present when Ms. Egan would make comments about
17 Boy Scouts being Nazis?
18 A. No, I was usually in -- in those cases I
19 was in the office with her by -- just the two of
20 us.
21 Q. Do you recall any other anti-Christian
22 there remarks made by Ms. Egan?
23 A. Well, she's -- her comments are against
24 religion as well and not just -- well, at least
25 one comment. She said that all organized religion

EXHIBIT 4

1 was fairy tales.
2 Q. Where did she say that?
3 A. In her office.
4 Q. Was anyone else present besides you?
5 A. This was the incident involving the gift
6 basket joke that involved a Holy Bible, and
7 Jameson Walker may have been present because she
8 had been showing that she could recite the books
9 of the Bible. And so that got on the conversation
10 of religion, but I'm not sure if he was still in
11 there when she made this statement, all organized
12 religions fairy tales.
13 Q. Let me go back a little bit. Tell me
14 about this gift basket incident.
15 A. A gift basket appeared in Lynne's office
16 and Lynne gets gift baskets from people she's
17 helped or outside companies that have been
18 involved with the auditor's office. It could
19 involve a case or it could involve a holiday.
20 The basket had mostly dollar store items
21 in it. Cans of sardines, chocolate covered
22 peanuts, but also a New Testament, a Holy Bible, a
23 book of faith messages and a cup that said "Faith"
24 on it.
25 The mystery was how it got there and

1 Lynne was concerned that it got in there passed
2 security and began investigating the matter. And
3 from what I understand, Michelle Huftel, who's a
4 coworker, thought it would be funny to give her
5 this gift.
6 It then got classified as a joke.
7 Normally the gift basket Lynne would receive would
8 sit on her table and be -- the contents would be
9 dispersed.
10 I was really offended about the Holy
11 Bible being next to a can of sardines and it being
12 called a joke. I asked if she was going to
13 disperse the -- what was in the basket and she
14 said no. She wanted to leave it there a few days.
15 So it sat there a few days.
16 Q. Did you tell Ms. Egan you were offended
17 by that fact?
18 A. I asked her if I could take the Bible and
19 she said, No, to leave it there. She knows I'm a
20 Christian. You know, we skirt around something
21 here where if -- if somebody said the N word or
22 somebody said crude comments about a woman or
23 somebody said crude comments about gays, how many
24 of those comments would it take to determine an
25 opinion about that person. I've cited three or

1 four to you but there's been a dozen since I
2 worked there. I don't think there needs to be.
3 I spoke to HR about it. I spoke to Nita
4 Holman about it.
5 Q. Tell me who Nita Holman is.
6 A. She's the HR person for the office.
7 Q. Had you spoken with Ms. Holman about this
8 issue more than once?
9 A. I spoke to her about it a long time ago
10 regarding not just the Christian aspect but
11 Lynne's habits of what she does. And she said she
12 had over a dozen complaints and nothing had been
13 done about it. And the last time I spoke to her
14 was right before I left because I wanted to know
15 what other options I might have.
16 Q. Can you give me an approximate date as to
17 when you first approached Ms. Holman about
18 Ms. Egan's anti-Christian comments?
19 A. Well, the first time I spoke to Nita
20 Holman it wasn't about anti-Christian comments per
21 say. It's in exit comments.
22 There was a time in which -- an
23 experience I had where we went to the back loading
24 dock to pray and found out that Lynne had seen me
25 praying and gossiped to other people about me

1 And when she said Derek Skees was a right
2 wing nutcase and her punch line was because he's
3 claimed his faith with Assembly of God, that said
4 to me that by the same standard, she would see
5 that in me.
6 And I believe that's the conclusion she
7 makes with people of faith who are committed to
8 their faith. And I think it's a attitude that's
9 formed early in life sometimes.
10 Q. Let me backtrack a little bit to the
11 meeting that you had with Ms. Holman sometime
12 around March of 2012.
13 She stated to you that it would not be
14 wise to go to Ms. Lindeen about this problem?
15 A. Yes.
16 Q. Did she elaborate as to why?
17 A. Monica Lindeen and Jesse Laslovich had a
18 tight relationship with Lynne Egan. They rely on
19 her for the effectiveness of their jobs. Lynne
20 has been there a long time. Lynne understands the
21 statute very well. Lynne gives considerations on
22 what charges should be applied on cases that go
23 forward. Lynne writes press releases sometimes
24 regarding information that leaves the office.
25 Lynne was chosen as their treasurer for

1 their election campaigns. They're -- I weighed on
2 going to talk to Monica Lindeen but for what
3 purpose. Neither of them were going to offend
4 Lynne Egan as I saw it. Not -- not for me.
5 Q. Was that an opinion that Ms. Holman
6 expressed to you?
7 A. Yes.
8 Q. Do you recall Ms. Holman saying anything
9 else during this March 2012 meeting?
10 A. Beyond the fact that she'd had so many
11 complaints against Lynne Egan.
12 Q. And did she describe these complaints as
13 arising from anti-Christian remarks or complaints
14 in general?
15 A. Complaints in general. In fact, Nita was
16 surprised I was a Christian because it's kind of a
17 subdued conversation -- or subdued element to what
18 somebody would discuss in the office.
19 Q. What -- what made it look like she was
20 surprised?
21 A. Because she said she was too.
22 Q. Did Ms. Holman express any issues that
23 she might have had with her -- with her beliefs in
24 the office?
25 A. She said she was bothered because Monica

1 A. Yes.
2 Q. Were there other employees in the office
3 that gave you similar warnings about Ms. Egan?
4 A. Yes.
5 Q. Who else gave you similar warnings about
6 Ms. Egan?
7 A. Roberta Cross-Guns. Jan McAlpine.
8 Q. You're going to have to wait just a
9 second here. Roberta Cross-Guns, [illegible] spelled
10 how it sounds?
11 A. C-r-o-s-s, hyphen, G-u-[illegible]
12 Q. I'm sorry to interrupt. [illegible] the
13 other person?
14 A. Jan McAlpine.
15 Q. How do yo spell that?
16 A. M-c-A-l-p-i-n-e.
17 Q. Any other employees?
18 A. Ken Kops, C-o-p-s. John [illegible]
19 F-o-r-s-m-a-n. Bob Moon, M-o-o-n. [illegible] Nyland,
20 T-a-r-i-l, N-y-l-a-n-d.
21 Q. I'm sorry. Could you spell the last
22 name.
23 A. N-y -- N, as in Nancy, [illegible]. The
24 rest are possibles.
25 Q. Okay. All right. Let's [illegible] with

EXHIBIT 4

1 Roberta Cross-Guns. Tell me who she is.
2 A. She's an attorney who's no longer
3 employed with the state auditor's office.
4 Q. How long had you known Ms. Cross-Guns?
5 A. For the time I worked for.
6 Q. What kind of warnings did
7 Ms. Cross-Guns --
8 A. The same kind --
9 Q. -- give you?
10 A. -- as Susan Paulson-Davis except
11 excluding the Christian part because I didn't
12 bring it up with Roberta, I think at a time when
13 she had warned me about it, but the same thing.
14 That she would lie, gossip and not be trusted,
15 that something I said would be used against me or
16 fabricated.
17 Q. When did Ms. Cross-Guns make that comment
18 to you?
19 A. Through the years.
20 Q. More than once?
21 A. Yes.
22 Q. How about Ms. McAlpine?
23 A. McAlpine.
24 Q. McAlpine.
25 A. Jan no longer works for the office. She

1 with you --
2 A. It's pretty wicked stuff.
3 Q. We're all adults here, [illegible].
4 A. Lynne said that she -- [illegible] had told
5 her that Tari been seen going into [illegible] apartment
6 of a certain man who'd worked at [illegible] office for --
7 for an overnight matter.
8 Q. Let me make sure I understand this.
9 Ms. Nyland told you that Lynne [illegible] upset about
10 Ms. Nyland going to another man's [illegible] nt?
11 A. Tari's married and has [illegible].
12 Q. Did Ms. Nyland express to you how she
13 felt about that?
14 A. Of course.
15 Q. What did she say?
16 A. There are a lot of things I'm saying
17 today that I'm only saying because I'm under oath
18 and I was brought into this, but [illegible] very
19 offended by it.
20 Q. Did Ms. Nyland have -- [illegible] that.
21 Did Ms. Nyland discuss [illegible] other
22 issues or concerns that she had [illegible] Egan?
23 A. Well, Tari Nyland doesn't [illegible] work with
24 Lynne Egan. So the strangeness [illegible] of this
25 gossip that would occur is it didn't [illegible] involve

1 people that Lynne worked with.
2 Q. Where did Ms. Nyland work?
3 A. In the insurance department.
4 Q. What other issues about Ms. Egan did
5 Ms. Nyland discuss with you?
6 A. The most common aspect of Lynne Egan
7 that's been brought to my attention and usually is
8 involved in conversation regarding Lynne Egan is
9 that people are scared of her and they don't want
10 to cross her. And people that actually said they
11 steer clear of her. Literally steer clear of her.
12 So there's a general attitude regarding the
13 disposition of the person.
14 Q. Was that a concern that Ms. Nyland
15 expressed to you?
16 A. I regret to say, yeah.
17 Q. Is that a -- is that an attitude that you
18 had about Ms. Egan?
19 A. I worked with Lynne Egan. I -- I worked
20 in a separate office from Lynne Egan, but after
21 this point where I was on the wrong side of
22 whatever I was on with her, I -- I really didn't
23 have an upside or something I could do to change
24 the situation.
25 Q. Did you share the same concerns about

1 really bad health issue. I had a [illegible] response
2 to a flu -- flu vaccine. I still [illegible]. My red
3 count numbers, white count numbe[illegible] [illegible]ocyte
4 numbers are off. I have arthriti[illegible] response
5 that leaves me hurting bad some [illegible].
6 Lynne minimized it, talked a[illegible] her own
7 arthritis that she'd dealt with [illegible]
8 minimized it and said how she ha[illegible] [illegible]s her
9 whole life, we were just getting o[illegible]. Really
10 wasn't sympathetic to my issue.
11 And I don't know if tha[illegible]e
12 thought I was weak or -- and I w[illegible] o[illegible]r
13 disfavor for that or whatever. [illegible]ut i[illegible]s a
14 really difficult time for me and t[illegible] that I
15 was out back praying was a point a[illegible] it had
16 been months into this matter. [illegible] had low
17 red and white count numbers, my [illegible]n't heal
18 the way it used it now.
19 And I was realizing it [illegible]ting my
20 life. I was actually wondering [illegible] not I'd
21 have to change my whole lifestyle.
22 Q. Who told you that Ms. [illegible]ssiping
23 about you praying on the dock?
24 A. Roberta Cross-Guns sa[illegible] sh[illegible]n the
25 office with Jameson Walker at t[illegible]ne

EXHIBIT 4

1 shared it with both of them, and I don't know how
2 many other people were there. But Lynne seemed --
3 or Roberta seemed bothered because Jameson was a
4 young attorney who'd just come on with the office
5 and thought it was a really bad impression for
6 Lynne to create by sharing that with Jameson
7 because he didn't need to know that.
8 In fact, she said afterwards Jameson was
9 worried about me and wanted to talk to me because
10 he was upset that I was upset.
11 Q. Did you ever discuss this matter with
12 Mr. Jameson?
13 A. No.
14 Q. And did you -- did Ms. Cross-Guns say
15 anything else about this incident other than --
16 A. No. She just warned me and she'd warned
17 me before not to -- not to give Lynne reason to
18 gossip.
19 Q. I think you mentioned earlier this
20 morning that Ms. Egan had been the treasurer for
21 Ms. Lindeen and Mr. Laslovich's campaign.
22 Did I get that right?
23 A. Yes.
24 Q. When did -- or when did you first find
25 out about this?

EXHIBIT 4

1 don't know that that check was f r campaign.
2 He said something more about Jes e u ng for
3 office and Jesse's campaign.
4 Q. Besides campaigning -- o n l campaign
5 contributions being delivered t t ate
6 auditor's office, did you witnes r of any
7 other political activities or wo k p tical work
8 taking place on state property time on
9 behalf of the Lindeen campaign o aslovich
10 campaign?
11 A. In my exit comments I m a
12 political atmosphere and that w e Jesse
13 and Monica seemed to be in Lynne s e a lot
14 more. And the looks or concerns t t got if I
15 entered into the office seemed t ferent or
16 more about secrecy and more clos d than they
17 had been regarding Lynne's time at c .
18 Q. When you say a lot more a lo you mean
19 by that?
20 A. They were down in her off lot more
21 than they had been.
22 Q. What was the date that h nge took
23 place?
24 A. After they announced thei nation --
25 or their candidacy.

EXHIBIT 4

1 Q. Quantify for me if you can what you mean
2 by a lot more.
3 A. Almost daily.
4 Q. Were these closed door meetings?
5 A. Often. Sometimes the door was open and
6 then the door would be closed.
7 Q. Did these kind of meetings take place
8 prior to Ms. Lindeen and Mr. Laslovich announcing
9 their campaigns?
10 A. They weren't in the office as often and
11 when they were they didn't make a point of closing
12 the door and they didn't look over their should --
13 their shoulder the way they did when they were
14 down there.
15 An example with Jesse Laslovich would be
16 I was trying to talk to Lynne about a problem one
17 day and was sitting in front of her desk talking
18 to her and Jesse walked in and just took over the
19 conversation and started talking to her. But they
20 didn't close the door. That was something work
21 related.
22 I don't -- I wouldn't see a need for the
23 closed door if it was something that was misc
24 related. Maybe there was another personnel issue.
25 They could have been talking about me for all I

EXHIBIT 4

1 know. But the number of closed [illegible] nd the how
2 often they were down there in that [illegible] ce changed.
3 Q. How long would these meet[illegible]g take
4 place --
5 A. Oh, I didn't keep track. [illegible] 'm sorry.
6 Q. How long would these meet[illegible]g take place
7 typically after the campaigns were [illegible] ne -- after
8 the candidates announced their c[illegible]s?
9 A. I -- I don't know.
10 Q. Okay.
11 A. Sometimes long enough t[illegible] ave up
12 asking -- trying to ask Lynne what [illegible] s going to
13 ask her because the door would be [illegible] d. But in
14 general I couldn't tell how long me[illegible]t gs occurred
15 or if other people came into the [illegible] ecause I
16 would go back to my office.
17 Q. Did any of your coworkers [illegible]ribe to you
18 any kind of campaign work that t[illegible] s or
19 observed on behalf of Ms. Lindee[illegible]
20 Mr. Laslovich --
21 A. No.
22 Q. -- occurring on -- occu[illegible] state
23 property?
24 A. No.
25 Q. During your time in the [illegible]t auditor's

EXHIBIT 4

1 office, Alan, did you witness or observe or hear
2 of individuals receiving preferential treatment?
3 You know, let's strike that question.
4 I'm going to rephrase it.
5 During your time in the auditor's office,
6 did you at any time become aware of subjects of an
7 investigation receiving preferential treatment?
8 A. Because Lynne was the real gatekeeper on
9 cases going forward or not going forward and my
10 ability to view the case after having presented a
11 report and sent it to her via e-mail is limited,
12 my view point would be from one in which people
13 who had put in a complaint called because nothing
14 was being done. Or because we would receive
15 additional complaints from somebody else and
16 nothing was being done.
17 My standard response would be that there
18 were only so many attorneys and so case loads
19 would back up and attorney time would be limited
20 on working the case loads. But at times would
21 question whether or not some cases languished and
22 other cases were brought forward.
23 I believe that on the aspect of the high
24 profile of the case I believe there would be a
25 preference given to it because it was high

1 profile, high visibility. The R[illegible] l[illegible] case is a
2 high profile, high visibility ca[illegible] h would
3 look very good for the office.
4 A case involving a doze[illegible] o[illegible] invested
5 in an oil venture in northern Mo[illegible] a[illegible]
6 languish and not get worked on a[illegible] h[illegible] may be the
7 reason why, but Lynne could expla[illegible] t[illegible] reason
8 why.
9 But some cases never ge[illegible] [illegible] to and
10 they remain on my spreadsheet but [illegible] re never
11 gotten to. Other cases are brou[illegible] f[illegible] and
12 brought upstairs for results and [illegible] you know,
13 going to jail or getting -- faci[illegible] [illegible]inal
14 action.
15 I have one case that I'[illegible] [illegible]
16 with -- with regarding a fella [illegible] Nooney,
17 because the gentleman who filed [illegible] plaint is
18 very articulate. His name is Je[illegible] [illegible]owen, he's
19 a Montana businessman, and I put [illegible] [illegible]ase in
20 maybe two years ago.
21 Q. This was a complaint that [illegible] initially
22 took?
23 A. Initially took and wh[illegible] [illegible] t[illegible]ok over.
24 And so the last calls I had from [illegible] [illegible]owan were
25 him asking why -- him asking que[illegible] [illegible] about

EXHIBIT 4

1 Lynne. Why she wasn't responsive, why she wasn't
2 calling him back, why she hadn't -- hadn't pursued
3 the matter.
4 And my concern with Nooney is that there
5 had been several complaints regarding Mr. Nooney.
6 And the issue with Mr. Nooney was is that he used
7 to be a state representative and some of the
8 documents that he used to solicit other people had
9 his name and his title on the documents he used to
10 solicit other people. So from my perspective --
11 Q. I'm sorry. When you say his name and
12 title, you mean his title as state representative?
13 A. Yes. So from my perspective it seemed
14 like an interesting case that should be pursued.
15 I -- when Mr. McGowan called, and it was probably
16 two or three weeks before I left the office, I was
17 straightforward in telling him I had -- no longer
18 had control over the office. He had remembered
19 that I had talked with him long, long ago. He
20 remembered who was and I explained that I would
21 get to Lynne and ask her about it.
22 I went over and asked Lynne about it and
23 she said, It's upstairs, that it's being worked
24 on, actually considered as a case. I actually
25 went upstairs and tried talking to people and I

HIBIT 4

1 don't know who was handling that [illegible]
2 So I'm not really sure [illegible] pened with
3 that case, but the FBI was also [illegible] in that
4 case.
5 Q. How do you know that?
6 A. Because I'm -- if you [illegible] how I
7 was perceived by other agencies, [illegible] o worked
8 for the IRS and the FBI think [illegible] ork.
9 Q. When you say the FBI wa[illegible] ed in
10 Mr. Nooney's -- or the complai[illegible] g
11 Mr. Nooney, how do you know that [illegible] y -- did
12 they make an inquiry of you?
13 A. Yes.
14 Q. What did they say?
15 A. They asked me what we [illegible] case
16 because they'd been contacted [illegible] e case.
17 They have several states that [illegible] ted and
18 they want to work the case.
19 Q. And this is -- I'm so[illegible] s the
20 FBI that was making this inquiry
21 A. Yes.
22 Q. What was your response?
23 A. That Lynne had taken [illegible] and
24 they'd have to get with her an[illegible] hey
25 actually hadn't gotten anything [illegible] her

EXHIBIT 4

1 except it then looked at it and the gen[illegible]man had
2 not made any financial gain off of what [illegible] done,
3 Mr. Nooney.
4 Q. Was Ms. Egan's statement to th[illegible] [illegible]
5 accurate in your opinion?
6 A. I don't know what happened to [illegible]ase.
7 Except that Mr. McGowan called me two w[illegible]s before
8 I left and asked me why nothing been do[illegible] And he
9 felt Lynne was office skating.
10 Q. Did he explain why he felt tha[illegible]ay?
11 A. Nonresponsiveness and -- and [illegible]terest
12 in his request. I -- I would, again, [illegible] to the
13 fact that I was always told to send a [illegible] letter
14 if something hadn't -- wasn't worth inv[illegible]igating.
15 And if it were me, I would have had to [illegible] out a
16 close letter to notify that person unde[illegible]at
17 basis something wasn't actionable.
18 And I would say one of those i[illegible] that
19 somebody didn't have financial gain aft[illegible]hey
20 took advantage of somebody.
21 Q. From your knowledge of the -- [illegible]Nooney
22 matter, do you believe Mr. Nooney did [illegible]ve a
23 financial gain from whatever it was tha[illegible]s being
24 complained of?
25 A. From the documentation I've se[illegible]e

EXHIBIT 4

1 clearly solicited people and [illegible] stments
2 for money in which money was e[illegible] kept
3 by him.
4 Q. Do you believe Mr. No[illegible] lated
5 any laws?
6 A. I wouldn't have conta[illegible]
7 information if I hadn't, and [illegible] -- the
8 last response I had from him, [illegible] mail CC
9 to Lynne Egan that he contacte[illegible]
10 regarding the matter, and that [illegible] ime I
11 was involved in the matter.
12 Q. Do you have any knowl[illegible] y
13 Mr. Nooney would have received [illegible]
14 treatment if indeed that's wh[illegible]
15 A. Hearsay information, [illegible]
16 information, from Roberta Cros[illegible] -- and I
17 don't know this politically, b[illegible]
18 represented the region in whic[illegible] vich
19 grew up.
20 Q. What specifically did [illegible] ns say
21 about that?
22 A. That's what she said.
23 Q. To your knowledge, do[illegible]
24 auditor's office receive any k[illegible] l
25 funding?

1 unregistered advisor.
2 Q. And when you say "they," they
3 A. The two federal authorities.
4 Q. Okay. What other concerns did the IRS
5 express with regard to Mr. Nooney?
6 A. That people had lost money as a result of
7 him and -- and I believe in different states.
8 Q. Did the FBI agent tell you that the IRS
9 had expressed specific concerns about the state
10 auditor's office with regard to Mr. Nooney?
11 A. Yes.
12 Q. Tell me what the FBI agent said that the
13 IRS told him --
14 A. No --
15 Q. -- in regard to that.
16 A. No more specific than they were concerned
17 about if there was a relationship, an improper
18 relationship, or improper actions that resulted
19 from a relationship of Bill Nooney and the people
20 at the state auditor's office.
21 Q. Were these just concerns that were stated
22 or did they -- did they believe that there was --
23 that there was some evidence or something behind
24 it?
25 A. I think that's what they're trying to

EXHIBIT 4

1 familiar with, would you -- wo[illegible] to see
2 the kind of specificity throug[illegible] in the
3 civil filings that you would [illegible] u saw
4 with Mr. Himes' case?
5 MR. LASLOVICH: Objec[illegible]ation.
6 THE WITNESS: I don't [illegible]ure to
7 judge the difference between t[illegible]e
8 adequate specificity for a civ[illegible]us a
9 criminal case. I would just s[illegible] in a
10 civil matter, documents conta[illegible] of
11 specificity, sequence of event[illegible]tions.
12 BY MR. MONFORTON:
13 Q. All right. You menti[illegible] ago
14 that Ms. Egan pre -- typically [illegible]rough
15 reports. Did I get that corre[illegible]
16 A. Thorough reports?
17 Q. Yes.
18 A. Yes.
19 Q. To your knowledge, who [illegible] actual
20 legal documents that are filed [illegible]t [illegible]m your
21 office?
22 MR. LASLOVICH: Objec[illegible]ation.
23 BY MR. MONFORTON:
24 Q. If you know.
25 A. Lynne will. And she's [illegible] of [illegible]

1 because she writes so well. The -- the group of
2 attorneys who are in the -- who work for Lynne
3 Laslovich at this time are young and they're
4 unseasoned. And they appreciate the in-depth
5 knowledge that Lynne has of securities,
6 documents she can prepare, the investigative
7 reports and how she writes them, the --
8 detailed nature. She's great with numbers. She's
9 great with spreadsheets. She's great at writing a
10 case.
11 Q. So it's your understanding that Lynne Egan
12 typically prepares at least the drafts of
13 documents that are filed in court?
14 A. I can't use the word "typically" because
15 I don't work in Lynne Egan's office. Lynne Egan
16 has been glad to tell me she's prepared
17 documents and glad to me that she pleased that the
18 attorneys are please she can prepare the
19 documents. And she even educates them how to
20 prepare the documents effectively so they
21 look good in court.
22 Q. Does Exhibit 34 appear to be something
23 that, to your knowledge, Ms. Egan wrote?
24 A. I don't know that she wrote it and I
25 may be wrong in that I don't think it's great

1 left, for my reasons on why I [illegible] left. And I
2 thought it was factual enough [illegible] people would
3 keep their mouths shut regar[illegible] p.
4 And number three, I w[illegible] t because I
5 don't think it's beyond people [illegible] office if
6 something went wrong to blame me [illegible] something
7 that went wrong if I wasn't th[illegible] ore. So I
8 wanted to expand on the reason[illegible] f tl office.
9 Q. Who did you give this [illegible]?
10 A. Nita Holman.
11 Q. And that's the --
12 A. Human resources.
13 Q. -- HR person you ta k[illegible] e[illegible]lier?
14 When you gave this [illegible] o
15 Ms. Holman, what was her rea[illegible]
16 A. She said she could [illegible] understand.
17 Q. Did she say anythin[illegible]
18 A. She actually made a c[illegible] - t[illegible]t's
19 when she also said something a[illegible] T. Tebow
20 incident and the fact that C[illegible] we[illegible]n't
21 treated too well in the offi[illegible] tl -- in
22 this respect it was better n[illegible] a e t[illegible] t you
23 were Christian. It was stra[illegible]ing
24 Christians and not knowing [illegible] ea other
25 for four years. Not that I [illegible] ela[illegible] to

EXHIBIT 4

1 her, but -- I don't know if I can.
2 It was strange that we'd been her --
3 worked together in the same office for years
4 and didn't know she -- we didn't know e
5 Christians.
6 Q. Ms. Holman has expressed to y this
7 meeting that she was a Christian as we
8 A. Yes.
9 Q. Did she mention any names to out
10 other people who had problems in the o
11 because of their religious beliefs?
12 A. No. But she said she'd had dozen
13 complaints and nothing's been acted on one
14 of the last times I met with her befo ft,
15 she said the morale was terrible in th ding
16 and that two people had been in her o crying
17 that day but they wouldn't go forward
18 anything because they were afraid of tion
19 for something they would say.
20 Q. When you say "that day," the ay
21 that you met with Ms. Holman?
22 A. Probably a week or it before ed
23 with her about leaving.
24 Q. Did Ms. Holman discuss with y
25 nature of the concerns of these two o ople

HIBIT 4

1 information that could be that would be deleted.
2 Q. Did Ms. Cross-Guns indicate how she knew
3 that?
4 A. No. It -- it really wasn't -- I found it
5 humorous more than anything.
6 MR. MONFORTON: Let's go off the record
7 for a moment. Maybe more than a moment.
8 VIDEOGRAPHER: We're going off the
9 record. The time is 12:28.
10 (Whereupon, a break was
11 then taken.)
12 VIDEOGRAPHER: Let's go back on the
13 record. The time is 12:42 p.m.
14 BY MR. MONFORTON:
15 Q. Alan, I want to ask you briefly about the
16 incident that you discussed earlier today in which
17 you were praying on a dock and you had been told
18 that Lynne Egan had been commenting to employees
19 about that incident.
20 Do you -- do you recall what I'm talking
21 about?
22 A. Yes.
23 Q. What time of day did that prayer take
24 place?
25 A. It was a midmorning break.

1 Q. You were on break at the time?
2 A. Yes.
3 Q. I also want to ask you about the
4 conversation you and I had a couple of weeks ago.
5 Do you recall that conversation?
6 A. Some of it.
7 Q. Was it a telephonic conversation?
8 A. Yes.
9 Q. Do you recall if I asked you to provide
10 an Affidavit with regard to the matters we've
11 discussed this morning?
12 A. Yes.
13 Q. What was your response?
14 A. Over the phone I told you I wanted to
15 think about it, but my concern was I was brought
16 into this in a strange manner. I had -- still
17 have no idea who you are and you were asking me to
18 do something that sounded like I was doing
19 something on behalf of a client of yours who I
20 also did not know.
21 So I told you I would call you back in a
22 day or two. And I would have because I told you I
23 would, but I wanted to Google it and think about
24 it. But I didn't understand the nature of it
25 enough. I was also concerned about my involvement

1 THE WITNESS: To create a grand
2 impression of a comparison, if Pat Robertson of
3 CBN University lived in Montana and they were
4 questioned regarding some securities matter or a
5 local pastor in Helena were questioned regarding a
6 securities matter or an important political figure
7 in the state who was also a Christian advocate was
8 questioned in a securities matter, each of those
9 people would be considered differently in regards
10 to how their case would go forward and what that
11 action could result in to the benefit of another
12 party.
13 BY MR. MONFORTON:
14 Q. What do you base that opinion on?
15 A. Human nature.
16 Q. Any person in -- specifically in the
17 auditor's office or people in the auditor's office
18 who would -- would make the difference with regard
19 to those persons?
20 A. Lynne Egan is the most powerful person in
21 that office for making consideration on what
22 charges are applied regarding securities because
23 of the extensive knowledge that she has and the
24 expertise that she has.
25 Jesse Laslovich in stepping into that

1 office that he took over, took control of the
2 attorneys that work for him, did not have the
3 experience that Lynne Egan did to decide which
4 cases would be pursued and which charges would be
5 applied.
6 And in -- in cases that had to be brought
7 forward, he had to rely on Lynne Egan's expertise
8 in order to determine what charges should be
9 applied. Let's -- let's take in the case of
10 Heffelfinger who --
11 MR. WITTICH: Slow down.
12 THE WITNESS: Let's take in the case of
13 Heffelfinger, who Ms. Heffelfinger may well have
14 been complicit and involved in the matter and
15 certainly benefited from the monies involved to
16 buy horses and spent money on gifts. She was
17 given extravagant gifts by him.
18 More than likely, she clearly knew that
19 this money was obtained illegally, and yet charges
20 weren't filed against her. A consideration was
21 made what benefit and effort was involved in the
22 matter, maybe what was winnable, what wasn't. But
23 charges weren't applied.
24 Was she just as complicit as Mr. Himes in
25 that she had knowledge of something that might

EMPLOYEE EXIT COMMENTS

This Employee Exit Comments form is optional. If you wish to make any comments concerning your employment with the Commissioner of Securities and Insurance (CSI) State Auditor's Office, you may do so on this form. Management may wish to use some or all of the suggestions you have made, therefore, comments may not be completely confidential. However, access to your comments will be restricted to individuals with a need to know. Please return this form to the Personnel Specialist before you terminate.

1. Please provide your reason for leaving.
I have had it with poor treatment from management. (see attachment)

2. Is the state pay system an issue? Y or (N)

3. Is management or supervisor an issue? (Y) or N, please explain.
(See Attachment)

4. Please provide any concerns you may have been reluctant to express before.
I don't remember the last time I received encouragement from supervisors.

5. Please provide any constructive criticism, suggestions and/or comments you have about your employment experience.
The Department seems to reek of politics and election concerns.

6. Please provide any concerns you may have had regarding your working conditions, assignments, or supervisors. Jesse Laslovich once said he was concerned about me "as a friend" I told him it was about Lynne and he never said another word to me. Likewise Monica Lindeen does not acknowledge my presense and it's dissappointing.

7. Please provide any other comments you wish to make.

Signature: [signature] Date: 5/1/12

Two years ago, in my annual review, Lynne wrote that I told her this was the last job I would have, meaning I was satisfied. Something about leadership changed since then and my manager disrespects me.

ATTACHMENT TO ALAN LUDWIG EXIT COMMENTS 5/1/2012

1.

In the fall of 2010, I got a flu shot that left me struggling with a vaccine response that my body still has not recovered from. My blood screens are still not normal but my kidney levels have improved. 2011 was a time of struggling with fatigue and pain. I tried to tell Lynne about my health issues but was met with comments about her own arthritis and how we are just getting older. I was then warned by friends to stop talking to Lynne about my illness because not only didn't she believe it, but she was gossiping with others about it, discounting my problems and calling me a hypochondriac. So I kept my problems to myself. Some days, it was difficult to go to work and each time I had blood tested, the doctor would talk with me about seeing a hematologist or other specialist. On a particularly bad day, I went back to the loading dock of the building and prayed. I did not realize Lynne had seen me from her office window until I was told by a friend to go somewhere else to pray because Lynne had seen me from her office window and gossiped about it with others, telling them she saw me weeping on the loading dock. It was painful to know my supervisor could gossip with others about the matter but not be understanding. I would attempt to discount what others have told me as to how I have been the subject of Lynne's gossip, but her gossip to me regarding other coworkers would support a pattern of behavior. The following examples occurred in 2011:

- While the Medical Capital hearing was on, Lynne told me that Jameson Walker was not handling things well. He had been throwing things around the office and crying like a baby. His supervisor Jesse Laslovich told him that maybe he was not cut out to be a trial attorney.
- After the Medical Capital hearing was over, I asked Lynne if she thought the attorneys would take some time off and she said she knew for a fact Mike Windsor was tying one on. That he was probably at home under the covers from drinking.
- As I entered her office one morning, Lynne opened conversation by saying, "Guess who John Morrison is sleeping with now?" and proceeded to tell me who and under what circumstances the news had come out.

These are just a few of many instances in which Lynne has shared personal information about current or former co-workers that I wish I had not heard, from the former SAO employee who shaved his private parts to the contract employee whose husband tells her to dress revealingly for other men to see. It changes one's opinion of those individuals, just as I believe has occurred in my relationship with co-workers and managers
as a result of her gossip.

2.

Shortly after Monica Lindeen became Montana Auditor, Lynne came into my office and asked me to write something about what I knew of what John Forsman did for his job as head of investigations. She said that others in the building were being asked their perceptions of what others did for their jobs so that the new administration could see how workers thought things worked. I made a quick note that I did not have any idea what Forsman did because our office was separate from theirs and hardly interacted. Lynne brought my note to me and said it was not enough; that the new administration was interested in improving how investigations worked. She said feel free to suggest ways to improve things, that nobody I wrote about would

ever read what I wrote. So I wrote about how even the Auditor should know more about securities if they are going to make right decisions on what to pursue, how Forsman seemed seperated from what was going on in our office, how the investigators should be encouraged to get educated on securities and how we could work together on cases and know where we were on things that overlapped, as when evidence on a case was in the investigator office while needed for scheduling of bank records by securities. I was surprised to learn almost a year later that I had been used to demote Forsman, my notes presented to him as evidence of his not doing a good job. I was directed to produce this document under false pretenses for the purpose of demoting a fellow employee.

3.

In my time working for Lynne Egan, I have made clear my Christian faith and the importance of it in my life. Despite that, Lynne has over the years made several negative comments about Christians such as "If they have such faith, why are they afraid of dying" and "all organized religion is just fairy tales." Recently, Lynne received a gift basket "joke" from co-workers that included a Holy Bible and a book of faith messages. Instead of being concerned that a Christian might take offense, she spent days with the basket in her office dividing the contents. The Bible was passed from office to office like a white elephant gift.

4.

Lynne has written me off as a part of the Securities Department, leaving me out of any part in the creation of the Department's Gold Diggers documentary, fielding more of the incoming complaints, taking over cases that I began, such as the Richard Reynolds case, and not inviting me to meetings such as scheduled FINRA conference calls in her office that all others in securities were attending.

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matthewmonforton@yahoo.com

Attorneys for Defendant Harris Himes

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT
RAVALLI COUNTY

STATE OF MONTANA,	)	Case No. DC 11-117
	)	
Plaintiff,	)	[Assigned to the Honorable Loren Tucker]
	)	
	)	**AFFIDAVIT OF HARRIS HIMES**
vs.	)	
	)	
HARRIS HIMES,	)	
	)	
Defendant.	)	
	)	

STATE OF MONTANA)
: ss
County of Ravalli)

Harris Himes, after being first duly sworn, deposes and states as follows:

1) My statements in this Affidavit are made without waiving any of the rights provided to me by Mt.R.Evid. Rule 104(d) and the Fifth Amendment to the U.S. Constitution.

EXHIBIT 5

2) I have been active in conservative Christian politics in Montana for over a decade. As the pastor of Big Sky Christian Center, a volunteer attorney for the Alliance Defense Fund (now the Alliance Defending Freedom), the president of the Montana Family Coalition (formerly the Montana Christian Coalition), and the president of Montana Eagle Forum, I have advocated for pro-family, pro-life, pro-traditional marriage bills and causes during this time.

3) I have been active in conservative politics in Montana for over a decade and have testified numerous times before the House Judiciary Committee and the Senate Judiciary Committee since 1999 regarding bills of interest to conservative Christians.

4) One of the prosecutors in this matter, Jesse Laslovich, was a state senator and was present during Senate Judiciary hearings when I testified regarding the following bills:

- SB 199 (2005) (inclusion of sexual orientation in human rights statutes);
- SB 202 (2005) (inclusion of sexual orientation to malicious intimidation law);.
- SB 330 (2005) (parental notification for abortion)
- SB 371 (2007) (inclusion of sexual orientation and gender identity to certain statutes)
- SB 46 (2009) (protection of unborn life)
- SB 497 (2009) (criminalization of obstruction of protests at healthcare facilities)
- SB 223 (2009) (revision of hate crimes statute to include sexual orientation)
- HB 516 (2011) (prohibiting local ordinances pertaining to gay rights)

5) With regard to one of the bills, (SB 497), then-Senator Laslovich directed questions to me during a hearing on the bill.

6) The State has referenced a check dated December 12, 2008, for $750 which is marked as Bates No. 747. The purpose of this check was to reimburse me for a water filter system I purchased from Costco at the request of James "Jeb" Bryant as well as for filing fees and services I performed for an Illinois corporation called Golden Equities Trading Company.

7) The memorandum line on Bates No. 747 states "WATERFILTER GET." This is a reference to the water filter system I purchased as well as the services I performed and the fees I paid on behalf of Golden Equities Trading Company, a.k.a. "GET."

EXHIBIT 5

8) A true and correct copy of a Costco receipt dated November 30, 2008, which reflects my purchase of the water filter system, is attached as Exhibit 5A (the "RO" stands for "reverse osmosis.")

9) A true and correct copy of a letter dated December 5, 2008, from the Illinois Secretary of State verifying my services to GET is attached as Exhibit 5B.

FURTHER AFFIANT SAYETH NAUGHT

DATED this 21st day of September, 2012.

Harris Himes
Affiant

STATE OF MONTANA)
) :ss
County of Ravalli)

On this 21st day of September, 2012, before me, a Notary Public in and for the state and county aforesaid, personally appeared Harris Himes, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

SANDRA L SHEETS
NOTARY PUBLIC for the State of Montana
Residing at Corvallis, Montana
My Commission Expires April 01, 2013
NOTARIAL SEAL
STATE OF MONTANA

Sandra L Sheets
NOTARY PUBLIC for the State of Montana
Residing at: Corvallis MT
My commission expires: 04-01-2013

EXHIBIT 5

PETITIONER'S EXHIBIT F 233

Warehouse: 368
Sales Date: 11/30/08 Reg#: 7 Trans Type: Tender
Time: 12:13 Tran#: 123 Tender:
Total: 558.16 Operator: 14 Block:
Member #: 000302402562050 HIMES, HARRIS Mbr Type: Business
Tax: 33.11 Resale Total:

FSA/ EBT	Item	Description	Amount	Units
	128367	SALSA FRESCA RICE CRISPS	4.99	1
	333614	NUEVA COCINA MEXICAN RICE	5.89	1
	334198	STAGG STEAKHOUSE RESERVE	10.79	1
	739538	WHEAT THINS 40Z	6.39	1
	322637	4 STAGE RO SYSTEM BRUSHED	199.99	1
	322637	4 STAGE RO SYSTEM BRUSHED	199.99	1
	352864	WATTS 4 STAGE R/O NICKEL	20.00-	1-
	352864	WATTS 4 STAGE R/O NICKEL	20.00-	1-
	293793	BIONAIRE MICA PANEL HTR	54.99	1
	364590	BIONAIRE MICA PANEL HEATR	5.00-	1-
	353571	CHILDREN OF HURIN TP	8.99	1
	285057	FIELD & STREAM MENS	12.99	1
	285064	FIELD & STREAM MENS	18.99	1
	285064	FIELD & STREAM MENS	18.99	1
	293278	KS WOOL SOCK 4PK	9.99	1
	45341	STRINGLESS SNAP PEA	5.49	1
	46507	TANGERINES	3.59	1
	83337	RED SEEDLESS GRAPES	7.99	1
		Check	558.16	

*** END OF REPORT ***

EXHIBIT 5A

OFFICE OF THE SECRETARY OF STATE

JESSE WHITE • Secretary of State

DECEMBER 5, 2008 6146-306-2

GOLDEN EQUITIES TRADING COMPANY
HIMES EDWARD BRYANT
9572 GENERAL LEE
ST LOUIS, MO 63126-3310

RE GOLDEN EQUITIES TRADING COMPANY

DEAR SIR OR MADAM:

ENCLOSED YOU WILL FIND THE REINSTATEMENT REGARDING THE ABOVE NAMED CORPORATION.

FEES IN THIS CONNECTION HAVE BEEN RECEIVED AND CREDITED.

THE DOCUMENT MUST BE RECORDED IN THE OFFICE OF THE COUNTY IN WHICH THE REGISTERED OFFICE WAS LOCATED PRIOR TO THE DISSOLUTION, AS PROVIDED BY THE ILLINOIS BUSINESS CORPORATION ACT.

MANY SERVICES ARE NOW AVAILABLE ON-LINE AT WWW.CYBERDRIVEILLINOIS.COM. YOU MAY CHECK THE STATUS OF THIS CORPORATION, PURCHASE A CERTIFICATE OF GOOD STANDING OR FILE AN ANNUAL REPORT WHEN IT IS DUE.

SINCERELY,

JESSE WHITE
SECRETARY OF STATE
DEPARTMENT OF BUSINESS SERVICES
TELEPHONE (217) 782-6961

EXHIBIT 5B

State of Montana v.
Harris Himes

Patrick Navarro
July 31, 2012

Charles Fisher Court Reporting
503 East Mendenhall
Bozeman, MT 59715
(406) 587-9016
maindesk@fishercourtreporting.com

EXHIBIT 6

1 MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT
2 RAVALLI COUNTY
3
4 STATE OF MONTANA,
5 Plaintiff,
6 vs. Cause No. DC-11-117
7 HARRIS HIMES,
8 Defendant.
9
10 DEPOSITION UPON ORAL EXAMINATION OF
11 PATRICK NAVARRO
12
13
14 BE IT REMEMBERED, that the deposition
15 upon oral examination of PATRICK NAVARRO, appearing
16 at the instance of the Defendant, was taken via
17 video conference at the offices of Fisher Court
18 Reporting, 21 North Last Chance Gulch, Suite 201,
19 Helena, Montana, on July 31, 2012, beginning at
20 2:00 p.m., pursuant to Montana Rules of Civil
21 Procedure, before Jennifer Lewis, Court Reporter
22 and Notary Public.
23
24
25

1 APPEARANCES
2 ATTORNEY APPEARING ON BEHALF OF THE PLAINTIFF,
3 STATE OF MONTANA:
4 Mr. Brett O'Neil, Esq.
5 Office of the Commissioner of Securities
6 and Insurance
7 840 Helena Avenue
8 Helena, MT 59601
9 ATTORNEY APPEARING VIA VIDEO CONFERENCE ON BEHALF OF
10 THE DEFENDANT,
11 HARRIS HIMES:
12 Mr. Patrick F. Flaherty, Esq.
13 Attorney at Law
14 1026 First Avenue South
15 P.O. Box 1968
16 Great Falls, MT 59403
17
18
19
20
21
22
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25

1 I N D E X
2 EXAMINATION OF PATRICK NAVARRO: PAGE
3 By Mr. Flaherty, Esq. 4, 35
4 By Mr. O'Neil, Esq. 35
5
6 E X H I B I T S
7 EXHIBITS: PAGE
8 Exhibit J50 Exit Interview of
9 Alan Ludwig. 4, 10, 19-20
10 Exhibit J51 Training Course Manuals. . . . 10
11 Exhibit J52 Draft Come Clean Letter. . . . 12
12
13
14
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1 WHEREUPON, the following proceedings were
2 had and testimony taken, to wit:
3 * * * * * * * *
4
5 (Whereupon, Deposition
6 Exhibit Number J50 was
7 marked for identification.)
8
9 PATRICK NAVARRO,
10 called as a witness herein, having been first duly
11 sworn, was examined and testified as follows:
12
13 EXAMINATION
14 BY MR. FLAHERTY:
15 Q. Are you the only person in the room right
16 now, besides Brett and the court reporter?
17 A. Yes.
18 Q. Okay. And then when you're done, the
19 other people are in the waiting room, they get
20 brought in serially, is that how we'll do this?
21 A. Yes.
22 Q. And I see Brett is nodding his head up
23 and down. All right. And just before this, I got
24 to know that you're an honorably discharged Marine
25 who served in Iraq. Thank you. And give me a

1 **Q. How do you know Tom?**
2 A. He's also a co-worker.
3 **Q. And how long has Tom McGaffee been**
4 **working there?**
5 A. About a month and a half to two months
6 now.
7 **Q. Does he know anything about the Harris**
8 **Himes case or investigation?**
9 A. Not to my knowledge.
10 **Q. Do you have any discussions about the**
11 **Harris Himes or the Jeb Bryant case with anybody at**
12 **the CSI office?**
13 A. No, I do not.
14 **MR. FLAHERTY:** Let's take a one-minute,
15 off-the-record break to see if those other exhibits
16 came through.
17 (Whereupon, a break was
18 taken.)
19 **BY MR. FLAHERTY:**
20 **Q. Back on the record. We're trying to**
21 **search for the truth in this Harris Himes criminal**
22 **case that's pending. You know, if there's stuff**
23 **that makes him guilty, we want to know it; if**
24 **there's stuff that makes him innocent, we want to**
25 **know it. If there's anything that you know in your**

1 **office that would help us in the search for the**
2 **truth, that's why we took this interview, you know,**
3 **we're trying to learn that?**
4 A. Yes.
5 **Q. You've answered all of these questions**
6 **just to the best of your ability, right?**
7 A. Yes.
8 **Q. Is there anything more that you can think**
9 **of that would help the jury or the judge find out**
10 **the truth in this?**
11 A. No.
12 **Q. If you were to continue to investigate**
13 **this, what else could you do?**
14 A. I was not part of the initial
15 investigation, so I don't know what was done
16 already. So I can't speak on what else can be
17 done.
18 **Q. Okay. All right. That's all I have.**
19 **Thank you so much, Mr. Navarro.**
20 A. You're welcome.
21 **MR. O'NEIL:** Pat, I just wanted to clear up
22 one thing here. It's my turn to ask you questions
23 now.
24
25 ///

1 **EXAMINATION**
2 **BY MR. O'NEIL:**
3 **Q. Do you know when the CSI started keeping**
4 **visitors' logs?**
5 A. I do not.
6 **Q. Okay. Do you know who decides whether or**
7 **not to prosecute or take administrative action?**
8 A. I do not.
9 **Q. Do you send the come clean letter to**
10 **every single company?**
11 A. Me personally, I do not.
12 **Q. Okay. Thank you.**
13 **MR. O'NEIL:** No further questions.
14
15 **EXAMINATION**
16 **BY MR. FLAHERTY:**
17 **Q. Let me back up on that. How do you**
18 **determine when to send out a come clean letter or**
19 **not?**
20 **MR. O'NEIL:** Asked and answered, Pat.
21 **BY MR. FLAHERTY:**
22 **Q. He said, do you do it in every single**
23 **case. So let's just, how many cases that you**
24 **investigate do you send a come clean letter out on?**
25 A. If the company is not registered with

1 Montana, then we send them a letter.
2 **Q. Or an individual, right? If an**
3 **individual's not registered, they get a come clean**
4 **letter too?**
5 A. Yes.
6 **Q. And that's not written down, but that is**
7 **the standard operating procedure as is taught and**
8 **trained to you, right?**
9 A. You could say yes to that, yeah.
10 **Q. All right.**
11 **MR. FLAHERTY:** That's all I've got.
12 (Whereupon, the deposition
13 was concluded at 3:00 p.m.)
14
15
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24
25

EXHIBIT 6

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Attorneys for Defendant Harris Himes

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT

RAVALLI COUNTY

STATE OF MONTANA, Plaintiff, vs. HARRIS HIMES, Defendant.	Case No. DC 11-117 [Assigned to the Honorable Loren Tucker] **AFFIDAVIT OF PATRICK FLAHERTY**

EXHIBIT 7

STATE OF MONTANA)
: ss
County of Cascade)

Patrick F. Flaherty, after being first duly sworn, deposes and states as follows:

I am counsel for Defendant Harris Himes in the above entitled matter. I have *firsthand* knowledge of the facts contained in this Affidavit and, if called to testify at a hearing or trial, could and would testify truthfully to the following:

1) Sometime after November 2011, I contacted the attorneys for the State to set up interviews with witnesses.

2) The prosecution, Mr. Laslovich and Mr. O'Neil, stated that they would not allow Mr. Himes to be personally present at the interview(s).

3) We have conducted interviews and depositions of witnesses in this case in the absence of my client in compliance with this condition and all other conditions required by the prosecution.

FURTHER AFFIANT SAYETH NAUGHT

DATED this 14 day of September, 2012.

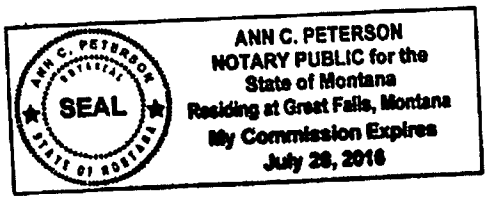
Patrick F. Flaherty
Affiant

EXHIBIT 7

STATE OF MONTANA)
: :ss
County of Cascade)

On this 14 day of September 2012, before me, a Notary Public in and for the state and county aforesaid, personally appeared Patrick F. Flaherty, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.



Ann C. Peterson
Printed Name: Ann C. Peterson
NOTARY PUBLIC for the State of Montana
Residing at: Great Falls, Montana
My commission expires: July 28, 2016

EXHIBIT 7

MONTANA SECURITIES DEPARTMENT
INVESTIGATION REPORT

CASE NUMBER: 02-01-11-341 I

PREPARED BY: Lynne Egan

SUBJECT: James Bryant, Harris Himes, Duratherm Building Systems, Inc. and Monarch Beach Properties LLC

DATE: April 20, 2011

This investigation was opened as the result of a conversation with and referral from Detective Sergeant Sterling Maus (Detective Maus) of the Ravalli County Sheriff's Office on January 26, 2011 regarding a $150,000 investment made by Geoffrey Serata (Serata), a resident of Hamilton, Montana. Detective Maus told the Department that Serata had contacted the Sheriff's Office regarding an investment he had made with two pastors of his church, Calvary Ministries, in Hamilton Serata reported that he made the $150,000 investment in a company called Duratherm Building Systems, Inc (DBS) on June 6, 2008 and, to date has received no evidence of his ownership in the company no return on his investment as promised, and that Pastor Harris Himes (Pastor Himes) and Pastor James Bryant (Pastor Bryant) will not return his telephone calls or provide him any information regarding the investment.

I. BACKGROUND OF SUBJECTS

James Edward Bryant (*a/k/a Jeb Bryant*) – Bryant's last known address is P O Box 540, Hamilton, MT 59840 and 116 Bowman Road, Hamilton, MT 59840 Bryant's date of birth is November 11, 1960. Bryant's Social Security number is 414-11-1745 Bryant is a pastor with Calvary Chapel in Hamilton. Bryant is not now nor has he ever been licensed to offer and sell securities in Montana. Bryant has the following criminal history record

Date	Issue	State
6/20/1999	DUI	Tennessee
5/12/2000	Public Intoxication	Tennessee
3/30/2001	DUI	Tennessee
10/14/2003	Driving on Revoked/Suspended License, Speeding; Aggravated Burglary	Tennessee
3/12/2004	Evading Arrest Speeding Driving on Revoked License	Tennessee
4/8/2004	Contempt/Evading Arrest Driving on Revoked License, Aggravated Burglary	Tennessee
4/26/2004	Contempt/Violation Registrations Speeding Evading Arrest,	Tennessee

EXHIBIT 8

	Resisting Arrest, Drug Possession Marijuana, Possession Cocaine: Possession Drug Paraphernalia	
5/14/2004	Resisting Arrest; Evading Arrest	Tennessee
5/29/2004	Possession of Drug Paraphernalia; Possession marijuana	Tennessee
12/22/2005	Attachment for Contempt, Violation Probation Misdemeanor, Violation of Probation - Felony	Tennessee
7/23/2006	Criminal Impersonation	Tennessee
1/20/2007	Driving on Revoked License	Tennessee

Harris Day Himes – Hime's last known address is P O Box 540, Hamilton, MT 59840 and 116 Bowman Road, Hamilton MT 59840 Hime's date of birth is March 26 1942. Hime's Social Security number is 555-60-4998 Himes is allegedly an attorney and he is also a pastor at Big Sky Christian Center in Hamilton Himes is not now nor has he ever been licensed to offer and sell securities in Montana

Duratherm Building Systems, Inc. – Duratherm Building Systems, Inc. (DBS) does not appear to be registered in any of the 50 states as a business entity. DBS has not made any filings with the Securities and Exchange Commission nor has it made any filings with the Montana Securities Department Duratherm has a web site of http://durathermsips.com. On its website it purports to build structural insulated panels It lists a contact address of dura @gmail.com It lists a phone number in Mexico of 52.954.104 2415, however, the number does not work It lists a phone number in the USA of 202-239-2009 and the person who answers is James Bryant On its website it purports to have a facility in Costera, Puerto Escondido Oxaca, Mexico.

Monarch Beach Properties LLC – Monarch Beach Properties LLC, according to instructions provided to Serata by Pastors Himes and Bryant on where to send his $150,000 investment, is located at 876 College Parkway, Rockville, MD 20850 A review of this address indicates this location is an apartment complex. A review of the Maryland Secretary of State's records indicates Monarch Beach Properties has never filed LLC documentation Monarch Beach Properties LLC, according to the documents on file with Harris Bank, is located at P O. Box 540, Hamilton, MT 59840. Monarch Beach Properties has never filed with the Montana Secretary of State. The two signatories for the Harris Bank account are James and Diana Bryant

II. BACKGROUND OF VICTIM:

Geoffrey Serata, is 52 years old, lives in Hamilton, MT, and can be reached at (406) 369-1336 Serata suffers from advanced liver disease from hepatitis C, arthritis, has multiple fused vertebrae and a failing fused hip that is leaking cobalt into his body. Serata is disabled Prior to his being disabled, Serata was a master electrician Serata has no retirement and no retirement savings

III. TIMELINE OF INVESTMENT:

December, 2007 - Serata received notice that he would be inheriting approximately $150 000 from a step-grandmother

January/February 2008 – Serata discussed his impending inheritance with Pastor Himes Himes introduced Serata to an investment in DBS. Himes told Serata that, in exchange for a $150,000 investment. Serata would receive a 20% minimum annual return for 2 years or a 5% ownership with DBS with a 20% annual return and 'perks" for a longer-term investment.

March 2008 – Pastor Bryant did a Power Point presentation for Serata about DBS. Serata agreed to a $150,000 investment, which would give him a 5% ownership in DBS

June 6, 2008 – Serata wired $150,000 from his account (entitled "Image of Truth") to Harris Bank in Chicago, IL f/b/o Monarch Beach Properties, LLC, Acct. 4802208553

June 26, 2008 – Serata travelled to and arrived in Lewisville, TX to join Pastor Bryant. Serata did so because he was told he would be paid to provide electrician services.

July 24, 2008 – Serata and Bryant left Texas for Mexico, arriving in Puerto Escondido, where DBS's facility was allegedly located

August 10 2008 – Pastor Bryant left Puerto Escondido, leaving Serata behind and alone

August 27, 2008 – Serata left Puerto Escondido and returned to the United States

IV. INVESTIGATION.

The Department reviewed information provided by Serata to Detective Maus

In early January 2008, Serata discussed with Pastor Himes the fact that he was about to inherit $150,000. Serata told Himes he wanted to invest the money in an ultra-conservative, risk-free investment that would provide income to support ministry work and provide a retirement income. Pastor Himes solicited Serata to invest in DBS, a company Pastor Himes and Pastor Bryant told Serata they had created to build structured insulated panels (SIPs). The Pastors told Serata that they, too, would be investing in DBS once they sold their interests in a mining venture

Serata claims the Pastors told him the DBS investment was a "sure thing" and that the investment would be doing the "Lord s work" by making SIPs to build churches, orphanages hospitals and shelters for the homeless The Pastors told Serata, both verbally and in e-mail, that DBS could produce 200 panels per day at its facility in Puerto Escondido, Oaxaca, Mexico, with a profit of $10.00 per panel. They told him, both verbally and in an e-mail dated May 28, 2008 from Pastor Bryant that DBS had buyers waiting to purchase 800 homes. They told him a group in Costa Rica wanted DBS to build them a similar structural insulated panel factory and that two more deals were being worked out with Canada and China

Serata claims the Pastors told him DBS had a factory in Puerto Escondido as well as a 5-year access to a beach house. Serata claims the Pastors enticed him into the investment by telling him they would use him as an electrician at the factory, setting up a new glue gun. He was to

be paid by DBS at a rate of $1,000/week plus expenses. In an e-mail dated May 28, 2008 from Pastor Bryant (jeb1160@yahoo.com), Pastor Bryant told Serata he would earn 24%, or $36,000 a year, on his investment He went on to state the long term looks much stronger for the investment.

The Pastors provided Serata with a Subscription Agreement for his investment in DBS. A review of the subscription agreement indicates the following

a. Page 1 includes language that "Each share controls POINT ZERO ZERO TWO (002) percent of the company and all ore values. (***According to the Pastors, DBS built structured insulated panels and was not involved in mining***).
b. Page 1 includes language that "It [each share] also guarantees that the subscriber shall receive POINT ZERO ZERO TWO (.002) percent royalties of the mine's defined net profits. (***Again, DBS allegedly built structured insulated panels, it was not a mine.***)
c. Page 1 indicates DBS relied on Sections 3(b), 4(2), 4(6) and if applicable, Regulation D of the Securities Act of 1933. (***Again, DBS has never filed with the Securities and Exchange Commission.)***
d. Item 7 on page 2 indicates "Subscriber is accepting shares in DBS solely as an investment" (***This clearly articulates the fact this opportunity is an <u>investment</u> opportunity***)
e. Item 10 on page 2 indicates "all distributions of funds are overseen by the [DBS] board of directors. (***There does not appear to be a Board of Directors and all of Serata's investment funds went into a bank account for Monarch Beach Properties, LLC which was controlled solely by Pastor Bryant and his wife, Diana.***)
f. Item 10 on page 2 indicates "the officers shall keep books of accounts into which each transaction shall be fully and accurately entered These books of account shall be kept at the company's principal office and shall be available during reasonable business hours for inspection and examination by any investor or representative ." (***Serata's investment funds were placed in an account entitled Monarch Beach Properties at Harris Bank which is an account owned and controlled by Pastor Bryant and his wife. Serata has not been provided access to DBS financial records.***)
g. Page 3 includes language that "Subscriber understands that DBS will issue certificates of ownership and royalty income in the form of Cash Dividends and Cash Dividends, Villa, Annuity. (***Serata has not receive a certificate of ownership nor has he received any Cash Dividends or Cash Dividends, Villa, Annuity***)
h. Page 4 indicates in exchange for $150,000, the subscriber (Serata) would receive POINT EIGHT THREE percent (6%) ownership in DBS. (***0083 is not equal to .06***).

On June 6, 2008 Serata wired $150.000 from Ravalli County Bank in Hamilton to Harris Bank in Rockville, MD. According to bank wiring instructions provided to Serata by the Pastors, the recipient account was Monarch Beach Properties. LLC, located at 876 College Parkway. Rockville, MD 20850. A review of the Harris Bank account statements and supporting financial instruments indicate Serata's money was spent as follows·

$ 56.668.78	Various payees, including Bryant and Himes
$ 17,312 46	American Express credit card
$ 99.71	Bank of America credit card
$ 46,884 44	Chase credit card

EXHIBIT 8

$ 12,729 34	Discover credit card
$ 1,319.00	Goel Forwarding Agency
$ 10,860 55	Various providers
$ 4 029.42	Merchandise (groceries, etc.)
$ 96 30	Bank fees
$150,000.00	**TOTAL**

Serata travelled to Texas in late June 2008 and purchased multiple items to take to the DBS facility in Puerto Escondido where he understood he would be providing his electrician services for compensation of $1,000 per week. He them travelled to Puerto Escondido with Pastor Bryant. When he arrived at the location where the DBS facility was supposed to be located he described it to the Securities Department as a "shed" on a farmer's land. Serata spent 17 days in Puerto Escondido with Pastor Bryant, attempting to get DBS up and running but determined there had been nothing purchased, there was no electricity to the "shed", there was no documentation for DBS and there was no beach house

In an e-mail to Pastor Bryant dated August 17, 2008, Serata demanded the following information regarding his investment in DBS

1. All assets held by DBS
2. Names of partners, their percentage of ownership, their type of investment (cash, real estate, etc.)
3. The relationship between DBS and Monarch Beach Properties, LLC, Monarch Beach Cloisters, and any other related businesses, companies, corporations
4. Qualification of his DBS position as a 6% shareholder
5. Qualification of the other shareholders and their position
6. Any other investors and their investments
7. Duratherm's expenses, to date
8. All other pertinent information
9. Technical information on everything

Pastor Bryant's e-mail response to Serata dated August 20, 2008 was that DBS is "50% held by God's Eternal Testament, 5% by Filipe, 6% by Serata, 39% by Monarch Beach (note, this does not add to 100%.) Pastor Bryant further states that Monarch Beach's 39% ownership owners are his wife Diana, his mom 3 of his cousins, Ryan Bell, Brad Hyde, Kathy Sayer and Pastor Harris. Pastor Bryant remained silent to all of Serata's additional requests for information

In an e-mail from Serata to Pastor Harris dated August 22, 2008, Serata confronted him with allegations of fraud. He stated there was no factory, no beach house, and that he had been scammed

In an e-mail dated September 9, 2008 to both Pastors, Serata summarizing events leading up to his investment and his trip to Mexico and the fact that he believed he had been scammed At the end of the e-mail he explained he was planning on filing criminal complaints and invited them to participate in "reconciliation "

In a response to Serata's September 9, 2008 e-mail dated September 16, 2008. Pastor Harris claimed that he had never suggested Serata invest in DBS; he stated Serata was a sophisticated businessman, he stated Serata was never offered an investment with a 20% per year return; he stated the venture was a start-up venture; he told Serata that he and Pastor Bryant had turned down another potential investor in anticipation of Serata's investment and that Serata's $150,000 came 2-months later than expected; he told Serata he was not asked to go to Mexico; he accused Serata of driving a DBS vehicle back to the United States without permission; and admitted the beach house was not on the beach At the end of the e-mail he stated that he was parting friends with Serata and that DBS was under no obligation to "buy you out but will endeavor to do so "

After not hearing from the Pastors for over six months, Serata filed a police report with the Ravalli County Sheriff's Department on May 3. 2009 To date, Serata has not received any documentation of his investment, has not received a return on his investment and has not received a return of his principal.

POSSIBLE VIOLATIONS:

Violations by Pastor Bryant and Pastor Himes

Pursuant to §30-10-201(1). MCA, "it is unlawful for a person to transact business in this state as a broker-dealer or salesperson, except as provided in 30-10-105. unless the person is registered under parts 1 through 3 of this chapter.

Pastor Bryant and Pastor Himes may have violated §30-10-201(1), MCA, when they offered and sold and investment in Duratherm Building Systems. Inc to Geoffrey Serata without being registered in Montana as a salespeople.

Pursuant to §30-10-201(13)(g), MCA and ARM 6 10.126, forgery. theft, non-disclosure, incomplete disclosure, misstatement of material facts. manipulative and deceptive practices are all deemed fraudulent, dishonest and unethical practices

Pastor Bryant and Pastor Himes may have engaged in dishonest and unethical practices in the securities business when they misappropriated the money entrusted to them by Geoffrey Serata and by engaging in other conduct such as forgery. theft. non-disclosure. incomplete disclosure, misstatement of material facts, manipulative and deceptive practices

Pursuant to §30-10-301(1)(b), MCA, it is unlawful for any person, in connection with the offer, sale or purchase of any security in, into, or from this state to "make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made in light of the circumstances under which they are made, not misleading."

Pastor Bryant and Pastor Himes may have violated §30-10-301(1)(b). MCA in connection with the offer and sale of a security when they made untrue statements of material fact when they told Geoffrey Serata that Duratherm Building Systems, Inc. had buyers waiting to purchase 800 homes, when they told him a group in Costa Rica wanted Duratherm Building Systems, Inc. to build them a similar structural insulated panel factory and when they told him that two more deals were being worked out with Canada and China when the factory was actually only a shed and was not producing SIP panels.

Pastor Bryant and Pastor Himes may have also violated §30-10-301(1)(b), MCA when they, in connection with the offer and sale of a security,

- Omitted the fact that they were not registered to sell securities in the State of Montana;
- Omitted the financial condition of Duratherm Building Systems, Inc.
- Omitted specific information about how the proposed rates of return on the investment were to be generated
- Omitted background information on the officers and directors, including but not limited to their names, principal occupations for the previous five years, ownership or interest held by each person
- Omitted the risks involved with the investment
- Omitted the fact that Serata's investment monies would be held in an account controlled by Pastor Bryant and his wife;
- Omitted the fact that Serata's investment monies would be used for purposes other than operating Duratherm Building Systems, Inc
- Omitted the issuer's background and/or history, including but not limited to, any regulatory or criminal action issued against the issuer or its offers and directors, among other things

Pursuant to §30-10-301(1)(c), MCA, it is unlawful for any person, in connection with the offer, sale or purchase of any security in, into, or from this state to engage in any act, practice or course of business that operates or would operate as a fraud or deceit upon any person."

Pastor Bryant and Pastor Himes may have violated §30-10-301(1)(c), MCA in connection with the offer and sale of a security when they engaged in an act, practice or course of business that operates or would operate as a fraud or deceit upon Geoffrey Serata by offering him an investment in Duratherm Building Systems, Inc and told him they had buyers waiting to purchase 800 homes, when they told him a group in Costa Rica wanted Duratherm Building Systems, Inc. to build them a similar structural insulated panel factory and when they told him that two more deals were being worked out with Canada and China, when the factory was actually only a "shed" and not producing SIP panels

Pastor Bryant and Pastor Himes may have violated §30-10-301(1)(c), MCA when they engaged in an act, practice or course of business that operates or would operate as a fraud or deceit upon Geoffrey Serata, in connection with the offer and sale of a security, by

- Omitted the fact that they were not registered to sell securities in the State of Montana,
- Omitted the financial condition of Duratherm Building Systems Inc
- Omitted specific information about how the proposed rates of return on the investment were to be generated
- Omitted background information on the officers and directors, including but not limited to their names principal occupations for the previous five years ownership or interest held by each person
- Omitted the risks involved with the investment;
- Omitted the fact that Serata's investment monies would be held in an account controlled by Pastor Bryant and his wife;
- Omitted the fact that Serata's investment monies would be used for purposes other than

operating Duratherm Building Systems, Inc.

- Omitted the issuer's background and/or history, including but not limited to, any regulatory or criminal action issued against the issuer or its offers and directors, among other things.
- By failing to produce the promised rates of returns, among other things.

Violations by Duratherm Building Systems, Inc.

Pursuant to §30-10-202, MCA, it is unlawful for any person to offer or sell any security in this state, except securities exempt under §30-10-104 or when sold in transactions exempt under §30-10-105. "

Duratherm Building Systems, Inc. may have violated §30-10-202, MCA when it offered and sold an investment to Geoffrey Serata without proper registration in this state and without the benefit of an exemption.

Pursuant to §30-10-301(1)(b), MCA it is unlawful for any person, in connection with the offer, sale or purchase of any security in, into, or from this state to "make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading."

Duratherm Building Systems, Inc. may have violated §30-10-301(1)(b) when it represented to investors that its offering was qualified pursuant to Regulations D of the Securities and Exchange Act of 1933 when the offerings may not have qualified.

Duratherm Building Systems, Inc. may have violated §30-10-301(1)(b) when it made its securities available to Montana residents without proper registration in this state and without the benefit of an exemption.

STATE OF MONTANA

DEPARTMENT OF JUSTICE

INFORMATION TECHNOLOGY SERVICES DIVISION

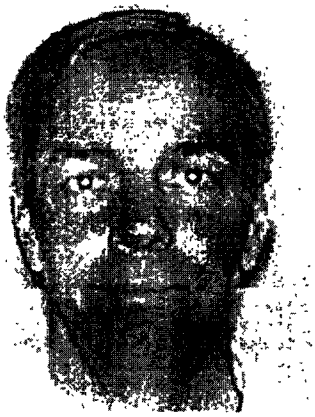
Mike McGrath
Attorney General

303 North Roberts, 5th Floor
Helena, Montana 59620-1405

THE ENCLOSED RECORD IS FURNISHED FOR LAW ENFORCEMENT USE ONLY

Photo ID of: **Last Name:** BRYANT
First Name: JAMES
OLN: 110431960411
Attention: ROB SMITH

Portrait



Signature

Drivers License Number	[illegible]	Customer Number	[illegible]
First Name	[illegible]	Last Name	[illegible]
Middle Name	[illegible]	Gender	[illegible]
Date Of Birth	[illegible]	Transaction Type	[illegible]
Image Create Date	[illegible]	Date Issued	[illegible]
Eye Color	[illegible]	Hair Color	[illegible]
Height	[illegible]	Weight	[illegible]
Workstation	[illegible]	Race	
Operator	[illegible]	Card Serial Number	
Document Type	[illegible]	State Transaction Id	
Address	PO BOX [illegible]	Location Name	
Address2		Document Expiration Date	[illegible]
City	HAMILTON	Class Of License	[illegible]
State	MT	Endorsements	[illegible]
Zip	[illegible]	Restrictions	[illegible]
Mailing Address1		Mailing Address2	
Mailing City		Mailing State	
Mailing Zip		Special Restrictions	

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Telephone: (406) 444-2800 FAX: (406) 444-4158

13-16
(21 pgs)

MKE/DR ORI MT0LN0000 FBST/MTO-[illegible] REQ/LSM13[illegible]

*** EXACT MATCH OF DL WILLS AS REQUESTED ***

>>>>>>>>>>>>>>>>>>>>

NAM/HIMES,HARRIS DUI LEGAL JUNE
SEX/M DOB/19400376 HGT 600 WGT 180 EYE/BRO
PO BOX 540 HAMILTON MT 59840

116 BOWMAN RD HAMILTON MT 5984[illegible]

CLN/0100416942 LOC OLT/TRIPPER OLS/MT MC ENDORSE/NONE
STATUS/VALID EXP/20140226

ISS DT/20060309 LST LIC [illegible]
RESTRICTIONS:
CORRECTIVE LENS

PREVIOUS OLN/555-04999

MRI 1346544 IN MUDD [illegible] AT 02MAY2010 00:31:21 OUT J13002 139 AT 02MAY2010
09:33:26

EXHIBIT 8

MKE/DR LRI,MIOLNO,CO LBST,MT,12C5JN REQ/LSM,LI6XXX

*** EXACT MATCH OF DL FILES AS REQUESTED ***

>>>>>>>>>>>>>>>>>>>>

NAM/BRYANT,JAMES EDWARD IWCOL NONE
SEX/M DOB/19621111 HGT/600 WGT/220 BTH/BRO
116 BOWMAN HAMILTON MT 59840

OLN/110431060 CLT DRIVER OLN,MT NO END,RES,STANDARD MOTORCYCLE
STATUS/VALID EXP/20141111

ISS DT/2007/06 10T 2/0 10 2007

MST 1646513 [illegible]
[illegible]

MKE/CH ORI/MI0470[illegible] DEST MI0110[illegible]N REQ/LS[illegible]1316XXX

NO IDENTIFIABLE RECORD IN THE NCIC INTERSTATE IDENTIFICATION INDEX
(III) FOR NAM/HIMES,HARRIS DAY DOB/19120326 SEX/M RAC/U SOC [illegible]
PUR/C.
NOTICE -- A LARGE NUMBER OF RECORDS FOR PERSONS BORN PRIOR TO 1936 ARE
NOT AUTOMATED AT THE FBI. IF A SEARCH OF THE NONAUTOMATED FILES IS
DESIRED, A FINGERPRINT CARD SHOULD BE SUBMITTED.
END

MSG 1347368 IN [illegible] AT 02MAY2003 10:03:19 OUT [illegible] 144 FI 02MAY2003
10:03:18

EXHIBIT 8

MKE/TR CR1[illegible] [illegible] LSM1[illegible]XXX

MONTANA CRIMINAL HISTORY NAME AND IDENTIFIER SEARCH
NO RECORD FOUND

REQUESTED BY
DATE: [illegible] ATTN:DEPUTY RUB SMITH PUR [illegible]

QUERY REQUESTED ON:
NAM/HIMES, HARRIS DAY
DOB/19420326
SEX/M
RACE/[illegible]
SOC/[illegible]
MRN/[illegible]

NO RECORD FOUND

END OF RESPONSE

MRE [illegible] IN [illegible] AT [illegible] OUT [illegible] AT [illegible]
[illegible]

EXHIBIT 8

MKE/QH ORI MT0410000 DEST/MT0410000 REQ/LSM1316XXX

THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
INQUIRY ON NAM/BRYANT,JAMES EDWARD SEX/M RAC/U DOB/19601111 PUR/C

NAME	FBI NO.	INQUIRY DATE
BRYANT,JAMES EDWARD	845904LB6	20[illegible]

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	PHOTO
M	W	1956/11/11	508	190	NON	BRO	N

BIRTH PLACE
TENNESSEE

FINGERPRINT CLASS PATTERN CLASS
[illegible] WU RS WU WU WU WU 18 WU 15
PU XU

ALIAS NAMES
BRYANT JAMES E BRYANT JIM EDWARD

OTHER BIRTH DATES	SCARS-MARKS-TATTOOS	SOCIAL SECURITY
1959 11 11	DISC BACK SC ABDOM TAT LF ARM IP W SPLE	414-11-[illegible]

IDENTIFICATION DATA UPDATED [illegible] 10/1[illegible]

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING
FBI - FBI/845904LB6

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION
INDEX BY USING THE APPROPRIATE NCIC TRANSACTION

END

MRI 1347400 IN NCI1 [illegible] AT 02MAY1[illegible] [illegible] 2[illegible]
10 [illegible]

EXHIBIT 8

[illegible]

MONTANA CRIMINAL HISTORY NAME AND IDENTIFICATION CHAR :
NO RECORD FOUND

REQUESTED BY:
DATE [illegible] ATTY:[illegible] ROB [illegible]

QUERY REQUESTED ON:
NAM/BRYANT, JAMES EDWARD
DOB/[illegible]
SEX/M
RAC/[illegible]
SID/
MNU [illegible]

NO RECORD FOUND

END OF REPORT

[illegible]

EXHIBIT 8

MRE/CR ORI WVFBINT00 DEST MT041083N PRC:LSM.1164/X

HDR/2L0169TD1MR1134741
ATN/DEPUTY ROB SMITH

HDR/2L0169TD1MR1134741
ATN/DEPUTY ROB SMITH

********** CRIMINAL HISTORY RECORD **********

Data As Of 2009-05-02

********** Introduction **********

This rap sheet was produced in response to the following request:
FBI Number 545906LB6
Request Id
Purpose Code C
Attention DEPUTY ROB SMITH
The information on this rap sheet is subject to the following caveats:
This record is based only on the FBI number in your request-545906LB6
Because additions or deletions may be made at any time, a new copy
should be requested when needed for subsequent use. (US, 2009-05-02
All arrest entries contained in this FBI record are based on
fingerprint comparisons and pertain to the same individual. (US,
2009-05-02)
The use of this record is regulated by law. It is provided for official
use only and may be used only for the purpose requested. (US,
2009-05-02)

********** IDENTIFICATION **********

Subject Name(s)
BRYANT, JAMES EDWARD
BRYANT, JIM EDWARD (AKA)
BRYANT, JAMES E (AKA)
Subject Description
FBI Number 545906LB6
State Id Number Unknown (XX)
Social Security Number
414112745
Sex Male
Race White
Height 5'08"
Weight 190
Date of Birth 1958-12-11, 1958-12-11, 1958-12-11, 1958-12-11
Hair Color Brown
Eye Color Blue
Fingerprint Pattern WU WU RS WU WU WT UO TS WU LS
Other
Scars, Marks, and Tattoos
Code Description, Comments, and Images
SC ABDOMEN SCAR ON ABDOMEN
DISC BACK DISCOLORATION ON BACK
TAT LF ARM TATTOO ON LEFT FOREARM
TAT R SHLD TATTOO ON RIGHT SHOULDER
Place of Birth
Citizenship US
Fingerprint Image
Photo Images
Photo Image Available SHERIFF'S OFFICE MARYVILLE IN0050000
Available Image Other
(No Photo Image Transmitted
Comment:Arresting agency has photo associated with arrest date of 2007-11-17.
Photo Image Available SHERIFF'S OFFICE MARYVILLE TN0050100
Available Image Other
(No Photo Image Transmitted
Comment:Arresting agency has photo associated with arrest date of 2007/01/20.
Photo Image Available POLICE DEPARTMENT ALCOA TN0050100
Available Image Other
(No Photo Image Transmitted
Comment:Arresting agency has photo associated with arrest date of 1999/06/20.

********** CRIMINAL HISTORY **********

********** Cycle 001 **********

Earliest Event Date 1999-06-20

Arrest Date 1999-06-20
Arrest Case Number FILE0003840
Arresting Agency TN0050100
Charge 01
Charge Literal DRIVING UNDER THE INFLUENCE

000025

EXHIBIT 8

Agency [illegible]
Severity Unknown

Earliest Event Date [illegible]

Arrest Date [illegible]
Arrest Case Number
Arresting Agency [illegible]
Charge
Charge Literal PUBLIC INTOXICATION
Agency [illegible] POLICE DEPARTMENT MARYVILLE
Severity Unknown

Earliest Event Date 2001 03 [illegible]

Arrest Date 2001 03 [illegible]
Arrest Case Number [illegible]
Arresting Agency [illegible]
Charge
Charge Literal [illegible]
Agency [illegible] SHERIFF'S OFFICE MARYVILLE
Severity Unknown
Charge
Charge Literal DRIVING ON REVOKED DRIVER LICENSE
Agency [illegible] SHERIFF'S OFFICE MARYVILLE
Severity Unknown

Earliest Event Date 2003-10-[illegible]

Arrest Date 2003-10-[illegible]
Arrest Case Number 20003840
Arresting Agency [illegible]
Charge
Charge Literal DRIVING ON REVOKED/SUSPENDED LICENSE
Agency [illegible] SHERIFF'S OFFICE MARYVILLE
Severity Unknown
Charge
Charge Literal AFC DRIVING ON REVOKED/SUSPENDED LICENSE
Agency [illegible] SHERIFF'S OFFICE MARYVILLE
Severity Unknown
Charge
Charge Literal AFC SPEEDING
Agency [illegible] SHERIFF'S OFFICE MARYVILLE
Severity Unknown
Charge
Charge Literal AGGRAVATED BURGLARY
Agency [illegible] SHERIFF'S OFFICE MARYVILLE
Severity Unknown

Earliest Event Date 2004-03-[illegible]

Arrest Date 2004-03-12
Arrest Case Number 3840
Arresting Agency [illegible]
Charge
Charge Literal EVADING ARREST
Agency [illegible] SHERIFF'S OFFICE MARYVILLE
Severity Unknown
Charge
Charge Literal VIOLATION OF PEO
Agency [illegible] SHERIFF'S [illegible] MARYVILLE
Severity Unknown
Charge
Charge Literal SPEEDING
Agency [illegible] SHERIFF'S OFFICE MARYVILLE
Severity Unknown
Charge
Charge Literal THREE COUNTS OF DRIVING ON REVOKED
Agency [illegible] SHERIFF'S OFFICE MARYVILLE
Severity Unknown

Earliest Event Date 2004-04-[illegible]

Arrest Date 2004-04-[illegible]
Arrest Case Number 20003840
Arresting Agency [illegible]
Charge
Charge Literal ATTACHMENT FOR CONTEMPT, EVADING ARREST
Agency [illegible] SHERIFF'S OFFICE MARYVILLE
Severity Unknown

EXHIBIT 8

Charge 02
Charge Literal ATTACHMENT FOR CONTEMPT/ DRIVING ON REV
Agency TN0050000 SHERIFF'S OFFICE MARYVILLE
Severity Unknown
Charge 03
Charge Literal ATTACHMENT FOR CONTEMPT/ AGG BURGLARY
Agency TN0050000 SHERIFF'S OFFICE MARYVILLE
Severity Unknown
Charge 04
Charge Literal ATTACHMENT FOR CONTEMPT/ DRIVING ON REV
Agency TN0050000 SHERIFF'S OFFICE MARYVILLE
Severity Unknown
==========Event Cycle 007 ==========
Earliest Event Date 2004-04-26

Arrest Date 2004-04-26
Arrest Case Number 00003840
Arresting Agency TN0050000
Charge 01
Charge Literal ATTACHMENT FOR CONTEMPT/VIOLATION REGISTRATION
Agency TN0050000 SHERIFF'S OFFICE MARYVILLE
Severity Unknown
Charge 02
Charge Literal ATTACHMENT FOR CONTEMPT/SPEEDING
Agency TN0050000 SHERIFF'S OFFICE MARYVILLE
Severity Unknown
Charge 03
Charge Literal EVADING ARREST
Agency TN0050000 SHERIFF'S OFFICE MARYVILLE
Severity Unknown
Charge 04
Charge Literal RESISTING ARREST
Agency TN0050000 SHERIFF'S OFFICE MARYVILLE
Severity Unknown
Charge 05
Charge Literal DRUG POSSESSION MARIJUANA
Agency TN0050000 SHERIFF'S OFFICE MARYVILLE
Severity Unknown
Charge 06
Charge Literal POSSESSION COCAIN
Agency TN0050000 SHERIFF'S OFFICE MARYVILLE
Severity Unknown
Charge 07
Charge Literal POSSESSION OF DRUG PARAPHERNALIA
Agency TN0050000 SHERIFF'S OFFICE MARYVILLE
Severity Unknown
==========Event Cycle 008 ==========
Earliest Event Date 2004-05-14

Arrest Date 2004-05-14
Arrest Case Number 902875
Arresting Agency TN0170000
Charge 01
Charge Literal RESISTING ARREST
Agency TN0470000 SHERIFF'S OFFICE KNOXVILLE
Severity Unknown
Charge 02
Charge Literal EVADING ARREST
Agency TN0470000 SHERIFF'S OFFICE KNOXVILLE
Severity Unknown
==========Event Cycle 009 ==========
Earliest Event Date 2004-05-23

Arrest Date 2004-05-23
Arrest Case Number 0000-840
Arresting Agency TN0050600
Charge 01
Charge Literal POSSESSION OF DRUG PARAPHERNALIA
Agency TN0050600 BLOUNT METRO NARC AL MARYVILLE
Severity Unknown
Charge 02
Charge Literal POSSESSION MARIJUANA
Agency TN0050600 BLOUNT METRO NARC AL MARYVILLE
Severity Unknown
==========Event Cycle 010 ==========
Earliest Event Date 2004-10-13

Arrest Date 2004-10-13
Arrest Case Number JKB--3840--BA# 200
Arresting Agency TN0050000

EXHIBIT 8

```
Charge                          21
        Charge Literal          ATTACHMENT FOR CONTEMPT
               Agency           TN0050000 SHERIFF'S OFFICE MARYVILLE
             Severity           Unknown
Charge                          22
        Charge Literal          ATTACHMENT FOR CONTEMPT
               Agency           TN0050000 SHERIFF'S OFFICE MARYVILLE
             Severity           Unknown
Charge                          23
        Charge Literal          ATTACHMENT FOR CONTEMPT
               Agency           TN0050000 SHERIFF'S OFFICE MARYVILLE
             Severity           Unknown
Charge                          24
        Charge Literal          ATTACHMENT FOR CONTEMPT
               Agency           TN0050000 SHERIFF'S OFFICE MARYVILLE
             Severity           Unknown
================================ ---- Cycle 01 ---------------------------------
Earliest Event Date             2005-12-22
--------------------------------------------------------------------------------
Arrest Date                     2005 12 22
Arrest Case Number
Arresting Agency                TN0051000
Charge                          21
        Charge Literal          ATTACHMENT FOR CONTEMPT
               Agency           TN0050000 SHERIFF'S OFFICE MARYVILLE
             Severity           Unknown
Charge                          22
        Charge Literal          ATTACHMENT FOR CONTEMPT
               Agency           TN0050000 SHERIFF'S OFFICE MARYVILLE
             Severity           Unknown
Charge                          23
        Charge Literal          ATTACHMENT FOR CONTEMPT
               Agency           TN0050000 SHERIFF'S OFFICE MARYVILLE
             Severity           Unknown
Charge                          24
        Charge Literal          ATTACHMENT FOR CONTEMPT
               Agency           TN0050000 SHERIFF'S OFFICE MARYVILLE
             Severity           Unknown
Charge                          25
        Charge Literal          ATTACHMENT FOR CONTEMPT
               Agency           TN0050000 SHERIFF'S OFFICE MARYVILLE
             Severity           Unknown
Charge                          26
        Charge Literal          ATTACHMENT FOR CONTEMPT
               Agency           TN0050000 SHERIFF'S OFFICE MARYVILLE
             Severity           Unknown
Charge                          27
        Charge Literal          VIOLATION PROBATION MISDEMEAN
               Agency           TN0050000 SHERIFF'S OFFICE MARYVILLE
             Severity           Unknown
Charge                          28
        Charge Literal          VIOLATION PROBATION FELONY
               Agency           TN0050000 SHERIFF'S OFFICE MARYVILLE
             Severity
** MESSAGE EXCEEDED 24000 CHARACTERS HAS BEEN SEGMENTED BY NLETS **
**    PART 1 OF 2    **
MSG 194743 TN. NLTS 1412 AT 02MAY2009 10:06:14 CDT  J13002 151 AT 02MAY2009
 10.06.18
```


EXHIBIT 8

MKE/CR ORI/WVFBIWFI0 DEST/MT0410530 REQ/LSM1316XXX

HDR/TL0164TD1M21-34 [illegible]
ATN/DEPUTY POB SMITH
Unknown
========== Cycle 012 ==========
Earliest Event Date 2006-07-23

Arrest Date 2006-07-23
Arrest Case Number 790472
Arresting Agency TN0470000
Subject 8 Name BRYANT,JAMES E
Charge 01
Charge Literal CRIMINAL IMPERSONATION
Agency TN0470000 SHERIFF'S OFFICE KNOXVILLE
Severity Unknown
========== Cycle 013 ==========
Earliest Event Date 2007-01-20

Arrest Date 2007-01-20
Arrest Case Number
Arresting Agency TN0050000
Charge 01
Charge Literal DRIVING ON REVOKED DL
Agency TN0050000 SHERIFF'S OFFICE MARYVILLE
Severity Unknown
========== Cycle 014 ==========
Earliest Event Date 2007-10-17

Arrest Date 2007-10-17
Arrest Case Number
Arresting Agency TN0050000
Charge 01
Charge Literal VIOLATION PROBATION MISDEMEAN
Agency TN0050000 SHERIFF'S OFFICE MARYVILLE
Severity Unknown
Charge 02
Charge Literal VIOLATION PROBATION MISDEMEAN
Agency TN0050000 SHERIFF'S OFFICE MARYVILLE
Severity Unknown
********** INDEX OF AGENCIES **********
Agency TBI CJIS DIV-CLARKSBG CLARKSBURG, WV PRINTOUT
Address
1000 CUSTER HOLLOW RD
CLARKSBURG, WV 26306

Agency POLICE DEPARTMENT ALCOA, TN0650100
Address
2020 N WRIGHT RD
ALCOA, TN 37701-3804

Agency POLICE DEPARTMENT MARYVILLE TN0650200
Address
406 W BROADWAY AVE
MARYVILLE, TN 37801-4721

Agency SHERIFF'S OFFICE MARYVILLE TN0050000
Address
940 E LAMAR ALEXANDER PKY
MARYVILLE TN 37804-5201

Agency SHERIFF'S OFFICE KNOXVILLE TN0470000
Address
IDENTIFICATION UNIT 400 MAIN ST
KNOXVILLE, TN 37902

Agency BLOUNT METRO NARCOTICS MARYVILLE TN0350000
Address
DRUG TASK FORCE PO BOX 4994
MARYVILLE TN 37802
* * * END OF RECORD * * *
** MESSAGE EXCEEDED 14400 CHARACTERS-HAS BEEN SEGMENTED BY NLETS **
** PART 2 OF 2 **
MRI 1347434 IN NLTI 1433 NT 22MAR2005 10 06 13 OUT. 013802 LEA PL 22MAY2009 10:06:18

000029
EXHIBIT 8

MAIL IN OFI TNSIP010. DPNT M10410590 FFQ.DYN1A18XXX

PUR/C ATN/DIFUTY ADI [illegible]

THIS TENNESSEE CRIMINAL HISTORY RECORD IS BASED ON THE FOLLOWING PROVIDED

NAM/ BRYANT,JAMES EDWARD
SEX/ M
RAC/ W
DOB/ 12/11/1968
SOC/414111745

THE FOLLOWING POSSIBLE MATCHES EXISTS TO THE ABOVE REQUEST

STD	NAME	R/S	DOB	HGT	WGT	EYE	FIN
333504	BRYANT,JAMES EDWARD	W/M	12/11/1968	[illegible]	185	BLU	X
333504	BRYANT,JAMES EDWARD	W/M	12/11/1968	[illegible]	185	BLU	X
360429	BRYANT,JAMES	B/M	10/08/1958	[illegible]	132	BRO	
759819	BRYANT,JIMMY	B/M	[illegible]/24/1958	[illegible]	185	BRO	F
2035138	BRYANT,JAMES	W/M	07/02/1967	[illegible]	170	GRN	X
328039	BRYANT JO	W/M	10/31/1967	[illegible]	170	BRO	[illegible]
364960	BRYANT,JIMMY	W/M	11/01/1960	[illegible]	145	BRO	
2178021	BRYANT JAMES	B/M	[illegible]/[illegible]/1968	[illegible]	175	BRO	
2073747	BRYANT JAMES	W/M	[illegible]/[illegible]/1991	[illegible]	285	BRO	

TO OBTAIN THE COMPLETE REPORT FOR THE SUBJECT OF YOUR INQUIRY, SUBMIT AN (FQ) INQUIRY USING THE APPROPRIATE STD NUMBER FROM THE ABOVE MATCH(ES)

TENNESSEE BUREAU OF INVESTIGATION NASHVILLE TN [illegible] [illegible] 11:11 PM
MRT 1347502 TN [illegible] [illegible] [illegible] 11:38 4[illegible] [illegible] [illegible] 152 AT 01MAR2009
[illegible]:08:47

MKE/FR ORI/TNCHR0000 DEST/MT04106-N REQ/USN.116XXX

ATN/DEPUTY ROB SMITH

ATN/DEPUTY ROB SMITH
********** CRIMINAL HISTORY RECORD **********

Data As Of 2009-06-02

********** Introduction **********

This rap sheet was prepared in response to the following request

State Id Number TN533504 (1)
Purpose Code C
Attention DEPUTY ROB SMITH

The information in this rap sheet is subject to the following caveats

THIS RECORD IS LABEL ONLY ON THE SID OR FBI NUMBER IN YOUR REQUEST (TN533504) BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME. A NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE. USE OF THE FOLLOWING RECORD IS REGULATED BY LAW. IT IS FURNISHED FOR OFFICIAL USE ONLY AND SHOULD ONLY BE USED FOR THE PURPOSE REQUESTED. WHEN EXPLANATION OF A CHARGE OR DISPOSITION IS NEEDED, COMMUNICATE DIRECTLY WITH THE AGENCY THAT CONTRIBUTED THE FINGERPRINTS. (TBI) 2015-06-28)

********** IDENTIFICATION **********

Subject Name(s

BRYANT, JAMES EDWARD
BRYANT, JAMES EDWARD (AKA)
BRYANT, JAMES E (AKA)

Subject Description

FBI Number 545906LB6
State Id Number 533504

Social Security Number
411112745

Miscellaneous Numbers
51261090

Sex Male
Race White
Skin Tone Unknown

Height 5'10"
Weight 185
Date of Birth 1959-12-22
1958-11-17

Hair Color Brown
Eye Color Blue
Scars, Marks and Tattoos
Code Description Comments and Images
SC ABDOM
DTSC BACK BIRTH MARK
TAT LF ARM HEART
TAT L ARM
TAT LF ARM
SC ABDOM
TAT R SHLD
TAT L ARM
TAT R ARM

Place of Birth TN
Citizenship US (2000-05-17

Residence
Residence as of 2006 07 25
204 THORNHILL DR
MARYVILLE, TN

000031
EXHIBIT 8

```
*************************  CRIMINAL HISTORY  ********** **************

========== Cycle 001 ==== ============== ==========
Tracking Number          [illegible]
Earliest Event Date      1990-07-19 Incident Date          1990-07-19
---------- ------------- ------------- ----- ----------- ---
Arrest Date              1990-07-19
Arresting Agency         TN0350000 BLOUNT COUNTY SO
Subject's Name           JAMES EDWARD BRYANT
   Offender Id Number    533504
Charge                   1
        Charge Number    [illegible]
       Charge Literal    TRAFFIC OFFENDER-HABITUAL MOTOR VEHICLE
             Counts      1
           Severity      UNKNOWN
========== ========== Cycle 002 ==  ==  == ===  ==  ==  ===
Tracking Number          [illegible]
Earliest Event Date
 1990-07-20 -                          - -- -  -
---------- -- -- -  -
Court Disposition        Cycle [illegible]
Court Agency             TN0350000 BLOUNT COUNTY SO
Subject's Name           JAMES EDWARD BRYANT
Charge                   1
       Charge Literal    TRAFFIC OFFENDER HABITUAL MOTOR VEHICLE
   Charge Description    UNKNOWN
            Counts       1
        Disposition      PROBATION SUSP  YR MO DAYS
========== ========== Cycle 003 ==  ==== ==== ====  ==  ==
Tracking Number          [illegible]
Earliest Event Date      [illegible] Incident Date          [illegible]
---------- ---------- ---- -- -- -  -- ---
Arrest Date              1994-06-[illegible]
Arrest Case Number       [illegible]
Arresting Agency         TN0350000 ALCOA PD
Subject's Name           JAMES EDWARD BRYANT
   Offender Id Number    533504
Charge                   1
        Charge Number    [illegible]
       Charge Literal    DUI
             Counts      1
           Severity      UNKNOWN
====== ========== ====== Cycle 004 ======  ==========  ===
Tracking Number          [illegible]
Earliest Event Date      2000-03-[illegible] Incident Date          [illegible]
-- -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- -- --
Arrest Date              2000-[illegible]
Arrest Case Number       ARREST # [illegible]
Arresting Agency         TN0350000 MARYVILLE PD
Subject's Name           JAMES EDWARD BRYANT
   Offender Id Number    533504
Charge                   1
        Charge Number    [illegible]
Charge Tracking Number   [illegible]
       Charge Literal    [illegible]
             Counts      1
           Severity      UNKNOWN
========== ========== ====== Cycle 005 ==========  ==
Tracking Number          [illegible]
Earliest Event Date      2001-[illegible] Incident Date          [illegible]
------ ------ -------- -- -  -  --- -  ------  -  - ---
Arrest Date              2001-[illegible]
Arrest Case Number       ARREST# [illegible]
Arresting Agency         TN0350000 BLOUNT COUNTY SO
Subject's Name           JAMES EDWARD BRYANT
   Offender Id Number    533504
Charge                   1
        Charge Number    [illegible]
Charge Tracking Number   [illegible]
       Charge Literal    DRIVING UNDER THE INFLUENCE
             Counts      1
           Severity      UNKNOWN
Charge                   2
        Charge Number    [illegible]
Charge Tracking Number   [illegible]
       Charge Literal    DRIVING ON A REVOKED DRIVER LICENSE
             Counts      1
           Severity      UNKNOWN
========== ========== ====== Cycle [illegible]  ====== ========  -  ====  --
```

000032

EXHIBIT 8

```
Tracking Number          050002003009
Earliest Event Date      2002-06-05 Incident Date          2002-06-05
-------------------------------------------------------------------------
Arrest Date              2002-06-05
Arrest Case Number       ARREST # 00003840
Arresting Agency         TN0050000 BLOUNT COUNTY SO
Subject's Name           JAMES EDWARD BRYANT
   Offender Id Number    533504
Charge                   1
        Charge Number    101206221
Charge Tracking Number   050002003009
        Charge Literal   PUBLIC INTOXICATION
                 Counts  1
               Severity  UNKNOWN
=========================== Cycle 002 ==========================
Tracking Number          050003003971
Earliest Event Date      2003-07-08 Incident Date          2003-07-08
-------------------------------------------------------------------------
Arrest Date              2003-07-08
Arrest Case Number       3840
Arresting Agency         TN0050000 BLOUNT COUNTY SO
Subject's Name           JAMES EDWARD BRYANT
   Offender Id Number    533504
Charge                   1
        Charge Number    101673076
Charge Tracking Number   050003003971
        Charge Literal   DRIVING ON REVOKED/SUSPENDED LICENSE
                 Counts  1
               Severity  UNKNOWN
=========================== Cycle 003 ==========================
Tracking Number          050003006252
Earliest Event Date      2003-10-14 Incident Date          2003-10-14
-------------------------------------------------------------------------
Arrest Date              2003-10-14
Arrest Case Number       00003840
Arresting Agency         TN0050100 ALCOA PD
Subject's Name           JAMES EDWARD BRYANT
   Offender Id Number    533504
Charge                   1
        Charge Number    101797421
Charge Tracking Number   050003006252
        Charge Literal   DRIVING ON REVOKED/SUSPENDED LICENSE
                 Counts  1
               Severity  UNKNOWN
Charge                   2
        Charge Number    101797424
Charge Tracking Number   050003006252
        Charge Literal   AGGRAVATED BURGLARY
                 Counts  1
               Severity  UNKNOWN
Charge                   3
        Charge Number    101797422
Charge Tracking Number   050003006252
        Charge Literal   APC DRIVING ON REVOKED/SUSPENDED LICENSE
                 Counts  1
               Severity  UNKNOWN
Charge                   4
        Charge Number    101797423
Charge Tracking Number   050003006252
        Charge Literal   APC SPEEDING
                 Counts  1
               Severity  UNKNOWN
=========================== Cycle 004 ==========================
Tracking Number          050004001616
Earliest Event Date      2004-03-12 Incident Date          2004-03-12
-------------------------------------------------------------------------
Arrest Date              2004-03-12
Arrest Case Number       3840
Arresting Agency         TN0050000 BLOUNT COUNTY SO
Subject's Name           JAMES EDWARD BRYANT
   Offender Id Number    533504
Charge                   1
        Charge Number    101987192
Charge Tracking Number   050004001616
        Charge Literal   EVADING ARREST
                 Counts  1
               Severity  UNKNOWN
Charge                   2
        Charge Number    101987193
Charge Tracking Number   050004001616
```


EXHIBIT 8

Charge Literal: VIOLATION OF REGISTRATION
Counts: 1
Severity: MISDEMEANOR
Charge: 1
Charge Number: 101987194
Charge Tracking Number: 0500040001616
Charge Literal: SPEEDING
Counts: 1
Severity: MISDEMEANOR
Charge: 4
Charge Number: 101987195
Charge Tracking Number: 0500040001616
Charge Literal: DRIVING ON REVOKED LICENSE
Counts: 1
Severity: UNKNOWN

Tracking Number: 0500040002275
Earliest Event Date: 2004-04-08 Incident Date: 2004-04-08

Arrest Date: 2004-04-08
Arrest Case Number: 00003840
Arresting Agency: TN0050000 BLOUNT COUNTY
Subject's Name: JAMES EDWARD BRYANT
Offender Id Number: 533504
Charge: 1
Charge Number: 102024387
Charge Tracking Number: 0500040002275
Charge Literal: ATTACHMENT FOR [illegible]
Counts: 1
Severity: UNKNOWN
Charge: 2
Charge Number: 102024387
Charge Tracking Number: 0500040002275
Charge Literal: ATTACHMENT FOR [illegible] EVADING ARREST
Counts: 1
Severity: UNKNOWN
Charge: 3
Charge Number: 102024388
Charge Tracking Number: 0500040002275
Charge Literal: ATTACHMENT FOR CONTEMPT [illegible] DRIVING ON REV
Counts: 1
Severity: UNKNOWN
Charge: 1
Charge Number: 102024389
Charge Tracking Number: 0500040002275
Charge Literal: ATTACHMENT FOR CONTEMPT AND BURGLARY
Counts: 1
Severity: UNKNOWN

Tracking Number: 0500040002636
Earliest Event Date: 2004-04-26 Incident Date: 2004-04-26

Arrest Date: 2004-04-26
Arrest Case Number: 00003840
Arresting Agency: TN0050000 BLOUNT COUNTY
Subject's Name: JAMES EDWARD BRYANT
Offender Id Number: 533504
Charge: 1
Charge Number: 102051561
Charge Tracking Number: 0500040002636
Charge Literal: EVADING ARREST
Counts: 1
Severity: UNKNOWN
Charge: 2
Charge Number: 102051562
Charge Tracking Number: 0500040002636
Charge Literal: DRUG POSSESSION MARIJUANA
Counts: 1
Severity: UNKNOWN
Charge: 3
Charge Number: 102051564
Charge Tracking Number: 0500040002636
Charge Literal: POSSESSION OF DRUG PARAPHERNALIA
Counts: 1
Severity: UNKNOWN
Charge: 4
Charge Number: 102051563
Charge Tracking Number: 0500040002636
Charge Literal: POSSESSION COCAINE
Counts: 1

```
                Severity   UNKNOWN
Charge                     5
          Charge Number    102051561
Charge Tracking Number     05000400263S
         Charge Literal    RESISTING ARREST
                 Counts    1
                Severity   UNKNOWN
Charge                     6
          Charge Number    102051558
Charge Tracking Number     05000400263S
         Charge Literal    ATTACHMENT FOR CONTEMPT VIOLATION REGISTRATION
                 Counts    1
                Severity   UNKNOWN
Charge                     7
          Charge Number    102051559
Charge Tracking Number     05000400263S
         Charge Literal    ATTACHMENT FOR CONTEMPT SPEEDING
                 Counts    1
                Severity   UNKNOWN
**********[illegible] Cycle [illegible] ----------[illegible]
Tracking Number            [illegible]
Earliest

** MESSAGE EXCEEDED [illegible] CHARACTERS AND HAS BEEN TRUNCATED TO [illegible] **
**    PART 1 OF [illegible]    **
MRI 1317595 IN: [illegible] 12MAY2009 [illegible] 010930 158 NT 12MAY2009
10:12:05
```


EXHIBIT 8

[illegible]

ATN/DEPUTY ROB SMITH

Event Date [illegible] Incident Date [illegible]

Arrest Date 1994-05-14
Arrest Case Number [illegible]
Arresting Agency [illegible] KNOX COUNTY SO
Subject's Name JAMES EDWARD BRYANT
Offender Id Number 533504
Charge 1
Charge Number 102085584
Charge Tracking Number [illegible]
Charge Literal RESISTING ARREST
Counts 1
Severity UNKNOWN
Charge 1
Charge Number 102085585
Charge Tracking Number [illegible]
Charge Literal [illegible] ARREST
Counts 1
Severity UNKNOWN

[illegible] Cycle [illegible]

Tracking Number: [illegible]
Earliest Event Date 2004-05-29 Incident Date [illegible]

Arrest Date 2004-01-29
Arrest Case Number: [illegible]
Arresting Agency [illegible]
Subject's Name JAMES EDWARD BRYANT
Offender Id Number 533504
Charge 1
Charge Number 102108412
Charge Tracking Number [illegible]
Charge Literal POSSESSION OF DRUG PARAPHERNALIA
Counts 1
Severity UNKNOWN
Charge 1
Charge Number 102108415
Charge Tracking Number: [illegible]
Charge Literal POSSESSION MARIJUANA
Counts 1
Severity UNKNOWN

Cycle 014

Tracking Number: [illegible]
Earliest Event Date 2004-12-20 Incident Date [illegible]

Arrest Date 2004-12-27
Arrest Case Number 00003840
Arresting Agency [illegible] BLOUNT COUNTY SO
Subject's Name JAMES EDWARD BRYANT
Offender Id Number 533504
Charge 1
Charge Number 102363091
Charge Tracking Number [illegible]
Charge Literal SHOW CAUSE ATTACHMENT-DRIVING ON REVOKED
Counts 1
Severity UNKNOWN

Cycle 01[illegible]

Tracking Number [illegible]
Earliest Event Date 2004-12-29 Incident Date [illegible]

Arrest Date 2004-12-[illegible]
Arrest Case Number [illegible]
Arresting Agency [illegible] ALCOA PD
Subject's Name JAMES EDWARD BRYANT
Offender Id Number 533504
Charge 1
Charge Number 102410538
Charge Tracking Number [illegible]
Charge Literal DRIVING ON REVOKED/SUSPENDED LICENSE
Counts 1
Severity UNKNOWN

Cycle [illegible]

Tracking Number [illegible]
Earliest Event Date 2004-12-[illegible] Incident Date [illegible]

Arrest Date 2004-12-1[illegible]

000036

EXHIBIT 8

Arrest Case Number: [illegible]
Arresting Agency: TN0050000 BLOUNT COUNTY SO
Subject B Name: JAMES EDWARD BRYANT
Offender Id Number: 533504
Charge: 1
Charge Number: 102432609
Charge Tracking Number: 050004007667
Charge Literal: ATTACHMENT FOR CONTEMPT
Counts: 4
Severity: UNKNOWN

Cycle 0.7

Tracking Number: 050005007933
Earliest Event Date: 2005-12-22 Incident Date: 2005-12-22

Arrest Date: 2005-12-22
Arresting Agency: TN0050000 BLOUNT COUNTY SO
Subject's Name: JAMES EDWARD BRYANT
Offender Id Number: 533504
Charge: 1
Charge Number: 102960475
Charge Tracking Number: 050005007933
Charge Literal: ATTACHMENT FOR CONTEMPT
Counts: 1
Severity: UNKNOWN
Charge: 2
Charge Number: 102960476
Charge Tracking Number: 050005007933
Charge Literal: ATTACHMENT FOR CONTEMPT
Counts: 1
Severity: UNKNOWN
Charge: 3
Charge Number: 102960479
Charge Tracking Number: 050005007933
Charge Literal: ATTACHMENT FOR CONTEMPT
Counts: 1
Severity: UNKNOWN
Charge: 4
Charge Number: 102960481
Charge Tracking Number: 050005007933
Charge Literal: VIOLATION PROBATION MISDEMEANOR
Counts: 1
Severity: UNKNOWN
Charge: 5
Charge Number: 102960482
Charge Tracking Number: 050005007933
Charge Literal: VIOLATION PROBATION FELONY
Counts: 1
Severity: UNKNOWN
Charge: 6
Charge Number: 102960480
Charge Tracking Number: 050005007933
Charge Literal: ATTACHMENT FOR CONTEMPT
Counts: 1
Severity: UNKNOWN
Charge: 7
Charge Number: 102960478
Charge Tracking Number: 050005007933
Charge Literal: ATTACHMENT FOR CONTEMPT
Counts: 1
Severity: UNKNOWN
Charge: 8
Charge Number: 102960476
Charge Tracking Number: 050005007933
Charge Literal: ATTACHMENT FOR CONTEMPT
Counts: 1
Severity: UNKNOWN

Cycle [illegible]

Tracking Number: 470001003283
Earliest Event Date: 2006-07-23 Incident Date: 2006-07-23

Arrest Date: 2006-07-23
Arrest Case Number: 790472
Arresting Agency: TN0470000 KNOX COUNTY SO
Subject's Name: JAMES E BRYANT
Offender Id Number: 533504
Charge: 1
Charge Number: 103258353
Charge Tracking Number: 470001003283
Charge Literal: CRIMINAL IMPERSONATION
Counts: 1

EXHIBIT 8

Severity UNKNOWN

Tracking Number [illegible]
Earliest Event Date [illegible] Incident Date [illegible]

Arrest Date [illegible]
Arresting Agency [illegible] BLOUNT COUNTY SO
Subject's Name [illegible]
Offender Id Number [illegible]
Charge [illegible]
Charge Number [illegible]
Charge Tracking Number [illegible]
Charge Literal DRIVING ON REVOKED DL
Counts 1
Severity UNKNOWN

Tracking Number [illegible]
Earliest Event Date [illegible] Incident Date [illegible]

Arrest Date [illegible]
Arresting Agency [illegible] BLOUNT COUNTY
Subject's Name [illegible] BRYANT
Offender Id Number [illegible]
Charge [illegible]
Charge Number [illegible]
Charge Tracking Number [illegible]
Charge Literal VIOLATION [illegible]
Counts 1
Severity UNKNOWN
Charge [illegible]
Charge Number [illegible]
Charge Tracking Number [illegible]
Charge Literal VIOLATION [illegible]
Counts 1
Severity UNKNOWN

********** INDEX OF AGENCIES **********

Agency BLOUNT COUNTY SO, TN0050000,

Agency BLOUNT COUNTY SO, TN0050000,

Agency KNOX COUNTY SO, TN0470000

Agency BLOUNT COUNTY SO, TN0050000,

Agency BLOUNT COUNTY SO, TN0050000,

Agency ALCOA PD, TN0050100,

Agency BLOUNT COUNTY SO, TN0050000,

Agency [illegible] TN0050000

Agency KNOX COUNTY SO, TN0470000

Agency BLOUNT COUNTY SO, TN0050000

Agency BLOUNT COUNTY SO, TN0050000

Agency BLOUNT COUNTY SO, TN0050000

Agency ALCOA PD, TN0050100,

Agency BLOUNT COUNTY SO, TN0050

Agency BLOUNT COUNTY SO, TN0050000

000038

EXHIBIT 8

13-16

Agency BLOUNT COUNTY SO, TN0050000,

Agency MARYVILLE PD; TN0050200

Agency ALCOA PD, TN0050100;

Agency BLOUNT COUNTY SO, TN0050000,

Agency BLOUNT COUNTY SO TN0050000

Agency BLOUNT COUNTY SO TN0050000,

Agency KNOX COUNTY SO; TN0470000;

Agency BLOUNT COUNTY SO, TN0050000

Agency BLOUNT COUNTY SO TN0050000;

Agency ALCOA PD; TN0050100,

Agency BLOUNT COUNTY SO; TN0050000,

Agency 5TH JUD DIST DRUG TASK FORCE; TN0050[illegible]

Agency KNOX COUNTY SO; TN0470000,

Agency BLOUNT COUNTY SO TN0050000,

Agency BLOUNT COUNTY SO, TN0050000;

Agency BLOUNT COUNTY SO; TN0050000,

Agency ALCOA PD, TN0050100;

Agency BLOUNT COUNTY SO, TN0050000,

Agency BLOUNT COUNTY SO; TN0050000,

Agency BLOUNT COUNTY SO; TN0050000,

Agency MARYVILLE PD; TN0050200,

Agency ALCOA PD TN0050100,

Agency BLOUNT COUNTY SO; TN0050000

Agency BLOUNT COUNTY SO; TN0050000,

* * * END OF RECORD * * *

** MESSAGE EXCEEDED [illegible] CHARACTERS-HAS BEEN SEGMENTED BY NLETS **
** PART 2 OF 2 **
MRI 1347896 IN: [illegible] AT [illegible] 10:12 [illegible] AT 02MAY2003
10:12:05

EXHIBIT 8

Office of the Commissioner of Securities and Insurance, Montana State Auditor
Serata Investments Schedule (Prepared by Lynne Egan)

Date	Description	Credit	Debit	Explanation
06/06/08	**Wire deposit**	**$ 150,000.00**		**Geoffrey Serata**
06/27/08	Outgoing Wire		$ 5,000.00	Ruth Bryant, Payee
06/27/08	Check 1001		$ 800.00	not provided
07/03/08	Outgoing Wire		$ 1,910.00	Danny Maples, Payee
07/09/08	Check 1002		$ 7,000.00	not provided
07/14/08	Intl Wire Out		$ 200 00	Ernest Wing Yiu Leung, Recipient
07/23/08	Check 1003		$ 5,000 00	not provided
07/31/08	Check 9999		$ 5,000.00	not provided
08/21/08	Intl Wire Out		$ 750.00	Augustine Cruz Barraghan recipient
08/25/08	Check 1004		$ 1,400.00	Alereda Rios Castilla
09/02/08	Check 1005		$ 2,000.00	James Bryant
10/09/08	Intl Wire Out		$ 10,000.00	Javier Marin Uribe, Recipient
10/28/08	Intl Wire Out		$ 8,000.00	Diana Aurora Marin Uribe, Recipient
11/12/08	Outgoing Wire		$ 8,000.14	Poliestiren O Alfa Gamma (??)
11/12/08	Check 1008		$ 1,000.00	Wendy Riedle
11/28/08	Intl Wire Out		$ 10,000.00	Diana Aurora Marin Uribe, Recipient
12/17/08	Check 1010		$ 1,000.00	Douglas Leu
12/22/08	Check 1011		$ 750.00	Harris Himes
			$ 67,810.14	$56668.78 attributed to Serata's deposit
06/10/08	ACH debit		$ 1,033.14	American Express
06/16/08	ACH debit		$ 328 30	American Express
06/30/08	ACH debit		$ 4 08	American Express
07/17/08	ACH debit		$ 563 01	American Express
08/06/08	ACH debit		$ 2,095.30	American Express
08/11/08	ACH debit		$ 827 40	American Express
08/18/08	ACH debit		$ 85.43	American Express
09/08/08	ACH debit		$ 125 00	American Express
09/10/08	ACH debit		$ 15.00	American Express
09/15/08	ACH debit		$ 276.88	American Express
12/09/08	ACH debit		$ 11,805.92	American Express
12/17/08	ACH debit		$ 153.00	American Express
			$ 17,312.46	
07/01/08	ACH debit		$ 26.97	Bank of America
08/28/08	ACH debit		$ 72.74	Bank of America
			$ 99.71	
06/16/08	ACH debit		$ 2,000.00	Chase
06/20/08	ACH debit		$ 4,108.56	Chase
07/14/08	ACH debit		$ 2,000.00	Chase
07/23/08	ACH debit		$ 64.66	Chase
08/04/08	ACH debit		$ 4,000.00	Chase
08/26/08	ACH debit		$ 10,000.00	Chase
10/07/08	ACH debit		$ 7,500.00	Chase
11/14/08	ACH debit		$ 12,079.33	Chase
12/17/08	ACH debit		$ 5,131.89	Chase

How Geoffrey Serata's Money was spent

$	56,668.78	Various payees, including Bryant and Himes
$	17,312.46	American Express credit card
$	99.71	Bank of America credit card
$	46,884.44	Chase credit card
$	12,729 34	Discover credit card
$	1,319 00	Goel Forwarding Agency
$	10,860.55	Various providers
$	4,029.42	Merchadise (groceries, etc.)
$	96.30	Bank fees
$	**150,000.00**	**TOTAL**

EXHIBIT 8

		$ 46,884.44	
07/02/08	ACH debit	$ 2,458.93	Discover card
07/02/08	ACH debit	$ 2,295.42	Discover card
08/05/08	ACH debit	$ 1,589.57	Discover card
09/02/08	ACH debit	$ 2,458.93	Discover card
09/08/08	ACH debit	$ 895 48	Discover card
10/03/08	ACH debit	$ 694 92	Discover card
10/06/08	ACH debit	$ 60.06	Discover card
11/03/08	ACH debit	$ 479.50	Discover card
12/03/08	ACH debit	$ 1,588 60	Discover card
01/07/09	ACH debit	$ 207.93	Discover card
		$ 12,729.34	
09/02/08	Check 1006	$ 184.00	Goel Forwarding Agency
11/12/08	Check 1009	$ 1,135 00	Goel Forwarding Agency
		$ 1,319.00	
07/16/08	Outgoing Wire	$ 6,000.00	MLS Machinery USA, Recipient
07/21/08	POS Purchase	$ 756.83	Northern Tool Equipment San Antonio TX
07/11/08	POS Purchase	$ 2,095.72	Ritchie Brothers Auctioneers Lake Worth TX
07/08/08	Outgoing Wire	$ 2,008.00	Wapello Fabrications, Recipient
		$ 10,860.55	
06/18/08	ACH debit	$ 31.18	Kohl's
06/09/08	POS Purchase	$ 106.50	Lalredo Texas
06/26/08	POS Purchase	$ 145.00	Lewisville Texas
07/14/08	POS Purchase	$ 133.78	Lewisville Texas
07/14/08	POS Purchase	$ 87.64	Lewisville Texas
07/16/08	POS Purchase	$ 91 38	Lewisville Texas
11/10/08	ATM Withdrawal	$ 303.00	Mall Del Norte Laredo TX
07/08/08	POS Purchase	$ 103.98	Plano Texas
08/04/08	Withdrawal	$ 399.39	Pochulta Texico
10/16/08	ACH debit	$ 43.33	Sears
12/02/08	ACH debit	$ 145.59	Sears
08/18/08	POS Purchase	$ 130.85	Walmart - Laredo TX
08/25/08	POS Purchase	$ 116.17	Walmart Laredo TX
08/20/08	POS Purchase	$ 160.74	Walmart San Antonio TX
11/06/08	POS Purchase	$ 82.04	Walmart San Antonio TX
06/09/08	ATM Withdrawal	$ 386.17	Bilboa Vizcaya Mexico
06/09/08	Foreign fee	$ 10.81	Bilboa Vizcaya Mexico
06/23/08	ATM Withdrawal	$ 243.30	Bilboa Vizcaya Mexico
06/23/08	Foreign fee	$ 6.81	Bilboa Vizcaya Mexico
08/07/08	ATM Withdrawal	$ 302.06	Bilboa Vizcaya Mexico
08/07/08	Foreign fee	$ 8.46	Bilboa Vizcaya Mexico
09/30/08	ATM Withdrawal	$ 438.77	Bilboa Vizcaya Mexico
09/30/08	Foreign fee	$ 12.29	Bilboa Vizcaya Mexico
11/05/08	POS Purchase	$ 58.22	Cienega De F
06/16/08	ATM Withdrawal	$ 481.96	Cuernavaca MO
		$ 4,029.42	
01/02/09	Statement fee	$ 5.00	fee
08/04/08	Foreign fee	$ 11.18	foreign Fee
11/05/08	Foreign fee	$ 1.63	foreign Fee
06/16/08	Foreign fee	$ 13.49	Foreign Fee Cuernavaca MO

EXHIBIT 8

11/28/08 Service fee	$	20.00	Service Charge
11/28/08 Service fee	$	45.00	Service Charge
	$	**96.30**	

EXHIBIT 8

geoff serata <gserata@gmail.com>

Ready = Send Money, $150,000.00

2 messages

geoff serata <gserata@gmail.com> EM-17 Tue, May 27, 2008 at 2:54 PM
To: James Bryant <jeb1160@yahoo.com>

Hello Jeb,

Ready to move forward on this end. Do you have any documentation for me? We have had several brief discussions on production contracts, could you review for me what is nailed down? Please help me to gauge the fruit so I can plan accordingly.

I've been searching for a rental but with little luck. Lots of high end stuff...any thoughts? Security, electricity and plumbing are my first considerations.

Looking for a Mac book Pro...should be a nice laptop for editing.

Still many loose ends up here. Glad that God is sovereign!

Have a glorious day, geoff

James Bryant <jeb1160@yahoo.com> EM-18 Wed, May 28, 2008 at 9:00 AM
To: geoff serata <gserata@gmail.com>

Dear Geoff, Attch. = LOI & Wire Instructions

Glad to hear that things are moving. To answer the bottom line question, we have three persons who want to buy our panels yesterday, and I won't sign an agreement until I feel that we can guarantee delivery; however, I do have LOI's (Letters of Intent.) I am hoping to produce about 200 panels per day at a profit of 10 dollars per panel. All these are conservative numbers; however, I believe very doable. We have a company in Puerto Escondido who is wanting 800 homes, and we can begin with those. That is about 2 years of work without dealing with another order. Your daily profit on that is about 120.00 to start with. As we move through the learning curve and increase production so go the profits. So, that works out to about 36000 per year or 24% on the investment. However, the long term looks much stronger. We have a group out of Costa Rica that wants to have us put in a factory for them and we will get the royalties. I am expecting another deal out of Canada later this week, and we were contacted out of China for the disaster situation. Selling these is not a problem. As long as we can make the delivery we can sell all day long. So things look good.

I have attached one of the LOI's that I got from the Guy in Puerto Escondido as well as our banking info. And there are several more deals that I just don't have time to elaborate upon, (Dominican Republic, Kansas City strip mall, Florida Highway sound barrier, Etc.) . We are running this AM. I will talk to you later.

Blessings,
Jeb
[Quoted text hidden]

EM-17-18

EXHIBIT 8

"If we do not help a man in trouble, it is as if we caused the trouble."
Alexis de Tocqueville

---

2 attachments

James Bryant.doc
45K

Wiring Monarch Beach.doc
26K

EM-17-18

EXHIBIT 8

EM-18 Attachment #1

PLAYA ENCANTADA "LOI"

Calle Arrecifes # 3

Col: Fracc. Corrizalillo Dorado

P

uerto Escondido, Oax.

C.P. 71980,

EM-18 Attch. #1 Pg 1 of 2

EXHIBIT 8

EM-18 Attchment #1
"LOI"

México

James Bryant
Monarch Beach Properties
Duratherm Panel Division
9347 Matador Rd.
Columbia, MD 21045

RE: Puerto Escondido Green Project

Dear Mr. Bryant,

This note may serve as our letter of intent to use your panels should our time lines be met. As you are already aware, during the past several years, my New York investment group and I have, at no small cost, initiated the development of an environmentally friendly community in Puerto Escondido. With the land is already purchased, the dirt work begun, and the designs complete; we are anxious to start the initial model homes of what will be an 800 unit complex. Your panels meet the green criteria necessary. Therefore, when can we expect your Puerto Escondido panel factory to commence operations?

Sincerely

Daniel Lopez Venture
Chief Executive Officer

México +52 01 800 681 15 26 USA +1 888 328 29 28
+52 01 800 681 15 28 +1 888 328 29 96

EM-18 Attch. #1 pg 2 of 2

EXHIBIT 8

EM-18 Attachment #2

Monarch Beach Properties, LLC

Wiring Instructions:

Harris Bank

8400 West 159th St.

Orland Park IL. 60462

Telephone # 708-873-7624

ABA # 0710-25661

Swift # HATRUS44

Beneficiary account:

Monarch Beach Properties, LLC

Account # 4802208553

EM-18 Attchment #2

EXHIBIT 8

TRANSCRIPTION OF HARRIS HIMES RADIO INTERVIEW

RADIO CO-HOST: And Harris, we didn't ask you to come on. You came on un-, under your own free will and, and wanted to do this, so go ahead. What's your side of the story?

HARRIS: Well, I think everyone can understand that since it's in litigation, I can't go into a great deal as far as the facts are concerned, but . .

PETER: Yeah. Hope, hope this visit is okay with your attorney.

RADIO CO-HOST: Yeah.

HARRIS: Well, actually, I, I'm still interviewing attorneys for this but, and I would be, I am wise enough not to represent myself in this matter, but --

PETER: Even though you're an attorney.

HARRIS: Even though I am.

PETER: Okay. Go ahead.

HARRIS: The thing is that, as Mike eluded, it is unfortunately . . . there is some evidence that shows that this, in fact, is an opportunity for the gay rights activists to come after me, because this particular claim – and I will say this unequivocally – I am innocent of all charges. I am without sin or guilt with regard to this unnamed person --

RADIO CO-HOST: Are you saying --

HARRIS: -- who . . .

RADIO CO-HOST: -- are you saying this was a setup by the gay rights activists?

HARRIS: I'm saying that there is, the case, this was an incident where, where the gentleman did ask us if he could invest in, in a, in a venture in Mexico because my friend Jeb is a pastor down there. And Duratherm happens to be a company that is beginning to thrive down there. So there is no fraud in the investment. It's just simply a situation where he wanted his money back, basically. And, and, of course, once an investment is made, then the money is not readily available; nor was it under the agreement which he signed, that he could get his money back. So that's essentially all I'm going to say about that aspect. But, again, I wish to tell those friends and supporters who have been praying and have been calling in, that I am without sin or guilt in this, and I will be even as bold to say that neither is my friend, Jeb Bryant. So the issue, then, is that when I found out there was a, a warrant, I got a, a, a friend of mine who is an attorney and I turned myself in yesterday morning. And I had the interesting experience, first time experience, of going to jail. And I'll tell you what. It is an eye-opener. It is . . . humility is a very expensive thing sometimes. But it was also very

interesting that the person with whom I was to be a cellie – they call it cellie, my, the one I would share that room with –

PETER: Your cellmate.

HARRIS: -- for --

PETER: Right, your cellmate. Right.

HARRIS: -- that period of time. He was, he was in need, he wanted to talk over some difficult issues and with tears running down his face, I was able to assure him that if he trusts in God, he will certainly never be disappointed.

PETER: Okay. Now, now here's --

HARRIS: And . . .

PETER: -- here, here's, here's what I want to know. We're come, coming up against a break, here. What I want to know is the message that you have consistently told on this radio station from the time the show started over two years ago until, until just . . . you, you were on Monday, right?

HARRIS: Right.

PETER: Right, you were on Monday. Will that change now that you have been in this situation where you have, admittedly, you just admitted being humbled by this, is, is your message, is this going to temper your message? Is it going to make you more cautious about saying things in the future?

HARRIS: No. Quite frankly, and, and, and if I might amend one, one discussion we had on Monday where you asked me, for instance, if I felt that every child who attended public school is going to hell, that kind of caught me off balance and I simply said, "Yes." Even, even . . . while I feel that the public schools, for instance, jeopardize the salvation of, of a, a child, so that is really what I had to say. And no, there's no reason to temper it. This is one of those things that, just like the prophets of old, and I do not claim to be in that caliber, but there was always persecution and in this world, we will face persecution. Christ promised that and, so . . .

RADIO CO-HOST: Well, Harris, Harris, I just want to, I want to clarify something. Is it your belief that what's going on here is, is, is a trumped up charge, made up by people that, that disagree with your position? Is, is that your belief, or was this simply a, a, an investment gone wrong? I mean, I, I just want to understand that because you, you brought up earlier in this discussion --

PETER: Or a little bit of both?

RADIO CO-HOST: -- about the gay rights community and how they were setting you up. Is, is that what happened, or . . . yes or no?

HARRIS: It's, Peter's, Peter's right that this is, this is, it seems to be partly both. But the disgruntled investor had every opportunity since '07 to bring the charges himself, and, and it

is my opinion that the case was so weak that he could not do it and, therefore, when you have the state, with Monica Lindeen, for instance, who is the state auditor and she's over all of this, Monica Lindeen is a, a lady I know from the legislature and she has always been very strongly on the other side. And so I've lobbied her many times and, and she is very pro-gay, very pro-abortion and this kind of thing, and so it's very feasible that this is an opportunity, when I consider it a very weak case to be brought by these people, and time will tell.

PETER: All right, Harris. We are flat out of time. I really appreciate you're taking the time and the courage to be on with us today. Okay?

HARRIS: Well, it wasn't a matter of courage. I just happened to be calling in to respond to your request to talk to you about it and, and then I, and then I found out that this was, this was a hot discussion and . . .

PETER: Well, we, we've got open phones today, so.

HARRIS: The Lord, the Lord works in mysterious ways. I, I, I wish, I wish all of you well. God bless you and all those, particularly who have been supporting Floyd and me, and if we are blessed with the opportunity to be on again, that would be wonderful.

END OF RECORDING

BO/jb (Himes, Harris)

EXHIBIT 8

DUPLICATE COPY

Business Platinum Card® OPEN SM

Earn points on all of your purchases, everywhere you use the Card.
Visit open.americanexpress.com/smallbusinessrewards

Prepared For
HARRIS D HIMES
HOLY GROUND

Account Number
XXXX-XXXXX7-21006

Closing Date
08/06/07

Previous Balance $	Payment Activity $	New Activity $ Inc. Adjustments	New Balance $
0.00	0.00	+465.00	465.00

Please Pay By 08/21/07

Please refer to page 2 for important information regarding your account

To manage your Account online or to pay your bill, please visit us at **open.americanexpress.com**.
For additional contact information, please see the reverse side of this page.

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- The savings are in addition to other discounts or special pricing you may receive from these companies

Payment must be made with an American Express® Business Card at the time of purchase. Savings will be credited to your Business Card billing statement. Participation/offers are subject to change without notice. For more information and terms & conditions visit **opensavings.com**

Cardmember Snapshot

Cardmember Name	Card Number	Total New Activity $
HARRIS D HIMES	3715-536407-21006	395.00
JAMES R BRYANT	3715-536407-21014	35.00
SANDRA S HIMES	3715-536407-21022	35.00
Total New Activity		465.00

Activity

* Indicates posting date

	Amount $
Total of Payment Activity	**0.00**

Due in Full Activity for HARRIS D HIMES
Card XXXX-XXXXX7-21006

		Amount $
08/06/07	Membership Fee	395.00
Total of Due in Full Activity for HARRIS D HIMES		**395.00**

Continued on Page 3

Please fold on the perforation below, detach and return with your payment

Payment Coupon

Account Number
3715-536407-21006

Please Pay By: 08/21/07

To Pay by Computer, visit open.americanexpress.com. To Pay by Phone, call 1-800-472-9297

HARRIS D HIMES
HOLY GROUND
PO BOX 540
HAMILTON MT 59840-0540

Total Amount Due $465.00

Please enter account number on all checks and correspondence

Make check payable to American Express.

See Finance Charges section on reverse side for a description of when additional Finance Charges are not assessed on Features.

Mail Payment to:

AMERICAN EXPRESS
P.O. BOX 650448
DALLAS TX 75265-0448

000390

000037155364072100 6 000046500000046500 05 4

EXHIBIT 8

Office of the Commissioner of Securities and Insurance, Montana State Auditor
Discover Card (Schedule Prepared by Lynne Egan)

Creditor: Discover Card
Account: 6011 3985 6559 5271
Cardmembers: Diana Bryant (Primary Account)
Monarch Properties
James E. Bryant (6011 3985 6594 4669)
Wendy Riedle Johansen
Harris Himes (6011 3985 7771 8937)
Doug Lew

Date	Debit	Credit	Amount	Explanation	Who made charges	Balance
10/18/2007	$ 212.01			Lowes Laredo Texas	Doug Lew	$ (212.01)
10/18/2007	$ 21.63			Sears Roebuck Laredo Texas	Doug Lew	$ (233.64)
10/18/2007	$ 356.66			Walmart Laredo Texas	Doug Lew	$ (590.30)
10/16/2007	$ 219.07			www.newegg.com	Monarch Properties	$ (809.37)
10/15/2007	$ 167.99			Kohl's	Monarch Properties	$ (977.36)
12/7/2007		$ 30.00		Payment	Monarch Properties	$ (947.36)
1/8/2008		$ 29.00		Payment	Monarch Properties	$ (918.36)
2/8/2008		$ 28.00		Payment	Monarch Properties	$ (890.36)
1/20/2008	$ 498.43			Verizon	Monarch Properties	$ (1,388.79)
3/9/2008		$ 42.00		Payment	Monarch Properties	$ (1,346.79)
3/8/2008	$ 109.25			Tripres.com	Monarch Properties	$ (1,456.04)
3/10/2008	$ 36.74			Geoffrey Beene Laughlin Nevada	Monarch Properties	$ (1,492.78)
4/8/2008		$ 45.00		Payment	Monarch Properties	$ (1,447.78)
3/14/2008	$ 10.92			Walmart Las Vegas NV	Monarch Properties	$ (1,458.70)
3/15/2008	$ 16.97			Bass Co Las Vegas NV	Monarch Properties	$ (1,475.67)
3/28/2008	$ 3.76			Walgreens Las Vegas NV	Monarch Properties	$ (1,479.43)
4/3/2008	$ 4.46			Kmart Hamilton MT	Monarch Properties	$ (1,483.89)
4/4/2008	$ 5.98			Kmart Hamilton MT	Monarch Properties	$ (1,489.87)
4/5/2008	$ 18.25			Walmart Missoula MT	Monarch Properties	$ (1,508.12)
4/10/2008	$ 39.25			Walmart Missoula MT	Monarch Properties	$ (1,547.37)
4/5/2008	$ 30.00			BJ's Family Restaurant Hamilton MT	Monarch Properties	$ (1,577.37)
3/26/2008	$ 34.36			Chevron Las Vegas NV	Monarch Properties	$ (1,611.73)

EXHIBIT 8

PETITIONER'S EXHIBIT F 286

000511

Date	Debit	Credit	Amount	Explanation	Who made charges	Balance
3/29/2008	$ 37.47			Town Pump Dillon MT	Monarch Properties	$ (1,649.20)
3/29/2008	$ 19.35			Flying J Ogden UT	Monarch Properties	$ (1,668.55)
4/7/2008	$ 34.23			ExxonMobil Dillon MT	Monarch Properties	$ (1,702.78)
3/26/2008	$ 5.90			Pep Boys Las Vegas NV	Monarch Properties	$ (1,708.68)
3/19/2008	$ 161.55			Verizon	Monarch Properties	$ (1,870.23)
4/1/2008	$ 6.32			Super 1 Foods Hamilton MT	Monarch Properties	$ (1,876.55)
4/5/2008	$ 13.26			Good Food Stores Missoula MT	Monarch Properties	$ (1,889.81)
4/10/2008	$ 13.90			Good Food Stores Missoula MT	Monarch Properties	$ (1,903.71)
4/2/2008	$ 9.60			USPS Rockville MD	Doug Lew	$ (1,913.31)
5/8/2008		$ 58.00		Payment	Diana Bryant	$ (1,855.31)
4/23/2008	$ 27.24			Virgin River Hotel Mesquite NV	Diana Bryant	$ (1,882.55)
4/12/2008	$ 25.01			Walmart Missoula MT	Diana Bryant	$ (1,907.56)
4/18/2008	$ 12.00			Dollartree Missoula MT	Diana Bryant	$ (1,919.56)
4/21/2008	$ 9.89			Walmart American Form UT	Diana Bryant	$ (1,929.45)
4/22/2008	$ 23.69			Susie's Deals Las Vegas NV	Diana Bryant	$ (1,953.14)
4/22/2008	$ 30.41			Walmart Las Vegas NV	Diana Bryant	$ (1,983.55)
4/25/2008	$ 8.45			CVS Pharmacy Rockville MD	Diana Bryant	$ (1,992.00)
4/28/2008	$ 8.59			CVS Pharmacy Rockville MD	Diana Bryant	$ (2,000.59)
4/29/2008	$ 6.33			Bethesda MD	Diana Bryant	$ (2,006.92)
5/5/2008	$ 44.59			Blue Heron Genoa Ohio	Diana Bryant	$ (2,051.51)
5/5/2008	$ 20.00			Pilot Hagerstown MD	Diana Bryant	$ (2,071.51)
5/6/2008	$ 22.63			BP Oil Elkhart IN	Diana Bryant	$ (2,094.14)
5/6/2008	$ 48.57			Commodore Perry Clyde OH	Diana Bryant	$ (2,142.71)
5/7/2008	$ 30.00			Shell Laurel MD	Diana Bryant	$ (2,172.71)
4/15/2008	$ 35.26			Super 1 Foods Hamilton MT	Diana Bryant	$ (2,207.97)
4/19/2008	$ 16.79			Super 1 Foods Hamilton MT	Diana Bryant	$ (2,224.76)
4/23/2008	$ 4.54			Food4Less Las Vegas NV	Diana Bryant	$ (2,229.30)
4/23/2008	$ 14.29			Trader Joe's Las Vegas NV	Diana Bryant	$ (2,243.59)
4/25/2008	$ 39.27			Magrudr's Rockville MD	Diana Bryant	$ (2,282.86)
4/25/2008	$ 13.00			Trader Joes Rockville MD	Diana Bryant	$ (2,295.86)
4/29/2008	$ 8.57			Giant Food Rockville MD	Diana Bryant	$ (2,304.43)
5/1/2008	$ 19.04			Magrudr's Rockville MD	Diana Bryant	$ (2,323.47)
5/2/2008	$ 22.99			Trader Joes Rockville MD	Diana Bryant	$ (2,346.46)
5/4/2008	$ 5.37			Magrudr's Rockville MD	Diana Bryant	$ (2,351.83)

EXHIBIT 8

PETITIONER'S EXHIBIT F 287

000512

Date	Debit	Credit	Amount	Explanation	Who made charges	Balance
5/7/2008	$ 22.30			Trader Joes Rockville MD	Diana Bryant	$ (2,374.13)
5/8/2008	$ 15.59			Magrudr's Rockville MD	Diana Bryant	$ (2,389.72)
5/8/2008	$ 2.99			Magrudr's Gaitherburg MD	Diana Bryant	$ (2,392.71)
5/1/2008	$ 23.07			Amazon.com	Doug Lew	$ (2,415.78)
5/1/2008	$ 23.07			Amazon.com	Doug Lew	$ (2,438.85)
5/1/2008	$ 18.66			Finance Charge		$ (2,457.51)
6/2/2008		$ 74.00		Payment	Diana Bryant	$ (2,383.51)
5/13/2008	$ 20.55			Walmart Germantown MD	Diana Bryant	$ (2,404.06)
5/24/2008	$ 20.57			Walmart Germantown MD	Diana Bryant	$ (2,424.63)
5/14/2008	$ 13.20			Food Lion Columbia MD	Diana Bryant	$ (2,437.83)
6/1/2008	$ 21.10			Finance Charge		$ (2,458.93)
7/1/2008		$ 2,458.93		Payment		$ (0.00)
7/18/2008	$ 58.83			Czech Inn Weimar TX	Monarch Properties	$ (58.83)
7/18/2008	$ 64.38			Czech Inn Weimar TX	Monarch Properties	$ (123.21)
7/21/2008	$ 118.56			Family Garden Inn & Suite Laredo TX	Monarch Properties	$ (241.77)
7/21/2008	$ 118.56			Family Garden Inn & Suite Laredo TX	Monarch Properties	$ (360.33)
7/23/2008	$ 59.28			Family Garden Inn & Suite Laredo TX	Monarch Properties	$ (419.61)
7/19/2008	$ 162.31			Verizon	Monarch Properties	$ (581.92)
7/20/2008	$ 188.78			Red Roof Inn San Antonio TX	Monarch Properties	$ (770.70)
7/20/2008	$ 188.78			Red Roof Inn San Antonio TX	Monarch Properties	$ (959.48)
7/23/2008	$ 59.28			Family Garden Inn & Suite Laredo TX	Monarch Properties	$ (1,018.76)
7/27/2008	$ 118.56			Family Garden Inn & Suite Laredo TX	Monarch Properties	$ (1,137.32)
7/27/2008	$ 118.56			Family Garden Inn & Suite Laredo TX	Monarch Properties	$ (1,255.88)
7/18/2008	$ 72.68			Love's Country Store Luling TX	Monarch Properties	$ (1,328.56)
7/19/2008	$ 65.27			Walmart San Antonio TX	Monarch Properties	$ (1,393.83)
7/20/2008	$ 3.64			Flying J Laredo TX	Monarch Properties	$ (1,397.47)
7/20/2008	$ 32.23			Flying J Laredo TX	Monarch Properties	$ (1,429.70)
8/31/2008		$ 2,458.93		Payment	Diana Bryant	$ 1,029.23
8/19/2008	$ 168.55			Verizon	Diana Bryant	$ 860.68
8/25/2008	$ 76.86			Arbonne International	Wendy Johansen Riedle	$ 783.82
8/14/2008	$ 19.96			Amazon.com	James Bryant	$ 763.86
8/14/2008	$ 723.82			Tigerdirect.com	James Bryant	$ 40.04
8/15/2008	$ 31.46			Amazon.com	James Bryant	$ 8.58
8/15/2008	$ 49.27			Amazon.com	James Bryant	$ (40.69)

EXHIBIT 8

PETITIONER'S EXHIBIT F 288

000513

Date	Debit	Credit	Amount	Explanation	Who made charges	Balance
8/15/2008	$ 21.28			Amazon.com	James Bryant	$ (61.97)
9/9/2008	$ 196.99			Amazon.com	James Bryant	$ (258.96)
8/21/2008	$ 68.00			Carino's Italian Grill Laredo TX	James Bryant	$ (326.96)
8/18/2008	$ 73.90			Love's Country Store San Antonio TX	James Bryant	$ (400.86)
8/20/2008	$ 64.53			Shell San Antonio TX	James Bryant	$ (465.39)
8/22/2008	$ 37.95			Exxonmobil Sealy TX	James Bryant	$ (503.34)
8/24/2008	$ 40.00			PCC Laredo TX	James Bryant	$ (543.34)
8/24/2008	$ 14.26			Shell Laredo TX	James Bryant	$ (557.60)
8/25/2008	$ 20.72			HEB Gas Beeville TX	James Bryant	$ (578.32)
8/25/2008	$ 13.63			HEB Gas Humble TX	James Bryant	$ (591.95)
8/27/2008	$ 24.97			HEB Gas Laredo TX	James Bryant	$ (616.92)
8/28/2008	$ 41.00			Exxonmobile Laredo TX	James Bryant	$ (657.92)
9/9/2008	$ 37.00			R S America Nevada	James Bryant	$ (694.92)
10/2/2008		$ 694.92		Payment	Diana Bryant	$ (0.00)
9/12/2008	$ 40.53			Godaddy	Wendy Johansen Riedle	$ (40.53)
9/12/2008	$ 83.88			Godaddy	Wendy Johansen Riedle	$ (124.41)
9/19/2008	$ 174.98			ATTM Farmers Bra TX	James Bryant	$ (299.39)
10/2/2008	$ 49.81			Target Columbia MD	Doug Lew	$ (349.20)
10/2/2008	$ 4.24			Dollartree Annapolis MD	Doug Lew	$ (353.44)
10/10/2008	$ 103.77			Harbor Freight Tools Laurel MD	Doug Lew	$ (457.21)
10/2/2008	$ 22.29			Trader Joe's Elkridge MD	Doug Lew	$ (479.50)
11/1/2008		$ 479.50		Payment	Diana Bryant	$ (0.00)
10/15/2008	$ 31.24			Gold Coast Gift & Liquor Las Vegas	James Bryant	$ (31.24)
10/16/2008	$ 29.00			Palms Casino Las Vegas	James Bryant	$ (60.24)
11/5/2008	$ 159.79			Howard Johnson San Antonio TX	James Bryant	$ (220.03)
11/7/2008	$ 17.29			Howard Johnson San Antonio TX	James Bryant	$ (237.32)
10/15/2008	$ 23.42			Walmart Las Vegas NV	James Bryant	$ (260.74)
10/15/2008	$ 11.77			99 Cents Only Store Las Vegas	James Bryant	$ (272.51)
10/15/2008	$ 54.74			Perfumania Las Vegas	James Bryant	$ (327.25)
10/16/2008	$ 9.67			Frenchy's Las Vegas	James Bryant	$ (336.92)
10/16/2008	$ 21.55			Music4Less Las Vegas	James Bryant	$ (358.47)
11/5/2008	$ 456.11			Harbor Freight Tools San Antonio TX	James Bryant	$ (814.58)
11/6/2008	$ 174.60			Harbor Freight Tools San Antonio TX	James Bryant	$ (989.18)
11/6/2008	$ 52.70			Leslie's Pool Supply San Antonio TX	James Bryant	$ (1,041.88)

EXHIBIT 8

PETITIONER'S EXHIBIT F 289

000514

Date	Debit	Credit	Amount	Explanation	Who made charges	Balance
11/5/2008	$ 34.00			Zios Italian Kitchen San Antonio TX	James Bryant	$ (1,075.88)
10/16/2008	$ 13.69			Chevron Las Vegas NV	James Bryant	$ (1,089.57)
11/5/2008	$ 60.01			Love's Country Store Encinal TX	James Bryant	$ (1,149.58)
10/16/2008	$ 6.99			Autozone Las Vegas NV	James Bryant	$ (1,156.57)
10/21/2008	$ 181.34			ATTM Farmer's Bra TX	James Bryant	$ (1,337.91)
10/15/2008	$ 32.79			Trader Joe's Las Vegas NV	James Bryant	$ (1,370.70)
10/15/2008	$ 8.58			Lowe's Las Vegas NV	James Bryant	$ (1,379.28)
11/5/2008	$ 119.91			Home Depot San Antonio TX	James Bryant	$ (1,499.19)
11/6/2008	$ 22.66			Northern Tool Equipment San Antonio TX	James Bryant	$ (1,521.85)
10/13/2008	$ 66.75			Harbor Freight Tools Laurel MD	Doug Lew	$ (1,588.60)
12/2/2008		$ 1,588.60		Payment	Diana Bryant	$ (0.00)
11/29/2008		$ 137.79		Credit - Harbor Freight Tools Gathersburg	Wendy Johansen Riedle	$ 137.79
11/26/2008	$ 11.06			Thirft Stores of Washington Laurel MD	Wendy Johansen Riedle	$ 126.73
11/26/2008	$ 311.99			Harbor Freight Tools Laurel MD	Wendy Johansen Riedle	$ (185.26)
11/25/2008	$ 53.04			Trader Joe's Annapolis MD	Wendy Johansen Riedle	$ (238.30)
12/10/2008	$ 556.50			Continental Airlines Houston TX	Doug Lew	$ (794.80)
12/10/2008	$ 556.50			Continental Airlines Houston TX	Doug Lew	$ (1,351.30)
1/6/2009		$ 600.00		Payment	Diana Bryant	$ (751.30)
12/31/2008	$ 359.35			ATTM Farmers Bra TX	Diana Bryant	$ (1,110.65)
12/26/2008	$ 20.97			Cellphoneshop.net Boulder City NV	James Bryant	$ (1,131.62)
12/1/2008	$ 3.40			Finance Charge		$ (1,135.02)
2/2/2009		$ 1,135.02		Payment	Diana Bryant	$ (0.00)
1/13/2009	$ 4.29			Godaddy	Wendy Johansen Riedle	$ (4.29)
1/18/2009	$ 4.29			Godaddy	Wendy Johansen Riedle	$ (8.58)
1/26/2009	$ 95.76			Godaddy	Wendy Johansen Riedle	$ (104.34)
2/10/2009	$ 194.64			Black Bros Co. Mendota IL	Doug Lew	$ (298.98)
3/5/2009		$ 298.98		Payment	Diana Bryant	$ (0.00)
2/19/2009	$ 394.61			Delta Airlines	Diana Bryant	$ (394.61)
2/19/2009	$ 6.99			Orbitz.com	Diana Bryant	$ (401.60)
2/20/2009	$ 349.60			Delta Airlines	Diana Bryant	$ (751.20)
2/20/2009	$ 349.60			Delta Airlines	Diana Bryant	$ (1,100.80)
2/25/2009	$ 13.98			Orbitz.com	Diana Bryant	$ (1,114.78)
2/25/2009	$ 366.60			Continental Airlines Houston TX	Diana Bryant	$ (1,481.38)
2/25/2009	$ 366.60			Continental Airlines Houston TX	Diana Bryant	$ (1,847.98)

EXHIBIT 8

PETITIONER'S EXHIBIT F 290

000515

Date	Debit	Credit	Amount	Explanation	Who made charges	Balance
2/25/2009	$ 366.60			Continental Airlines Houston TX	Diana Bryant	$ (2,214.58)
2/25/2009	$ 20.97			Orbitz.com	Diana Bryant	$ (2,235.55)
2/19/2009	$ 22.09			Orbitz.com	Diana Bryant	$ (2,257.64)
4/2/2009		$ 200.00		Payment	Monarch Properties	$ (2,057.64)
3/16/2009	$ 173.19			Autozone Laredo TX	Doug Lew	$ (2,230.83)
3/17/2009	$ 21.64			Autozone Laredo TX	Doug Lew	$ (2,252.47)
4/1/2009	$ 3.81			Finance Charge		$ (2,256.28)
5/3/2008		$ 1,000.00		Payment	Diana Bryant	$ (1,256.28)
4/23/2009	$ 84.77			Office Depot Annapolis MD	Wendy Johansen Riedle	$ (1,341.05)
4/22/2009	$ 24.73			7-Eleven Derwood MD	James Bryant	$ (1,365.78)
5/2/2009	$ 18.24			7-Eleven Rockville MD	James Bryant	$ (1,384.02)
5/3/2009	$ 12.77			7-Eleven Rockville MD	James Bryant	$ (1,396.79)
4/23/2009	$ 5.60			USPS Spencerville MD	James Bryant	$ (1,402.39)
4/28/2009	$ 24.76			Home Depot Gaithersburg MD	James Bryant	$ (1,427.15)
5/1/2009	$ 3.12			Finance Charge		$ (1,430.27)
6/2/2009		$ 200.00		Payment	Diana Bryant	$ (1,230.27)
6/9/2009	$ 397.88			American Airlines	Diana Bryant	$ (1,628.15)
6/2/2009	$ 9.49			CVS Pharmacy Rockville MD	James Bryant	$ (1,637.64)
6/6/2009	$ 37.09			Guitar Center Rockville MD	James Bryant	$ (1,674.73)
6/2/2009	$ 38.00			Austin Grill Silver Springs MD	James Bryant	$ (1,712.73)
6/2/2009	$ 12.45			7-Eleven Burtonsville MD	James Bryant	$ (1,725.18)
6/4/2009	$ 20.07			7-Eleven Rockville MD	James Bryant	$ (1,745.25)
6/4/2009	$ 36.61			Saturn of Gaithersburg MD	James Bryant	$ (1,781.86)
5/30/2009	$ 10.59			Macgruder's Gaithersburg MD	James Bryant	$ (1,792.45)
6/3/2009	$ 15.98			Trader Joe's Gaithersburg MD	James Bryant	$ (1,808.43)
6/3/2009	$ 13.98			Trader Joe's Gaithersburg MD	James Bryant	$ (1,822.41)
6/3/2009	$ 3.12			Finance Charge		$ (1,825.53)
7/3/2009		$ 200.00		Payment	Diana Bryant	$ (1,625.53)
6/3/2009		$ 57.91		Credit - Fox Rent-A-Car Seatac WA	James Bryant	$ (1,567.62)
7/3/2009	$ 161.98			Best Buy Rockville MD	James Bryant	$ (1,729.60)
7/3/2009	$ 50.85			Micro Center Rockville MD	James Bryant	$ (1,780.45)
7/5/2009	$ 13.84			Eddie Bauer Gettysburg PA	James Bryant	$ (1,794.29)
6/11/2009	$ 40.03			Great Wall Chinese Buffet Tacoma WA	James Bryant	$ (1,834.32)
6/13/2009	$ 5.61			Apex Grocery Tacoma WA	James Bryant	$ (1,839.93)

EXHIBIT 8

PETITIONER'S EXHIBIT F 291

000516

Date	Debit	Credit	Amount	Explanation	Who made charges	Balance
6/16/2009	$ 12.11			Chevron Fairfax VA	James Bryant	$ (1,852.04)
7/1/2009	$ 23.19			Shell Laurel MD	James Bryant	$ (1,875.23)
7/4/2009	$ 13.31			Sheetz Thurmont MD	James Bryant	$ (1,888.54)
7/7/2009	$ 28.01			7-Eleven Rockville MD	James Bryant	$ (1,916.55)
6/11/2009	$ 150.00			Fox Rent-A-Car Seatac WA	James Bryant	$ (2,066.55)
6/12/2009	$ 8.19			Safeway Store Tacome WA	James Bryant	$ (2,074.74)
6/14/2009	$ 9.19			Mom's/My Organic Rockville MD	James Bryant	$ (2,083.93)
6/29/2009	$ 86.10			Macgruder's Gaithersburg MD	James Bryant	$ (2,170.03)
6/30/2009	$ 12.68			Giant Food Rockville MD	James Bryant	$ (2,182.71)
7/7/2009	$ 12.57			USPS Rockville MD	James Bryant	$ (2,195.28)
6/1/2009	$ 14.12			Finance Charge		$ (2,209.40)
8/3/2009		$ 400.00		Payment	Diana Bryant	$ (1,809.40)
7/25/2009	$ 54.00			Tickets Wolf Trap Vienna VA	James Bryant	$ (1,863.40)
7/25/2009	$ 10.59			Micro Center Rockville MD	James Bryant	$ (1,873.99)
7/26/2009	$ 49.61			Baja Fresh Mexican Grill Rockville MD	James Bryant	$ (1,923.60)
7/14/2009	$ 12.27			7-Eleven Rockville MD	James Bryant	$ (1,935.87)
7/19/2009	$ 30.03			7-Eleven Burtonsville MD	James Bryant	$ (1,965.90)
7/24/2009	$ 24.28			7-Eleven Rockville MD	James Bryant	$ (1,990.18)
7/18/2009	$ 60.74			Trader Joe's Falls Church VA	James Bryant	$ (2,050.92)
7/26/2009	$ 12.81			Safeway Store Rockville MD	James Bryant	$ (2,063.73)
7/1/2009	$ 15.83			Finance Charge		$ (2,079.56)
9/3/2009		$ 63.00		Payment	Diana Bryant	$ (2,016.56)
9/11/2009	$ 251.12			Triangle Fastener Richmond VA	Wendy Johansen Riedle	$ (2,267.68)
8/13/2009	$ 61.01			Ramada Syracuse NY	James Bryant	$ (2,328.69)
8/13/2009	$ 61.01			Ramada Syracuse NY	James Bryant	$ (2,389.70)
8/12/2009	$ 55.55			Joey's Syracuse NY	James Bryant	$ (2,445.25)
8/27/2009	$ 30.00			R S America Nevada	James Bryant	$ (2,475.25)
8/1/2009	$ 15.99			Finance Charge		$ (2,491.24)
10/4/2009		$ 200.00		Payment	Diana Bryant	$ (2,291.24)
10/1/2009	$ 16.48			Finance Charge		$ (2,307.72)
11/1/2009	$ 14.85			Finance Charge		$ (2,322.57)
11/2/2009		$ 500.00		Payment	Monarch Properties	$ (1,822.57)
12/1/2009	$ 12.11			Finance Charge		$ (1,834.68)
12/2/2009		$ 100.00		Payment	Monarch Properties	$ (1,734.68)

EXHIBIT 8

PETITIONER'S EXHIBIT F 292

000517

Date	Debit	Credit	Amount	Explanation	Who made charges	Balance
1/1/2010	$ 10.83			Finance Charge		$ (1,745.51)
1/2/2010		$ 500.00		Payment	Monarch Properties	$ (1,245.51)
2/1/2010	$ 8.65			Finance Charge		$ (1,254.16)
2/3/2010		$ 38.00		Payment	Monarch Properties	$ (1,216.16)
3/1/2010	$ 10.36			Finance Charge		$ (1,226.52)
3/4/2010		$ 100.00		Payment	Monarch Properties	$ (1,126.52)
3/4/2010	$ 43.32			Super 8 Laredo TX	James Bryant	$ (1,169.84)
2/18/2010	$ 29.61			Harbor Freight Tools Gaithersville MD	James Bryant	$ (1,199.45)
3/5/2010	$ 33.05			Rudy's Country Store Laredo TX	James Bryant	$ (1,232.50)
2/22/2010	$ 28.66			Shell Derwood MD	James Bryant	$ (1,261.16)
2/23/2010	$ 17.32			Shell Manassas VA	James Bryant	$ (1,278.48)
2/26/2010	$ 19.50			Raceway Little Rock AK	James Bryant	$ (1,297.98)
2/26/2010	$ 34.27			ExxonMobile Taxarkana AR	James Bryant	$ (1,332.25)
3/2/2010	$ 22.15			Racetrack Grand Prarie TX	James Bryant	$ (1,354.40)
3/2/2010	$ 27.88			ExxonMobile Buffalo TX	James Bryant	$ (1,382.28)
3/4/2010	$ 12.31			Shell Von Ormy TX	James Bryant	$ (1,394.59)
3/4/2010	$ 32.04			Shell Humble TX	James Bryant	$ (1,426.63)
2/25/2010	$ 476.14			Direct Tire Distributors Memphis TN	James Bryant	$ (1,902.77)
2/18/2010	$ 13.90			Trader Joe's Gaithersburg MD	James Bryant	$ (1,916.67)
3/1/2010	$ 19.41			Finance Charge		$ (1,936.08)
4/5/2010		$ 200.00		Payment	Monarch Properties	$ (1,736.08)
4/3/2010	$ 39.00			Late free		$ (1,775.08)
4/1/2010	$ 17.74			Finance Charge		$ (1,792.82)
5/3/2010		$ 54.00		Payment	Monarch Properties	$ (1,738.82)
5/1/2010	$ 24.20			Finance Charge		$ (1,763.02)
6/2/2010		$ 150.00		Payment	Monarch Properties	$ (1,613.02)
5/17/2010	$ 35.71			Office Depot Laredo TX	Monarch Properties	$ (1,648.73)
5/18/2010	$ 48.00			Walmart Laredo TX	Monarch Properties	$ (1,696.73)
5/18/2010	$ 47.06			Big Lots Laredo TX	Monarch Properties	$ (1,743.79)
5/18/2010	$ 29.21			Walmart Laredo TX	Monarch Properties	$ (1,773.00)
5/21/2010	$ 12.52			Rudy's Country Store Laredo TX	Monarch Properties	$ (1,785.52)
5/21/2010	$ 30.34			Rudy's Laredo TX	James Bryant	$ (1,815.86)
5/20/2010	$ 528.77			Home Depot Laredo TX	James Bryant	$ (2,344.63)
5/20/2010	$ 44.84			Home Depot Laredo TX	James Bryant	$ (2,389.47)

EXHIBIT 8

PETITIONER'S EXHIBIT F 293

000518

Date	Debit	Credit	Amount	Explanation	Who made charges	Balance
6/1/2010	$ 23.88			Finance Charge		$ (2,413.35)
7/3/2010		$ 72.00		Payment	Diana Bryant	$ (2,341.35)
7/1/2010	$ 23.72			Finance Charge		$ (2,365.07)
8/3/2010		$ 200.00		Payment	Monarch Properties	$ (2,165.07)
8/1/2010	$ 22.38			Finance Charge		$ (2,187.45)
9/3/2010		$ 100.00		Payment	Monarch Properties	$ (2,087.45)
9/1/2010	$ 30.00			RAS of America Nevada	James Bryant	$ (2,117.45)
9/1/2010	$ 21.03			Finance Charge		$ (2,138.48)
10/3/2010		$ 100.00		Payment	Diana Bryant	$ (2,038.48)
10/1/2010	$ 20.60			Finance Charge		$ (2,059.08)
11/3/2010		$ 200.00		Payment	Monarch Properties	$ (1,859.08)
11/4/2010	$ 14.01			Pilot Las Vegas NV	James Bryant	$ (1,873.09)
11/1/2010	$ 24.72			Finance Charge		$ (1,897.81)
12/4/2010		$ 100.00		Payment	Diana Bryant	$ (1,797.81)
12/3/2010	$ 39.00			Late free		$ (1,836.81)
12/1/2010	$ 25.01			Finance Charge		$ (1,861.82)
1/3/2011		$ 100.00		Payment	Monarch Properties	$ (1,761.82)
1/1/2011	$ 31.11			Finance Charge		$ (1,792.93)
2/9/2011		$ 200.00		Payment	Monarch Properties	$ (1,592.93)
2/3/2011	$ 39.00			Late free		$ (1,631.93)
1/15/2011		$ 130.10		Credit - Payless Car Rental Las Vegas	James Bryant	$ (1,501.83)
1/18/2011		$ 70.34		Credit - Payless Car Rental Las Vegas	James Bryant	$ (1,431.49)
1/18/2011	$ 11.91			Rebel Las Vegas NV	James Bryant	$ (1,443.40)
1/18/2011	$ 12.61			Rebel Henderson NV	James Bryant	$ (1,456.01)
1/18/2011	$ 23.33			Pilot St George Utah	James Bryant	$ (1,479.34)
1/15/2011	$ 200.44			Payless Car Rental Las Vegas NV	James Bryant	$ (1,679.78)
2/1/2011	$ 25.78			Finance Charge		$ (1,705.56)
3/5/2011		$ 100.00		payment	Diana Bryant	$ (1,605.56)
3/1/2011	$ 27.22			Finance Charge		$ (1,632.78)
4/3/2011		$ 100.00		Payment	Monarch Properties	$ (1,532.78)

EXHIBIT 8

PETITIONER'S EXHIBIT F 294

000519

HARRIS.

DEPOSIT TICKET

0100914387

HARRIS N.A. DEBIT

TELLER NUMBER

7049

CASH IN

$1,400.00

0100914380

MONARCH BEACH PROPERTIES, LLC

1008

11-7-08

$ 1135.00

HARRIS.

0100928676

MONARCH BEACH PROPERTIES, LLC

1011

12-12-08

$ 750.00

HARRIS.

0200517231

MONARCH BEACH PROPERTIES, LLC

1004

$ 1400.00

HARRIS.

0300891982

EXHIBIT 8

MONTANA SECURITIES DEPARTMENT
CONTACT REPORT

DATE: 04/20/2011

NAME: Noe Sanchez **PHONE NUMBER: 956-722-1952**

ORG./ADDRESS: **CASE / SUBJECT: DBS**

PREPARED BY: Egan

SUMMARY:

The Department spoke with Noe Sanchez regarding his $1900 payment (3/19/2009) and his $2500 payment (3/19/2010) to Monarch Beach Properties. Sanchez told the Department that he was not an investor in DBS. He said he knew James Bryant but had not seen him in over a year. Noe said he is a customs agent and receives goods and funds from America and Mexico and then transmits them over the border. Sanchez said the two payments were funds he received from Bryant and he subsequently transmitted them to Bryant's bank account. Sanchez was aware of an entity entitled Monarch Beach Properties but was not aware of Duratherm. Sanchez' business is Goel Forwarding.

Sanchez said he knew Bryant quite well but was not surprised that he might be in trouble.

EXHIBIT 8

State of Texas

County of Webb

Personally appeared before me NOE E SANCHEZ, whom under oath states the following:

Regarding my conversation with the Montana Securities Department held on 4/20/2011, DATES #788, I would like to make the following corrections:

1. I did not make a statement denying the existence of Duratherm since we had done business with James Bryant and with Duratherm since the beginning in Oaxaca.
2. In reference to the comment regarding James Bryant's character I strongly deny such comments. My relationship with James since the very beginning has proven to me completely the opposite. James is a person of integrity and of highest morals.

I swear under penalty of perjury that the above is true and correct.

_____

Noe E Sanchez

SUBSCRIBED TO AND SWORN TO BEFORE ME ON THIS THE 8th DAY OF AUGUST, 2012

_____

NOTARY PUBLIC FOR WEBB COUNTY, TEXAS

SUBSCRIBED AND SWORN BEFORE ME

This 8TH day of AUGUST 2012

_____

NOTARY PUBLIC

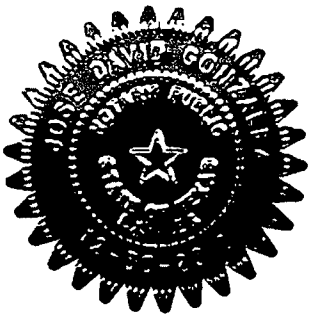

EXHIBIT 9

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EXHIBIT G

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MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT,
RAVALLI COUNTY

STATE OF MONTANA, Plaintiff, vs. HARRIS HIMES, Defendant.	)))))))))	Cause No.: DC-11-117 **RESPONSE TO DEFENDANT'S MOTION TO COMPEL PRODUCTION OF SELECTIVE PROSECUTION EVIDENCE**

The State of Montana (State), by and through counsel, responds to the Defendant's Motion to Compel Production of Selective Prosecution Evidence. The motion should be rejected. In the same motion, the Defendant asks for leave from the Court to file an oversized brief, to which the State does not object.[1] The Defendant also asks for an extension of the motions deadline for purposes of filing a motion to dismiss all counts against the Defendant, which the State opposes. The following will show, however, that the question of whether the motions deadline should be extended is moot. The Defendant has not made a sufficient showing that further discovery regarding selective prosecution is warranted, much less that the Defendant has been selectively prosecuted because of his religious beliefs.

[1] The State previously asked for leave from this Court to file this oversized brief.

INTRODUCTION

The Bible states that "for everyone to whom much is given, of him [or her] shall much be required."[2] The State, via the Montana and United States Constitutions, has certainly been given much. It is appropriate and necessary, then, to require much of the State, particularly when it comes to charging citizens with crimes. And while the Montana Supreme Court states that a "prosecutor has broad discretion in determining whether or not to prosecute" (*State v. Lemmon* (1984), 214 Mont. 121, 126, 692 P.2d 455, 457), the prosecutor should do so judiciously pursuant to the evidence as presented.

Here, to put it lightly, the Defendant and his attorneys do not believe the Defendant was charged judiciously. In fact, the Defendant argues that he is being selectively prosecuted due to his "outspoken conservative Christian" beliefs and the "anti-Christian bigotry of the decision-makers in the Auditor's office." (Def.'s Mot. to Compel Production of Selective Prosecution Evidence at 1-5. (September 22, 2012)) These are very serious and troubling allegations, often lacking evidentiary support or a reasonable inquiry,[3] which attack the integrity and motivations of the prosecutors and those who investigated the case. The Defendant and his lawyers base their allegations on the testimony of two former employees of the Auditor's office, but, as shown below, their testimony is often stretched, twisted, and otherwise misconstrued by the Defendant and his attorneys to support their allegations, as the following will reflect.[4] See Exhibit A.

The Defendant would have this Court believe that he was specifically targeted and charged by the State due to his religious beliefs. In other words, the State's prosecutors and investigators are on a crusade against "outspoken conservative Christians" because they are

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[2] Luke 12:48.

[3] See Mont. R. Civ. P. 11(b).

[4] By making repeated misrepresentations to the Court, it is likely that the Defendant's lawyers have violated Rules 3.1(a)(1) and 3.3(a)(1) of the Montana Rules of Professional Conduct.

"bigots" and find devout Christians "particularly repulsive." *Id.* Indeed, the Defendant and his lawyers argue that the State "fabricated" evidence, the investigator perjured herself, and one of the prosecutors needed the Defendant as his "prey" for political purposes.[5] (Def.'s Mot. at 21, 24.) To be sure, according to the Defendant and his lawyers, "one of the greatest injustices that can occur in our legal system" is when a citizen (the Defendant) is selectively prosecuted for expressing opinions "the government deems offensive." (Def.'s Mot. at 32.)

The Defendant and his lawyers conveniently fail to mention, however, how this case was initiated. It was not the State seeking help to pursue the Defendant; instead, it was someone who had trusted and admired the Defendant who turned to the State for help. Exhibit B Depo. G.S. 66:9-15 (May 1, 2012); Exhibit C Depo. Robert Smith 8:25-9:16. Ironically, what the Defendant and his lawyers utterly fail to mention is the fact that the person who sought the State's help is a Christian – a devout Christian. Exhibit B Depo. G.S. 69:25-71:20 (May 1, 2012). He tried to contact the Defendant first. Exhibit F Bates 289-292. When that failed, he called the Ravalli County Sheriff's Office (RCSO). Exhibit C Depo. Robert Smith 8:25-9:16; Exhibit D Depo. G.S. 84:3-17 (May 30, 2012).

PROCEDURAL HISTORY

On May 2, 2009, Deputy Sheriff Robert Smith of the RCSO interviewed G.S., the victim in this case, regarding G.S.'s concerns about the Defendant. Exhibit C Depo. Robert Smith 11:15-17 and 12:11-17. After finishing an initial report, Deputy Smith sent it "down the line" to Lieutenant Potter to assign to a detective because of the "type and size of investigation." *Id.* at 13:11-21. Deputy Smith obtained and included in his report criminal background information on the co-defendant Jeb Bryant but, at his deposition, admitted that it was the wrong report and

[5] See Exhibit A.

pulled a new one. *Id.* at 32:3-8; 45:24-48:14. Aside from the Defendant being a Pastor, nothing in Deputy Smith's records discussed the Defendant's religious beliefs.

The case was assigned to Detective Sergeant Sterling Maus, who spoke with G.S. soon after Deputy Smith did. Exhibit E Depo. Sterling Maus 9:12-21. In July 2009, however, Detective Maus closed the case because he did not hear from G.S. *Id.* at 10:6-9. In January 2011, Detective Maus reopened the case because G.S. contacted the RCSO inquiring about the status of the case. *Id.* at 10:2-3 and 10:9-25. After reviewing G.S.'s documents and speaking with his Lieutenant, Detective Maus forwarded the case on to the State Auditor's office because it appeared to be a securities fraud case. *Id.* at 10:18-25. Detective Maus called Neil Brunett, with whom he previously worked insurance cases, and Mr. Brunett transferred him to Lynne Egan. *Id.* at 11:25-12:6. After speaking with Ms. Egan, Detective Maus transferred the file to her around January 25, 2011. *Id.* 12:3-6 Exhibit 32 attached to his deposition. Aside from the Defendant being a Pastor, nothing in Detective Maus' records discussed the Defendant's religious beliefs.

After conducting her own investigation, Ms. Egan wrote an investigation report dated April 20, 2011. Exhibit F Bates 1-8. As part of her investigation report, she relied on the RCSO for the criminal background information on Mr. Bryant and alleged that the Defendant, among other things, violated the Securities Act of Montana for failing to disclose to the victim the criminal history of Mr. Bryant. Exhibit G Depo. Lynne Egan 123:7-124:13; Exhibit F Bates 6-8. Aside from the Defendant being a Pastor, nothing in Ms. Egan's report discussed the Defendant's religious beliefs. Exhibit F Bates 1-8.

On September 23, 2011, based on the documents provided by G.S. and the investigation, two prosecutors at the Auditor's office filed an Information and Affidavit of Probable Cause

against the Defendant alleging that he committed six felonies. (Mot. and Affidavit for Leave to File Information (September 23, 2011); Information (September 23, 2011).) The Information did not allege that the Defendant violated the Securities Act of Montana for failing to disclose to the victim the criminal history of Mr. Bryant. *Id.* After the Information was filed, certain persons approached the State claiming the Defendant had also offered them securities and, based on this new information, the State filed an Amended Information charging the Defendant with an additional felony. (Mot. and Affidavit for Leave to file Amended Information (November 10, 2011); Amended Information (November 10, 2011).) Nothing in any of the documents filed with the Court even remotely referenced the Defendant's religious beliefs, other than the fact that he and his co-defendant were pastors. *Id.* In fact, no one's religious beliefs were ever discussed until July 31, 2012 – the day Alan Ludwig, a former employee of the State Auditor's office, was deposed. Mr. Ludwig is one of two of the Defendant's alleged "whistleblowers." (Def.'s Mot. at 1.)

STATEMENT OF FACTS

Mr. Ludwig believes that "some of [the] charges [against the Defendant] are relevant I'm sure." Exhibit H Depo. Alan Ludwig 202:7-13. Mr. Ludwig testified that one of the reasons he left the Auditor's office on May 1, 2012, was an anti-Christian bias, although he never told anyone at the office about his concerns except the human resources officer in March 2012. *Id.* at 49:8-16; 90:25-91:8; 181:15-182:2. Specifically, he had concerns about Ms. Egan, although he testified that she never took a negative action toward him because of his faith. *Id.* at 49:14-22; 175:1-10. He also expressed frustration that he "had fallen out of favor with" Ms. Egan or otherwise he'd "still be working [at the office]." *Id.* at 47:3-4. He felt like he was "being excluded from work" during the last year of his employment and "was given dead end matters"

that "didn't leave [him] much purpose." *Id.* at 48:5-16. Mr. Ludwig also testified that he never heard the State Auditor, Monica J. Lindeen, or one of the prosecutors in this case, Jesse Laslovich, make any anti-Christian remarks. *Id.* at 89:4-14. With regard to the other prosecutor in this case, Brett O'Neil, Mr. Ludwig testified that he "didn't know [Mr. O'Neil's] attitudes towards Christians in general," only that Mr. O'Neil, in two comments related to another criminal case the office was prosecuting, had commented about pastors proselytizing. *Id.* at 89:15-90:15. Mr. Ludwig also admitted that he has limited personal knowledge about the Defendant's case. *Id.* at 109:4-110:21; 128:13-129:5; 195:23-196:1; 202:7-21; (See State's Mot. in Limine to Exclude Testimony of Ludwig and Brief in Support (Sept. 26, 2012).)

The other "whistleblower" identified by the Defendant, Roberta Cross Guns, testified that even though she "didn't spend a lot of time with [Mr. O'Neil]," she said Mr. O'Neil called "right wing Christians . . . whack jobs . . . maybe two or three" times. Exhibit I Depo. Roberta Cross Guns 59:6-24. As for the other prosecutor, Mr. Laslovich, Ms. Cross Guns testified that she could not recall if he made any religious-based comments. *Id.* at 59:25-60:9. In fact, she believes Mr. Laslovich is "a practicing Christian" and didn't think he made comments in the office about "people's faith." *Id.* at 60:3-9. Besides Ms. Egan and Mr. Ludwig, Ms. Cross Guns did not "recall others even discussing religion" in the office. *Id.* at 60:10-24. Ms. Cross Guns also admitted that she has no personal knowledge about the Defendant's case. *Id.* at 54:15-22; 88:21-22; (see State's Motion in Limine to Exclude Testimony of Roberta Cross Guns and Brief in Support (Sept. 19, 2012).)

Ms. Cross Guns also expressed concerns about Mr. Laslovich's trial experience. *Id.* at 68:4-5. In contrast, Ms. Cross Guns testified that she has "done lots of trials . . . lots of judge trials . . . lots of jury trials" and that she has "a wealth of experience." *Id.* at 68:7-10. Indeed,

according to Ms. Cross Guns, "I win a lot." *Id.* at 68:11. But Ms. Cross Guns testified that in her 12 years at the Auditor's office, she prosecuted two jury trials, one of which resulted in a directed verdict for the defendant and the other an acquittal. *Id.* at 97:14-99:13.

In addition to his lack of experience, Ms. Cross Guns testified that Mr. Laslovich is "extremely politically motivated," but "feels like [Mr. Laslovich] is willing to say, 'I shouldn't have done that,'" and that he has a "good work ethic." *Id.* at 67:15-16; 69:20-70:5. And even though she "voluntarily" quit her job in January 2012, Ms. Cross Guns felt in "some ways" she was forced out because "in some ways, the way [Mr. Laslovich] treated me was pretty horrible." *Id.* at 110:12-19.

Additionally, according to Ms. Cross Guns, until Mr. Laslovich became Chief Legal Counsel for the Auditor's office, Ms. Egan had significant influence on whether cases were handled criminally. *Id.* at 32:24-33:5. After Mr. Laslovich took over, however, Ms. Cross Guns said she didn't "know what happened" and didn't know "if [Ms. Egan] continued to have a say or not." *Id.* at 33:6-7. Mr. Laslovich started employment with the office in the spring of 2009. Exhibit G Depo. Lynne Egan 119:16-21. Ms. Egan, moreover, testified that the decision of whether a case is handled criminally or administratively is made by "the legal department or the attorney that's going to handle the matter." *Id.* at 40:18-41:5. According to Ms. Egan, if a case is handled administratively or prosecuted criminally, it "would not change the way I investigated the matter at all." *Id.* at 41:5-6. In fact, if Ms. Egan recommends criminal prosecution, the "legal department reaches its own conclusion and does what it sees fit." *Id.* at 47:4-9. As far as her investigations go, "come-clean" letters are "used on a case-by-case basis." *Id.* at 127:15-128:1.

Additionally, Ms. Egan has never investigated someone based on her religious beliefs, their religious beliefs, or their political affiliation. *Id.* at 138:19-139:6. Nor has the Auditor's office pursued someone based on their religious beliefs or political affiliation. *Id.* at 138:13-18. In fact, neither Mr. Ludwig nor Ms. Cross Guns testified that they had seen such actions. Ms. Cross Guns also testified that Ms Egan is "amazingly excellent at identifying where the money goes, following the money. She can do that like nobody I know." Exhibit I Depo. Roberta Cross Guns 108:8-14. To be sure, Ms. Cross Guns trusts that part of Ms. Egan's work. *Id.* at 108:17-18. Mr. Ludwig also testified that Ms. Egan is "very good" at her work and that he trusts her work. Exhibit H Depo. Alan Ludwig 199:6-16.

Importantly, Mr. Ludwig testified that with regard to the Defendant, "it tends to be that people who wind up being involved in these matters are complicit in some matter and some of those charges [against the Defendant] are relevant I'm sure." *Id.* at 202:7-13. Mr. Ludwig's opinion is confirmed by criminal actions initiated by the Auditor's office since Mr. Laslovich began employment with the Auditor's office, all of which have resulted in convictions except those which are still pending, including this one. Exhibit J.

Additionally, since Mr. Laslovich began employment with the Auditor's office, many securities cases have been handled administratively, some have been referred to federal authorities, and others are still in the investigatory stage. Exhibit K. For example, the investigation into Bill Nooney is not complete. Exhibit G Depo. Lynne Egan 116:2-117:7. Additionally, the United States Attorney's office prosecuted Daniel Two Feathers and Rick Young, but decided not to indict Nicholas Cladis. *Id.* at 114:10-115:19; Exhibit I Depo. Roberta Cross Guns 47:21-48:7; Exhibit M Affidavit of Nicholas Cladis, ¶ 5. And in a case Mr. Ludwig

investigated, Ms. Cross Guns filed an administrative action against ACN Corporation. Exhibit G Depo. Lynne Egan 112:20-114:5.

Despite the diversity in the way cases are filed, the Defendant and his lawyers nevertheless argue that the Defendant is being selectively prosecuted. (Def.'s Mot. at 1-2.) For example, Ms. Cross Guns testified that Ms. Egan referred to the Defendant as a "whack job" and a "right-wing Christian," but Ms. Cross Guns never heard Ms. Egan say anything of that nature directly to her. Exhibit I Depo. Roberta Cross Guns 54:23-55:16. Ultimately, no one testified, not even the alleged "whistleblowers," that the Defendant was being prosecuted because of his religious beliefs.

Importantly, Tari Nyland, a current employee of the Auditor's office, stated that in her opinion, the Auditor's office would not investigate, nor would its lawyers prosecute, an individual based on their religious or political beliefs, including the Defendant. Exhibit N Affidavit of Tari Nyland, ¶ 13. The Defendant and his lawyers, however, used Ms. Nyland as an "example" of the "Auditor's office routinely harass[ing] employees who are devout Christians." (Def.'s Mot. at 5.) Ms. Nyland, a devout Christian, was "very hurt and upset" that the Defendant's lawyer did this. Exhibit N Affidavit of Tari Nyland, ¶¶ 9, 11. She was not only "very hurt and upset," she disagrees with the Defendant's lawyer's characterization that the "Auditor's office routinely harasses employees who are devout Christians." *Id.* at ¶¶ 9, 12.

ARGUMENT

I. THE DEFENDANT'S MOTION TO COMPEL SHOULD BE DENIED BECAUSE THE DEFENDANT FAILS TO SHOW THAT HE IS BEING SELECTIVELY PROSECUTED.

According to the Montana Supreme Court, a "prosecutor has broad discretion in determining whether or not to prosecute." *State v. Lemmon*, 214 Mont. 121, 126, 692 P.2d 455,

457 (1984). "Thus, the conscious exercise of some selectivity in the enforcement of criminal laws, without more, does not constitute a violation of constitutional rights." *Lemmon*, 214 Mont. at 126, 692 P.2d at 458; *see also*, *State v. Stanko*, 1998 MT 323, ¶ 51, 292 Mont. 214, 974 P.2d 1139; *State v. Pease*, 227 Mont. 424, 428, 740 P.2d 659, 661 (1987); *State v. Maldonado*, 176 Mont. 322, 328-29, 578 P.2d 296, 300 (1978). "A person asserting that his or her constitutional rights have been violated by selective prosecution must allege and prove that the selection was deliberately based on an unjustifiable standard such as race, religion or other arbitrary classification." *Stanko*, ¶ 51; *Pease*, 227 Mont. at 428, 740 P.2d at 661; *Lemmon*, 214 Mont. at 126, 692 P.2d at 458; *Maldonado*, 176 Mont. at 329, 578 P.2d at 300.

"There is no right under the Constitution to have the law go unenforced against you, even if you are the first person against whom it is enforced, and even if you think (or can prove) that you are not as culpable as some others who have gone unpunished. The law does not need to be enforced everywhere to be legitimately enforced somewhere." *Futernick v. Sumpter Township*, 78 F.3d 1051, 1056-57 (6th Cir. 1996). This is consistent with United States Supreme Court precedent, which states that "the conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation." *Oyler v. Boles*, 368 U.S. 448, 456 (1962).

The United States Supreme Court, moreover, emphasizes caution when reviewing claims of selective prosecution, stating a prosecutor's "broad discretion rests largely on the recognition that the decision to prosecute is particularly ill-suited to judicial review." *Wayte v. United States*, 470 U.S. 598, 607 (1985). The Court explains:

> Such factors as the strength of the case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship to the Government's overall enforcement plan are not readily susceptible to the kind of analysis the courts are competent to undertake. Judicial supervision in this area, moreover, entails systemic costs of particular concern. Examining the basis of a prosecution delays the criminal proceeding, threatens to chill law enforcement by subjecting the prosecutor's motives and

> decision making to outside inquiry, and may undermine prosecutorial effectiveness by revealing the Government's enforcement policy. All these are substantial concerns that make the courts properly hesitant to examine the decision whether to prosecute. *Wayte*, 470 U.S. at 607-08.

Yet "[i]t is appropriate to judge selective prosecution claims according to ordinary equal protection standards." *Wayte*, 470 U.S. at 608.

The seminal case analyzing these equal protection standards is *United States v. Armstrong*, 517 U.S. 456 (1996). "A defendant claiming selective prosecution must demonstrate "that the . . . prosecutorial policy had a discriminatory effect and that it was motivated by a discriminatory purpose" or intent. *Armstrong*, 517 U.S. at 465 (internal quotation marks omitted). In other words, "[i]n order to dispel the presumption that a prosecutor has not violated equal protection, a criminal defendant must present clear evidence to the contrary," demonstrating that the government was motivated by a discriminatory purpose to adopt a prosecutorial policy with a discriminatory effect. *Id.* (internal quotations omitted).

To be sure, "the standard [for proving a selective prosecution claim] is a demanding one." *Id.* at 463. Accordingly, "the presumption of regularity supports . . . prosecutorial decisions and, in the absence of clear evidence to the contrary, courts presume that [prosecutors] have properly discharged their official duties." *Id.* at 464 (internal brackets and quotation marks omitted). This "presumption of regularity should not be lightly discarded." *United States v. Lewis*, 517 F.3d 20, 25 (1st Cir. Mass. 2008). "It is, therefore, unsurprising that the presumption is formidable; it can be overcome only by a proffer of '<u>clear evidence</u>' that the prosecutor acted impermissibly in pursuing a case." *Id.*, citing *Armstrong*, 517 U.S. at 465 (Emphasis added).

The Defendant and his lawyers state that he is only required to show "some" evidence of discriminatory effect and discriminatory intent, but they completely fail to provide this Court

with the standard to prove both discriminatory effect and discriminatory intent.[6] (Def.'s Mot. at 17-18.) Indeed, the standard for obtaining discovery in support of a selective prosecution claim is "rigorous" and "only slightly lower than for a dismissal" of the charges. *Armstrong*, 517 U.S. at 468; *United States v. Venable*, 666 F.3d 893, 900 (4th Cir. Va. 2012). "The evidentiary threshold that a defendant must cross in order to obtain discovery in aid of a selective prosecution claim is somewhat below 'clear evidence,' but it is nonetheless fairly high." *Id.*, citing *Armstrong*, 517 U.S. at 468. "To cross this lower threshold, a defendant must present 'some evidence' tending to show both discriminatory effect and discriminatory intent." *Id.* (citing *United States* v. *Berrios*, 501 F.2d 1207, 1211 (2d Cir. 1974)) (Emphasis added). For purposes of "some evidence," the evidence in support of the asserted discriminatory effect must comprise a **credible** showing that similarly situated individuals who do not share the protected characteristic were not prosecuted. *Id.*, citing *Armstrong*, 517 U.S. at 469 (Emphasis added). "Similarly, the evidence in support of the asserted discriminatory intent must consist of a **credible** showing that the government chose to prosecute 'at least in part because of, not merely in spite of,' the defendant's protected characteristic." *Id.*, citing *Wayte*, 470 U.S. at 610 (quoting *Personnel Adm'r of Mass.* v. *Feeney*, 442 U.S. 256, 258 (1979) (Emphasis added)).

The Defendant has demonstrated neither a discriminatory effect nor a discriminatory intent, both of which are needed to successfully obtain the requested discovery. "[F]ailure on one branch dooms the discovery motion as a whole." *Lewis*, 517 F.3d at 26, citing *United States v. Bass*, 536 U.S. 862, 863-64 (2002) (per curiam). The question of discriminatory effect is addressed first.

[6] The Defendant's lawyers correctly noted that "some" evidence is required, but failed to inform the Court what the standard for "some" evidence is.

A. The Defendant and his lawyers fail to make any kind of credible showing that similarly situated individuals who were not "outspoken Christian conservatives" were not prosecuted.

To establish a discriminatory effect, the Defendant must show that similarly situated individuals who were not outspoken Christian conservatives were not prosecuted. *Armstrong*, 517 U.S. at 470; *United States v. DeBerry*, 430 F.3d 1294 (10th Cir. Colo. 2005). In *United States v. Olvis*, 97 F.3d 739, 744 (4th Cir. 1996), the court held that "defendants are similarly situated when their circumstances present no distinguishable legitimate prosecutorial factors that might justify making different prosecutorial decisions with respect to them." *Id.* A court must examine all relevant factors and not just the other persons' "relative culpability." *Venable*, 666 F.3d at 903. Examples of such factors include:

> (1) a prosecutor's decision to offer immunity to an equally culpable defendant because that defendant may choose to cooperate and expose more criminal activity; (2) the strength of the evidence against a particular defendant; (3) the defendant's role in the crime; (4) whether the defendant is being prosecuted by state authorities; (5) the defendant's candor and willingness to plead guilty; (6) the amount of resources required to convict a defendant; (7) the extent of prosecutorial resources; (8) the potential impact of a prosecution on related investigations and prosecutions; and (9) prosecutorial priorities for addressing specific types of illegal conduct.
>
> *Id.*

The "analysis of these factors is not to be conducted in a mechanistic fashion, however, because '[m]aking decisions based on the myriad of potentially relevant factors and their permutations require the very professional judgment that is conferred upon and expected from prosecutors in discharging their responsibilities.'" *Id.*, citing *Olvis*, 97 F.3d at 744. As such, the *Venable* court rejected a "narrow approach to relevant factors to be considered when deciding whether persons are similarly situated for prosecutorial decisions." *Id.*, citing *Olvis*, 97 F.3d at 744.

The Defendant provides no analysis of the foregoing or any factors and instead argues that the following provide a credible showing that similarly situated people who are not outspoken conservative Christians were not prosecuted:

1. Numerous suspects who are not outspoken conservative Christians and have defrauded victims of substantial sums have not been prosecuted by the Auditor;

2. The Auditor's refusal to contact the Defendant prior to charging him – something done for other suspects – is also an effect of anti-Christian bigotry;

(Def.'s Mot. to Compel 25, 27 (Sept. 24, 2012).) Prior to addressing these in the order the Defendant raised them, it must be noted that the Defendant alleges that his protected characteristic is "outspoken conservative Christian." While the case law rightfully gives protection to those the government pursues based on an individual's religion, it is apparent that no additional protection is afforded to a defendant simply because a defendant is "outspoken." Indeed, to what extent does outspoken mean? Is the Defendant excluding those who consider themselves liberal Christians? Or those who have no political beliefs but are nonetheless Christian? This kind of rigidity has no support in the case law and should fail on its face. And while the Defendant provided the Court with examples of his "outspokenness," he is surely one of many advocates who lobby the Legislature[7] and he certainly is not the only "outspoken conservative Christian" who is quoted in newspapers.[8] Indeed, the Defendant did not and cannot provide this Court with any kind of evidence whatsoever that shows the prosecutors or anyone in

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[7] The Defendant states he testified on seven bills that appeared before Mr. Laslovich when Mr. Laslovich was a State Senator, even receiving questions from Mr. Laslovich on one of the bills. These seven bills were a part of hundreds of bills heard by Mr. Laslovich over the course of sitting on the Senate Judiciary Committee for three legislative sessions. Even assuming, *arguendo*, that Mr. Laslovich or Ms. Lindeen knew of the Defendant's "outspoken conservative Christian" beliefs, the Defendant did not and cannot provide this Court with one shred of evidence – including from the alleged "whistleblowers" – that Mr. Laslovich and Ms. Lindeen made any kind of derogatory comment about *anyone's* religious beliefs, let alone the Defendant's.

[8] Surely, being quoted in four newspaper articles – two in the *Independent Record* and two in the *Missoulian* – over the course of two years does not amount to "extensive press coverage."

the Auditor's office saw the "extensive press coverage" the Defendant has received over the years.

The Defendant has also failed to provide evidence showing that people who are not outspoken conservative Christians were not prosecuted by the Auditor's office.

1. The Defendant has not made a credible showing that the State chose not to prosecute any individual specifically because he or she was not an "outspoken conservative Christian."

Of the many people the Auditor's office has investigated or prosecuted over the course of the years, the Defendant provides the Court with four people who were not prosecuted because, according to the Defendant, they were not "outspoken conservative Christians." Indeed, they all "tend[ed] to receive civil penalties (or none at all)." (Def.'s Mot. at 25.) Each person is addressed in the order raised by the Defendant.

Nick Cladis, a "very active" Christian, was a former partner of a person who was charged by the United States Attorney's office and ultimately sentenced to federal prison. Exhibit M Affidavit of Nicholas Cladis, ¶¶ 11-12; Exhibit I Depo. Roberta Cross Guns 101:6-11. After an extensive investigation into Mr. Cladis, the FBI decided not to pursue the same charges against him. Exhibit M Affidavit of Nicholas Cladis, ¶ 5. Even Ms. Cross Guns testified that the federal government was free to pursue Mr. Cladis regardless of what the Auditor's office did. Exhibit I Depo. Roberta Cross Guns 101:12-15. There is no evidence whatsoever that shows that the prosecutors, the investigators, or anyone at the Auditor's office did not criminally prosecute Mr. Cladis because he was not an "outspoken conservative Christian."

The same goes for Daniel Two Feathers. Ms. Cross Guns handled the administrative proceedings against Daniel Two Feathers, while the United States Attorney's office prosecuted him criminally. *Id.* 42:12-25. Tellingly, when the Defendant's lawyer asked Ms. Cross Guns

why Ms. Egan did not pursue criminal action against Mr. Two Feathers, her response was that "[Ms. Egan] was mad at the feds. That was her biggest reason. She was mad at them." *Id.* at 43:1-5. Even the Defendant's own alleged "whistleblower" did not say that Ms. Egan did not pursue Mr. Two Feathers because he was not an "outspoken conservative Christian." Accordingly, the Defendant did not and cannot provide this Court with any kind of evidence whatsoever that shows that the prosecutors, the investigators, or anyone at the Auditor's office did not criminally prosecute Mr. Two Feathers because he was not an "outspoken conservative Christian."

Rick Young was also prosecuted criminally by the United States Attorney's office. *Id.* at 47:21-48:7. Ms. Cross Guns testified that he was "pretty crazy" and "just nuts." *Id.* at 48:2-5. Allegedly, according to Ms. Cross Guns, the Auditor's office did not do anything with him because "it was not interesting enough to [Ms. Egan]." *Id.* at 48:8-9. Again, nothing was said regarding Mr. Young's religious beliefs. Accordingly, the Defendant did not and cannot provide this Court with any kind of evidence whatsoever that shows that the prosecutors, the investigators, or anyone at the Auditor's office did not criminally prosecute Mr. Young because he was not an "outspoken conservative Christian."

Finally, Bill Nooney[9] is still under investigation by the Auditor's office, so no decision has been made as to whether he will be prosecuted criminally or administratively. Exhibit G Depo. Lynne Egan 116:2-117:7. Even the alleged "whistleblowers" testified that they did not know the status of Mr. Nooney's case. Exhibit I Depo. Roberta Cross Guns 107:21-22; Exhibit H Depo. Alan Ludwig 192:16-18. The Defendant and his lawyers, citing Mr. Ludwig's

[9] Because Mr. Nooney is still under investigation, his identity and documents relating to the investigation constitute confidential criminal justice information under Mont. Code Ann. § 44-5-303 (2011). That confidentiality has already been breached, however, by the alleged "whistleblowers" when they freely discussed the investigation in their depositions.

testimony, nevertheless state that "[f]ederal officials are concerned about an improper relationship between Nooney and the Auditor's office." (Def.'s Mot. at 16.)

But John Nielsen, a Special Agent for the Division of Criminal Investigation of the Internal Revenue Service (IRS), and the person Mr. Ludwig alluded to in his deposition, stated that he has never expressed "concerns about whether there was an improper relationship between Mr. Nooney and the people at the Auditor's office." Exhibit O Affidavit of John Nielsen, ¶¶ 1, 10. Special Agent Nielsen, moreover, stated that in none of his conversations with Mr. Ludwig did he express "concerns about whether there were improper actions that resulted from a relationship between Mr. Nooney and the Auditor's office." *Id.* at ¶ 11. At the very least, Mr. Nielsen's statements call into question the credibility and motivations of Mr. Ludwig, but more importantly, they show that the Defendant's allegations of impropriety have no merit. Again, the Defendant did not and cannot provide this Court with any kind of evidence whatsoever that shows that the prosecutors, the investigators, or anyone at the Auditor's office did not (or will not) criminally prosecute Mr. Nooney because he was/is not an "outspoken conservative Christian."

If the Defendant believes these four individuals are "the tip of the iceberg," then no iceberg exists because there has not even been a showing – let alone a credible showing – that these four individuals were not prosecuted because they were not "outspoken conservative Christians." (Def.'s Mot. at 26.) The Defendant has failed to produce any evidence making a credible showing that he was similarly situated to the above individuals who were not prosecuted criminally by the Auditor's office. Indeed, he did not and cannot show that he and the other four present no distinguishable legitimate prosecutorial factors that might justify making different prosecutorial decisions with respect to them. *See Olvis*, 97 F.3d at 744.

Certainly, distinguishable legitimate prosecutorial factors existed with regard to Mr. Cladis such as his level of cooperation, the strength of the evidence against him (the FBI didn't think enough existed to prosecute him criminally), his role in his partner's crime, and his candor, among others. The same goes for Mr. Two Feathers and Mr. Young, such as the fact that they were going to be prosecuted by the federal authorities, the limited extent of prosecutorial resources, the amount of resources required to convict them, the potential impact of a prosecution on other investigations and prosecutions, and prosecutorial priorities. As for Mr. Nooney, most of the *Olvis* and *Venable* factors are present, such as the strength of the evidence against him, whether he is going to be prosecuted by the federal authorities, his candor and willingness to plead guilty, and the resources that will be affected by pursuing him. Simply put, all these individuals are distinguishable from one another, which prevents the Defendant from establishing that they are similarly situated.

Case law, moreover, supports the State's position. In *DeBerry*, *supra*, the defendants did not produce evidence that similarly situated individuals of another race were not prosecuted. *DeBerry*, 430 F.3d at1301. The African American defendants' alleged assault differed in a significant respect from others in that it was captured on videotape, whereas a stabbing alleged to have been committed by Native Americans occurred inside a cell, outside the range of video cameras. *Id.* The court held that this distinction in the evidence available to the prosecutors justified their delay in charging the Native Americans. *Id.* These additional hurdles required of the prosecution were sufficient to deny the Defendants' motion for obtaining discovery showing selective prosecution. *Id.*

Similarly, in *Lewis*, *supra*, the court stated that "[a] similarly situated offender is one outside the protected class who has committed roughly the same crime under roughly the same

circumstances but against whom the law has not been enforced." *Lewis*, 517 F.3d at 27. The court considered material factors such as the comparability of the crimes, similarities in which the crimes were committed, equivalency of the evidence, and the efficacy of the prosecution as a deterrent. *Id.* Ultimately, there was no indication that any similarly situated person of a different race escaped prosecution and the court upheld the district court's denial of the defendant's motion. *Id.*

The above cases are harmonious with this one. The factors surrounding each of the individuals the Defendant identifies are different. And the Defendant has not provided any evidence that any of the other four individuals committed roughly the same crime under roughly the same circumstances. This, combined with his failure to provide any credible showing that the four individuals were not prosecuted because they were not "outspoken conservative Christians," is fatal to the Defendant's arguments.

2. <u>The Defendant also has not made any showing that the Auditor's office contacts people who are not "outspoken conservative Christians" prior to prosecuting them.</u>

The Defendant states that the Auditor's office has a "policy" of sending "come-clean" letters to suspects prior to charging them. (Def.'s Mot. at 27.) The Defendant misstates the record. See Exhibit A. Indeed, Patrick Navarro, an assistant examiner in the Auditor's office, answered "yes" when asked if it was standard operating procedure to send "come-clean" letters even though nothing was written down. Exhibit L Depo. Patrick Navarro 36:6-9. But he also testified that he, personally, does not send a come clean letter to every single company. *Id.* at 35:9-11. Mr. Navarro has only been an assistant examiner for about 1 ½ years, does not investigate cases, but instead assists in the examination of broker-dealer firms and investment advisory firms registered in Montana. *Id.* at 6:18-20; Exhibit G Depo. Lynne Egan 127:2-8.

Lynne Egan, who is Mr. Navarro's supervisor and who has been with the Auditor's office for over 18 years, testified that sending a come-clean letter is done on a "case-by-case basis" and is only "one of the ways that we investigate." Exhibit G Depo. Lynne Egan 16:05-25; 127:15-25.

Mr. Navarro's testimony is inconsistent at best, he has limited experience with securities regulation, and his supervisor and long-standing Auditor's office employee testified that come-clean letters are sent on a case-by-case basis. Importantly, even assuming *arguendo* that the Auditor's office did have a policy of sending come-clean letters, the Defendant provides absolutely no evidence to this Court showing that similarly situated individuals who were not "outspoken conservative Christians" did receive come-clean letters prior to being charged or that other "outspoken conservative Christians" did not receive come-clean letters. He only speculates and hypothesizes, which is not enough to establish any kind of discriminatory effect whatsoever.

In his reply, the Defendant will likely argue that the evidence he is requesting be compelled will likely show a discriminatory effect. In other words, once he examines all of the cases the Auditor's office has handled since 2006, he will presumably be able to provide at least some evidence of discriminatory effect. This argument, though, has already been previously rejected.

In *United States v. Thorpe*, the defendant filed a discovery motion seeking evidence from the government of selective prosecution. *Thorpe*, 471 F.3d 652, 654 (6th Cir. 2006). The defendant argued that it was "unfair" to require him to make a showing of discrimination without the benefit of the discovery requested. *Thorpe*, 471 F.3d at 662. The court cited *Armstrong*, saying that the United States Supreme Court was "well aware" of this argument and "yet still found the 'rigorous' standard for discovery to be justified." *Id.* at 663. Additionally, the court noted, the United States Supreme Court "summarily and unequivocally" dispelled any notion

that it would reduce the threshold for discovery set forth in *Armstrong*. *Id.*, citing *United States v. Bass*, 536 U.S. 862, 863-64 (2002). The Court in *United States v. Bass* did not want to "threaten the 'performance of a core executive constitutional function'" and, therefore, reversed the circuit court's decision granting a discovery motion for selective prosecution. *Id.*

It is no different here. Because the Defendant did not and cannot provide this Court with any evidence showing that other "outspoken conservative Christians" did not receive come-clean letters or that those who were not "outspoken conservative Christians" did receive come clean letters, his argument fails. He has no legal basis, moreover, to argue that this Court must grant his motion to enable him to find evidence to make such an argument, as the United States Supreme Court affirmatively rejected this in *Bass*. The Defendant, therefore, has not overcome the "rigorous" standard of dispelling the "presumption" that prosecutors here have not violated equal protection. *Armstrong*, 517 U.S. at 463-64, 468.

Because the Defendant cannot show discriminatory effect, the Court need not go any further and the Defendant's motion should be denied. In the unlikely event the Court finds that the Defendant has overcome his burden showing discriminatory effect, he has failed to show discriminatory intent.

B. The Defendant and his lawyers fail to make any kind of credible showing of evidence that proves discriminatory intent by the State's prosecutors.

In order to show discriminatory intent, the decision to prosecute must be "invidious or in bad faith." *Venable*, 666 F.3d at 903, citing *Wayte*, 470 U.S. at 610. Similar to discriminatory effect, the evidence in support of the asserted discriminatory intent must consist of a **credible** showing that the State chose to prosecute "at least in part 'because of,' not merely in spite of," the defendant's protected characteristic. *Wayte*, 470 U.S. at 610 (quoting *Personnel Adm'r of Mass.* v. *Feeney*, 442 U.S. 256, 258 (1979)).

The Defendant cites the following as the "truckload" of evidence of discriminatory intent by the State:

1. The routine use of anti-Christian epithets by decision makers in the Auditor's office;
2. Harassment of employees in the Auditor's office who are devout Christians, which is indicative of biased charging of suspects who are devout Christians;
3. Decision makers in the Auditor's office knew of the Defendant's outspoken conservative Christian beliefs;
4. The Auditor's reliance upon fabricated evidence in charging the Defendant;
5. Charging the Defendant with six felonies despite lacking evidence that the Defendant took G.S.'s money;
6. The Auditor's retaliation against the Defendant for publicly criticizing her;
7. Mr. Laslovich's need to placate Democratic primary voters provided an additional motive to prosecute a prominent Christian "whack job."

(Def.'s Mot. at 18-24.)

Prior to addressing each argument in the order presented by the Defendant, it must be reaffirmed that the decision to prosecute rests with the "broad discretion" of the prosecutor. *Lemmon*, 214 Mont. at 126, 692 P.2d at 458. "Prosecutor means an elected or appointed attorney who is vested by law with the power to initiate and carry out criminal proceedings on behalf of the state or political subdivision." Mont. Code Ann. § 46-1-202(22) (2011). Based on the plain wording of the statute, a prosecutor is not an investigator. It is in this context that the Defendant's arguments are examined.

1. <u>The Defendant has not made any credible showing that the prosecutors showed discriminatory intent by routinely using "anti-Christian epithets."</u>

The Defendant did not and cannot cite to any evidence showing that Mr. Laslovich, one of the prosecutors in this matter, routinely – or even one time – made "anti-Christian epithets." In fact, Ms. Cross Guns testified that Mr. Laslovich was a "practicing Christian." Exhibit I Depo. Roberta Cross Guns 60:3-9. And even though she did not talk with Mr. O'Neil, the other prosecutor, much, Ms. Cross Guns heard him call "right wing Christians . . . whack jobs"

"maybe two or three times." *Id.* at 59:6-24. Mr. Ludwig testified that he merely heard Mr. O'Neil make comments about pastors proselytizing, although he "didn't know [Mr. O'Neil's] attitudes towards Christians in general." Exhibit H Depo. Alan Ludwig at 89:15-90:15.

The Defendant and his lawyers go to great lengths in discussing Ms. Egan's alleged use of "anti-Christian epithets" and the "enormous influence" she has on the "inexperience[d]" prosecutors. Def.'s Mot. at 19. Even assuming, *arguendo*, the Defendant is correct, he still nevertheless has failed to show that he was charged criminally "at least in part because of" his being an "outspoken conservative Christian." *Wayte*, *supra*, 470 U.S. at 610 (quoting *Personnel Adm'r of Mass.* v. *Feeney*, 442 U.S. 256, 258 (1979)).

To be sure, the Defendant cannot show that either prosecutor made any kind of "anti-Christian epithet" against the Defendant. Additionally, Ms. Egan never made any comments about the Defendant's religious beliefs in the presence of Ms. Cross Guns, as Ms. Cross Guns' testimony of Ms. Egan's statements was what was "relayed" to her. Exhibit I Depo. Roberta Cross Guns 54:15-18; 55:10-16.

Ultimately, nothing can be shown that the prosecutors had discriminatory intent when they filed charges against the Defendant. On this alone, the Defendant's argument must be rejected because the filing of charges is a prosecutorial decision, not one made by the investigator. The prosecutors sign the pleadings, not the investigator. And the facts of this charging decision show that the prosecutors did not blindly follow Ms. Egan. *Cf.* Information and Amended Information and Exhibit F Bates 1-8; *See* Exhibit H Depo. Ludwig 139:22-140:5 (admitting he does not know if Ms. Egan wrote the State's Motion for Leave to File Information and Affidavit in Support (Sept. 25, 2011)). The prosecutors' decision to charge the Defendant is

entitled to a "presumption" that it did not violate the Defendant's equal protection rights. *Armstrong*, 517 U.S. at 468. Quite simply, that presumption has not been overcome by the Defendant.

Even if the Court were to consider the allegations made against Ms. Egan, the Defendant fails to demonstrate a substantive link between her alleged comments and the Defendant's charges, as is necessary to prove discriminatory intent. Case law is instructive on this point. In *Venable, supra*, the defendant argued that he was prosecuted due to his race and provided statistical evidence showing 87 percent of firearms prosecutions were brought against black defendants. *Venable*, 666 F.3d at 898-99. The court rejected his argument because there was no "evidence about the number of blacks who were actually committing firearms offenses or whether a greater percentage of whites could have been prosecuted for such crimes. It does not even provide any evidence regarding the proportion of blacks residing within the relevant geographical area." *Id.* at 903. This decision was consistent with the court's decision in *Olvis, supra*, which held that a study submitted by the defendant in support of his discovery motion "provide[d] no statistical evidence on the number of blacks who were actually committing crack cocaine offenses or whether a greater percentage of whites could have been prosecuted for such crimes." *Olvis*, 97 F.3d at 745.

Here, the Defendant has not even submitted a study or any kind of statistical evidence whatsoever showing that people who are not "outspoken conservative Christians" could have been prosecuted for crimes similar to the Defendant's. The only evidence the Defendant can point to is innuendo about the Boy Scouts, Christians in general, and Ms. Egan's volunteerism on political campaigns. The Defendant nevertheless argues that this is enough to "reasonably

[infer]" that charging decisions against "conservative Christians"[10] are "[tainted]." (Def.'s Mot. at 20.) But this is not the "rigorous" standard outlined by *Armstrong*. *Armstrong*, 517 U.S. at 468. His argument, therefore, must be rejected.

2. The Defendant has not made any credible showing that the State harasses its Christian employees and as such engages in "biased charging of suspects who are 'devout Christians.'"[11]

Again, the Defendant argues that "it is not difficult to infer" that people who are "devout Christians" face discrimination because the "decision makers in the Auditor's office" "routinely target employees who are devout Christians." (Def.'s Mot. at 20.) Even assuming that the Defendant had evidence showing this, which he does not, he nonetheless still fails to overcome the "rigorous" standard set by *Armstrong*. *Armstrong*, 517 U.S. at 468. In fact, the Defendant's example of an Auditor's office employee who has been routinely harassed because she is a devout Christian disagrees with the misrepresentation that the Auditor's office "routinely harasses employees who are devout Christians." Exhibit N Affidavit of Tari Nyland, ¶ 12. Clearly, the Defendant and his lawyers' arguments have no merit.

The Defendant simply fails to provide any evidence – let alone a credible showing – that proves that the State charged the Defendant "at least in part because of" the Defendant being a "devout Christian." *Wayte supra*, 470 U.S. at 610 (quoting *Personnel Adm'r of Mass.* v. *Feeney*, 442 U.S. 256, 258 (1979)). Not even the alleged "whistleblowers" could testify that the Defendant was charged because he was a "devout Christian." And as Ms. Cross Guns' own testimony demonstrates, religious bias played no part in the State's non-prosecutions of individuals such as Mr. Cladis and Mr. Two Feathers. While the Defendant relies on office

[10] The Defendant and his lawyers dropped the word "outspoken."
[11] The Defendant and his lawyers dropped the words "outspoken conservative" and inserted "devout."

gossip and hearsay to infer discriminatory intent, his witness' personal prosecutorial experience in the Auditor's Office necessitates the opposite conclusion.

3. The Defendant has not made any credible showing that decision makers in the Auditor's office knowing of the Defendant's outspoken conservative Christian beliefs proves discriminatory intent.

Under *Armstrong*, it is not enough simply to say that because the Auditor's office knew of the Defendant's Christian beliefs, then he is being selectively prosecuted. It is self-evident that someone who is a Pastor at a church named Big Sky Christian Center is a Christian. The victim's relationship with the Defendant, moreover, was based on shared religious beliefs with the Defendant and he was lured to invest because of the Defendant's offer to invest in the "Lord's work." Exhibit F, Bates 48. Quite simply, for the State to avoid exposure to the Defendant's religious beliefs would constitute a failure to investigate the basic facts of the case, which is exactly what the Defendant is alleging in another pleading. (See Def.'s Ans. Br. to State's Mot. in Limine to Prohibit use of Depos. and Video Conference Test. (Sept. 28, 2012).) The Defendant cannot have it both ways. He cannot assert discriminatory intent based on the State's knowledge of the Defendant's beliefs while at the same time accusing the State of an insufficient investigation.

Importantly, here the Defendant concedes that the *prosecutors* charged him – and not the *investigator* (i.e. Ms. Egan). (Def.'s Mot. at 20.) The only evidence the Defendant offers in support of his argument that the prosecutors knew of the Defendant's belief prior to charging him was that Mr. Laslovich heard the Defendant testify before the Senate Judiciary Committee from 2005 to 2010 and even asked the Defendant some questions, and that the Defendant has been named in four newspaper articles in 2010 and 2011. (Def.'s Mot. at 21.) Assuming the Defendant is correct, the Defendant still fails to provide this Court with any credible showing

that he was charged criminally "at least in part" because of his "outspoken conservative Christian" beliefs. *Wayte supra*, 470 U.S. at 610 (quoting *Personnel Adm'r of Mass.* v. *Feeney*, 442 U.S. 256, 258 (1979)). In fact, the Defendant does not even try to make inferences here. Absent any kind of credible showing (or any showing at all) that the prosecutors charged him at least in part *because* of his Christian beliefs, his argument has no legal support and therefore must be rejected by the Court.

4. The Defendant has not made any credible showing that the State relied upon "fabricated evidence" and, therefore, the Defendant cannot prove discriminatory intent.

The Defendant argues that Ms. Egan fabricated evidence and included materially false statements in her report, both of which are evidence of bias. (Def.'s Mot. at 21.) For example, Ms. Egan spoke with Noe Sanchez on the phone and prepared a contact report summarizing the conversation, some of which Mr. Sanchez contradicts in an Affidavit. Importantly, the conversation was not a part of Ms. Egan's investigation report nor was it used by the prosecutors in charging the Defendant. The conversation, moreover, is regarding Jeb Bryant, the co-defendant, and did not affect the charging of the Defendant in any way. And the Defendant has not pointed to any case law that shows that this question of fact is evidence of bias. This is as much a question of Mr. Sanchez's sincerity as anything. A mere question of fact speaking to the credibility of a witness is grossly insufficient to demonstrate bias. It is the province of the jury to assess credibility.

The Defendant also disputes that both he and Mr. Bryant gave the victim wiring instructions, arguing instead that it was just Mr. Bryant. Indeed, this is consistent with what the prosecutors alleged in the Affidavit for Probable Cause and the Information. Ironically, the Defendant's attempt to show Ms. Egan's initial report (dated months prior to the Information

being filed) referring to both pastors only confirms (1) the Auditor's office's ongoing commitment to ensuring evidentiary integrity, and (2) that the Defendant's assertion of Ms. Egan's influence in charging defendants, including the Defendant, is overstated.

Finally, the Defendant also discusses the incorrect criminal history of Mr. Bryant that was included as part of Ms. Egan's investigation report. According to the Defendant and his lawyers, this shows Ms. Egan's "reckless (or deliberate) disregard for the truth." (Def.'s Mot. at 22.) But a complete review of the record shows that Deputy Smith of the RCSO made a mistake when he initially ran Mr. Bryant's criminal history and Ms. Egan, who simply relied on what was provided to her by the RCSO, did not know it was the wrong criminal history when she completed her report. In fact, no one at the State knew of the mistake until Deputy Smith's deposition. As soon as this was realized, Deputy Smith ran a new criminal history background search on Mr. Bryant. Most importantly, though, is the fact that the Defendant was not charged for failing to disclose Mr. Bryant's criminal history to the victim.

Therefore, none of the foregoing shows evidence being fabricated to charge the Defendant. In fact, all three of the Defendant's arguments relate to Mr. Bryant and not himself. The Defendant argues that "a reasonable person could view [the foregoing] as purposeful attempts to secure a criminal conviction against a 'whack job' conservative Christian." *Id.* Again, no law is cited by the Defendant in support of his argument.

The foregoing does not show evidence being fabricated. Rather, a person interviewed by Ms. Egan recalls what he said differently than Ms. Egan's recollection, the prosecutors appropriately attributed the wiring instructions to Mr. Bryant, and the RCSO acknowledged that they made a mistake regarding Mr. Bryant's criminal history. None of this has anything to do with the charging decision relative to the Defendant. Absent any kind of credible showing that

proves that the State charged the Defendant "at least in part because of" the Defendant being a "devout Christian" or "outspoken conservative Christian," this Court cannot find discriminatory intent. *Wayte supra*, 470 U.S. at 610 (quoting *Personnel Adm'r of Mass.* v. *Feeney*, 442 U.S. 256, 258 (1979)).

5. The Defendant has not made any credible showing that the State lacked evidence in charging him with six felonies and, therefore, the Defendant cannot prove discriminatory intent.

The Defendant argues that because the State lacked evidence in charging him with six felonies, he has shown discriminatory intent. (Def.'s Mot. at 22-23.) First, the Defendant's argument is a question of fact for the jury to decide. Secondly, he completely fails to demonstrate how he was charged differently than others who were similarly situated to him, only speculating that charging him with six felonies was "likely" the result of a biased charging decision. (Def.'s Mot. at 23.) "Likely" is not the standard. Again, he must credibly show that the State charged the Defendant "at least in part because of" the Defendant being an "outspoken conservative Christian" or "devout Christian." *Wayte supra*, 470 U.S. at 610 (quoting *Personnel Adm'r of Mass.* v. *Feeney*, 442 U.S. 256, 258 (1979)). He simply has not met his burden.

6. The Defendant has not made any credible showing that the Auditor retaliated against him for publicly criticizing her, and therefore, the Defendant cannot prove discriminatory intent.

The Defendant argues, without evidentiary support,[12] that the Auditor retaliated against him after he went on a radio program after he was charged and made statements about the strength of the State's case. (Def.'s Mot. at 23.) Specifically, he argues that the State not allowing the Defendant to attend interviews and depositions "exemplifies [Ms. Lindeen's] policy of punishing defendants for engaging in protected speech." *Id.* He also states, again without

[12] See Exhibit A.

evidentiary support,[13] that the prosecutors added a seventh charge that was not made in "good faith," but instead as a "vindictive response" because the office does not "brook[]" criticism of its charging decisions. *Id.* at 23-24.

The facts of the case contradict the Defendant's baseless accusations, especially in regard to the "retaliatory" charging. The Defendant claims the seventh charge included in the Amended Information was a result of retaliation for the Defendant's radio interview made after the initial charging. In actuality, the seventh "retaliatory" charge was founded upon complaints made by witnesses who approached the State after hearing of the Defendant's other charges. (Mot. Amd. Info. at 6.) It was, therefore, impossible for the State to include this charge in its Information. Once it heard these complaints, it was the State's prosecutorial prerogative to choose not to ignore evidence of further victimization. Additionally, the Defendant baldly asserts that the State's decision not to include Himes at depositions constitutes retaliation. Yet he does not even attempt to demonstrate a link between this pre-trial strategy and the Defendant's prior statements. While the Defendant's speculation and innuendo may make for good rhetoric, they do not meet the "rigorous" standard set by *Armstrong*. *Armstrong*, 517 U.S. at 468. Without any evidence showing that the State retaliated against the Defendant "at least in part" because of his religious beliefs,[14] the Defendant cannot prove discriminatory intent.

7. <u>The Defendant has not made any credible showing that the State filed the charges to placate Democratic primary voters and, therefore, the Defendant cannot prove discriminatory intent.</u>

The Defendant argues that Mr. Laslovich was "in need of prey in order to impress voters in a Democratic Party primary,"[15] and, therefore, charged the Defendant to "burnish[]" his

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[13] See Exhibit A.
[14] The Defendant also raises "protected speech" for the first time, but does not elaborate.
[15] See Exhibit A.

credentials with voters. (Def.'s Mot. at 24.) He only cites the Court to the testimony of Ms. Cross Guns, who said in her "opinion" that Mr. Laslovich "was looking for a pretty high profile criminal case" and "there[] [was] no reason for him not to ask for my help in prosecuting these cases." Exhibit I Depo. Roberta Cross Guns 69:2-15. No law was cited by the Defendant.

Ms. Cross Guns specifically mentioned the prosecution of "Art Heffelfinger" and "Don C[h]ouinard," and "there[] [was] no reason for [Mr. Laslovich] not to ask me to sit second chair." *Id.* at 69:7-12. She also testified that in her 12 years at the Auditor's office, she had not won one jury trial. *Id.* at 97:14-99:13. Ms. Cross Guns testified, moreover, that "there are things about Mr. Laslovich that I really like and that I really respect" such as when something goes wrong, "he's willing to say, 'I shouldn't have done that.'" *Id.* at 69:20-70:2.

Importantly, Ms. Cross Guns acknowledged that all of this was her opinion. *Id.* at 69:15. Opinion and conjecture are not enough to meet *Armstrong's* "rigorous" standard. *Armstrong*, 517 U.S. at 468. The Defendant did not and cannot, nor can Ms. Cross Guns, provide this Court with any evidence that shows Mr. Laslovich filed charges against the Defendant to placate Democratic primary voters. Even though the Defendant and his lawyers speculate and make accusations without evidentiary support, it is not enough to make a credible showing that proves that the State charged the Defendant "at least in part because of" the Defendant being a "devout Christian" or a "prominent Christian 'whack job'" who needed to be prosecuted in order to placate Democratic primary voters. *Wayte supra*, 470 U.S. at 610 (quoting *Personnel Adm'r of Mass.* v. *Feeney*, 442 U.S. 256, 258 (1979)).

Ultimately, none of the Defendant's arguments make the credible showing necessary under the "rigorous" standard established in *Armstrong* to prove discriminatory intent. *Armstrong*, 517 U.S. at 468. The presumption that the prosecutors did not violate the

Defendant's equal protection rights has not been overcome. Because the Defendant cannot prove discriminatory effect or discriminatory intent, this Court must reject the Defendant's motion.

II. THE DESIGNATION OF LYNNE EGAN AS AN EXPERT WITNESS DOES NOT PROVIDE THIS COURT WITH A BASIS TO GRANT THE DEFENDANT'S MOTION.

The Defendant argues that designating Lynne Egan as an expert provides a separate basis for the Court to grant the Defendant's motion to compel production of selective prosecution evidence. The Defendant did not and cannot provide the Court with any case law that prevents an investigator from serving as an expert witness, a fact made more clear in the Defendant's Motion to Exclude Expert Testimony of Lynne Egan. The Defendant instead argues that Ms. Egan is biased due to her "anti-Christian bigotry." (Def.'s Mot. at 29.) This argument, though, has previously been effectively shown to have no merit. And under the "rigorous standard" articulated by *Armstrong*, in order for the Court to grant a motion for discovery of selective prosecution, the Defendant must credibly show both discriminatory effect and discriminatory intent. He has not done so here. Indeed, while the Defendant makes assumptions and speculates about Ms. Egan's "anti-Christian bigotry," he offers no evidence to make a credible showing that Ms. Egan investigated the Defendant "at least in part because of" the Defendant being a "devout Christian" or a "prominent Christian 'whack job.'" *Wayte supra*, 470 U.S. at 610 (quoting *Personnel Adm'r of Mass.* v. *Feeney*, 442 U.S. 256, 258 (1979)).

Additionally, the Defendant argues that he is entitled to the evidence based on *United States v. Brady*, 373 U.S. 83, 87 (1963). Under *Brady*, the Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is **material** either to guilt or punishment." *Brady*, 373 U.S. 83, 87 (1963) (Emphasis added). Subsequently, the Court in *United States v. Bagley* adopted a materiality standard:

> The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome.
>
> 473 U.S. 667, 682 (1985).

Emphasizing the limited scope of *Brady*, the Court noted that "[a]n interpretation of Brady to create a broad, constitutionally required right of discovery 'would entirely alter the character and balance of our present systems of criminal justice.'" *Bagley*, 473 U.S. at 676, citing *Giles v. Maryland*, 386 U.S. 66, 117 (1967) (dissenting opinion).

The Defendant argues that because evidence of Ms. Egan's allegedly "anti-Christian bigotry" is favorable to him, then it is "subject to mandatory disclosure as *Brady* evidence." (Def.'s Mot. at 29.) This argument grossly mischaracterizes *Brady* and its progeny. The argument implies a positive right of the Defendant to demand and receive, pre-trial, documents based solely upon a suspicion of their possible contents. This conception of *Brady* is fallacious on two levels. First, *Brady* ramifications apply <u>after</u> suppressed evidence is discovered, not before it is even determined to exist: "The rule of *Brady v. Maryland* . . . arguably applies in three quite different situations. Each involves the discovery, after trial, of information which had been known to the prosecution but unknown to the defense." *United States v. Agurs*, 427 U.S. 97, 103 (1976). This is evinced by the very nature of the *Brady* test, which addresses <u>actual failures</u> to disclose <u>actual evidence</u>. *State v. Ellison*, 2012 MT 50, ¶ 16, 364 Mont. 276, 272 P.3d 646.[16]

[16] "There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *State v. Ellison*, 2012 MT 50, ¶ 16, 364 Mont. 276, 272 P.3d 646 (citing *State v. St. Dennis*, 2010 MT 229, ¶ 47, 358 Mont. 88, 244 P.3d 292.

Second, *Brady* obligates the State; it does not entitle the Defendant. *Brady* requires the State to disclose material evidence favorable to the accused, 373 U.S. at 87; it does not grant the Defendant the positive right to sort through the State's files in search of such evidence, *see Bagley*, 473 U.S. at 675 ("Thus, the prosecutor is not required to deliver his entire file to defense counsel . . . ."). The Defendant's interpretation of *Brady* would "create a broad, constitutionally required right of discovery" of the type rejected by *Bagley*. 473 U.S. at 682. In short, *Brady* doesn't allow fishing expeditions.

Moreover, even if such a right existed, the Defendant cannot clear the hurdle of materiality. To justify his *Brady* demand, the Defendant again references Egan's "anti-Christian bigotry" as a possible source of impeachment. (Def.'s Mot. at 29.) Yet he cannot show that the documents he seeks (e.g., "documents from her employee file as well as information pertaining to her compensation as an expert" (Def.'s Mot. at 30.)) contain "anti-Christian" substance. The Defendant is, therefore, caught in a catch-22: he must prove the State holds material evidence in order to implicate *Brady*, yet he seeks to use *Brady* in an attempt to prove that the demanded evidence is material. This application of *Brady* perverts the rule. Put bluntly, the Defendant cannot use *Brady* to obtain evidence in order to prove that evidence is subject to *Brady*.

The Defendant fails to recognize that he cannot proactively invoke *Brady* to obtain evidence in this case. Moreover, the Defendant cannot use *Brady* to obtain evidence he claims would justify the use of *Brady*. For these reasons, *Brady* is inapplicable.

III. THE DEFENDANT IS NOT ENTITLED TO THE RELIEF REQUESTED

Ultimately, in his Motion to Compel, the Defendant requests that the Court order the State to provide the following discovery:

1. Evidence pertaining to the Auditor's treatment of similarly situated suspects who are not outspoken conservative Christians.

2. Contact information pertaining to former employees.

3. Lynne Egan's employee files.

For the aforementioned reasons and analysis, the Defendant is not entitled to evidence pertaining to the Auditor's treatment of similarly situated suspects who are not outspoken conservative Christian because he has not met his "rigorous" burden under *Armstrong*. *Armstrong*, 517 U.S. at 468.

Similarly, as for contact information pertaining to former employees and Ms. Egan's employee files, the Defendant has also not met the "rigorous" standard in *Armstrong* for this Court to order the release of such information. *Armstrong*, 517 U.S. at 468. The Defendant speculates, once again, that "if" Ms. Egan's salary is "partly attributable to the [Auditor's office] success rate at trial,"[17] then it's a conflict the jury is entitled to hear. (Def.'s Mot. at 31-32.) As for information about former Auditor's office employees, the Defendant states that Mr. Ludwig and Ms. Cross Guns were aware "of at least some of the details" about the Defendant's case, so there is "no explanation as to why former employees would be ignorant of [the Defendant's] case" as well. (Def.'s Mot. at 31.) Additionally, Mr. Ludwig gave the Defendant's attorneys specific names of former and current employees Ms. Egan has treated "negatively," but there is absolutely no evidence the Defendant can provide that shows Ms. Egan treated the employees negatively because of the employees' respective religious beliefs. *Armstrong* supports the State's position that the Defendant is not entitled to selective prosecution evidence because one employee said a "negative" thing about another employee.

Additionally, the Defendant states that this information will be protected because he offered to enter into a protective order. (Def.'s Mot. at 32.) But just because the Defendant

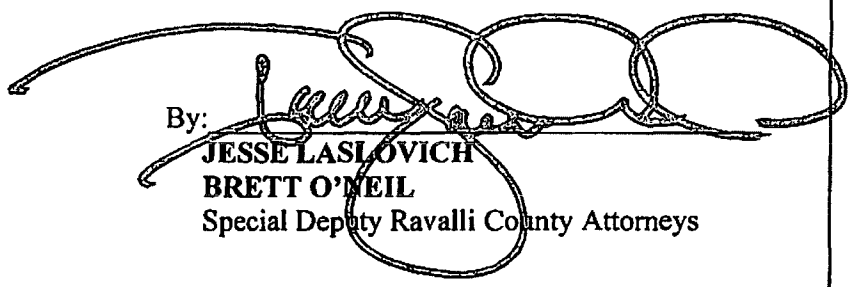
[17] The Defendant and his lawyers state that "the Auditor's Office is at least partially funded by monies it receives from cases it prosecutes." See Exhibit A.

offers to enter into a protective order does not mean that he is entitled to the information. To the contrary and as demonstrated previously, because he has not met the standard articulated in *Armstrong*, he is not entitled to such information. *Armstrong*, 517 U.S. at 468. Under *Armstrong*, speculation, conspiracy theories, and mischaracterization of the evidence are not sufficient for the Court to compel the release of the requested information.

CONCLUSION

At its core, this case is about the Defendant committing crimes against another Christian. The prosecutors, using their "broad discretion," charged the Defendant with those crimes based on the evidence presented, as the foregoing reflects. The prosecutors' "broad discretion" is entitled to a presumption – a presumption which the Defendant has not overcome. The State respectfully urges the Court to deny the Defendant's motion.

DATED this 5th day of October, 2012.



By: _____
JESSE LASLOVICH
BRETT O'NEIL
Special Deputy Ravalli County Attorneys

EXHIBIT H

Exhibit A

JESSE LASLOVICH
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Attorneys for Plaintiff

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT,
RAVALLI COUNTY

STATE OF MONTANA, Plaintiff, vs. HARRIS HIMES, Defendant.	)))))))))	Cause No.: DC 11-117 **EXHIBIT A**

The State believes it is compelled to inform the Court of the following, as statements were made by defense counsel in their brief that had no basis in fact.

Rule 3.1(a)(1) of the Montana Rules of Professional Conduct states that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein without having first determined through diligent investigation that there is a bona fide basis in law and fact for the position to be advocated." *Id.*

Rule 3.3(a)(1) of the Montana Rules of Professional Conduct states that "[a] lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." *Id.*

The following shows how the above rules have likely been violated by the Defendant's attorneys:

Defense counsel Statement	Page in Defense counsel's brief	Defense counsel's cite to the record	What the record says
"One category of persons Egan finds particularly repulsive is devout Christians, as she makes clear almost on a daily basis."	"Statement of Facts." Page 4, lines 25-26.	None	There is nothing in the record that proves what defense counsel represented here.
"[Egan's] hatred of Boy Scouts arises from their affiliation with Christian churches."	"Statement of Facts." Page 5, lines 4-5.	Attachment 1 Cross Guns Depo., pg. 53,	A review of Ms. Cross Guns' deposition on page 53 does not discuss Boy Scouts at all.
"Egan's antipathy towards Christianity manifests itself in her interactions with individual Christians."	"Statement of Facts." Page 5, lines 8-9.	None.	There is nothing in the record that proves what defense counsel represented here.
"Brett O'Neil ... has stated repeatedly that "these right-wing Christians are whack jobs."	"Statement of Facts." Page 5, lines 21-22.	Attachment 2 Cross Guns Depo., pg. 59.	Ms. Cross Guns testified that Mr. O'Neil "possibly" made remarks about people's religious beliefs "[m]aybe two or three" times.
"The Auditor's Office routinely harasses employees who are devout Christians..."	"Statement of Facts." Page 5, lines 23-24.	None.	There is nothing in the record that proves what defense counsel represented here.
"Egan ... subjects Christian employees to unsolicited vulgar rants."	"Statement of Facts." Page 6, line 3.	None.	There is nothing in the record that proves what defense counsel represented here.
"Egan's influence also arises from the 'free' services she provided to Laslovich's campaign for Attorney General as well as the services she still provides to Lindeen's ongoing campaign for re-election as State Auditor."	"Statement of Facts." Page 7, lines 6-8.	None.	While the record shows how Ms. Egan volunteers for political campaigns, there is nothing in the record that proves that Ms. Egan's "influence" arises from such services.

"reports and email correspondence provided to [Ms. Egan] by the Ravalli Sheriff are replete with references to Himes' religious beliefs, such as the alleged victim filming Himes' abortion clinic protests."	"Statement of Facts." Page 9, lines 19-21.	Attachment 3 Bates No. 47.	The cited authority is part of what the victim provided the Ravalli County Sheriff's office. Besides saying the Defendant is a Pastor at Big Sky Christian Center, in addition to the filming, there is no other reference about the Defendant's religious beliefs.
"The State Auditor's Office has a policy of attempting to resolve allegations of securities violations before filing charges."	"Statement of Facts." Page 10, lines 3-4.	None.	There is nothing in the record that proves what defense counsel represented here.
"The Auditor's Office deals very differently with suspects who are not outspoken conservative Christians."	"Statement of Facts." Page 14, lines 16-17.	None.	There is nothing in the record that proves what defense counsel represented here.
"High profile criminal cases (like the Himes case) that would aid Laslovich's campaign for Attorney General, however, were more likely to be filed."	"Statement of Facts." Page 16, lines 9-10.	Attachment 4 Cross Guns Depo., page 69.	While Ms. Cross Guns speculated that Mr. Laslovich "was looking for a pretty high profile criminal case," there is nothing in the record that the case against the Defendant was the one he was looking to file. In fact, Ms. Cross Guns mentioned other cases that were filed, but not this case.
"Perhaps the most obvious evidence of discriminatory intent in this case is the habitual use of anti-Christian epithets by decision makers in the Auditor's office."	Argument. Page 18, lines 17-18.	None.	There is nothing in the record that proves what defense counsel represented here.
"decision makers in the Auditor's Office use bigoted anti-Christian epithets almost daily."	Argument. Page 20, line 4.	None.	There is nothing in the record that proves what defense counsel represented here.
"The Auditor's Office routinely targets employees who are devout Christians for harassment."	Argument. Page 20, lines 13-14.	None.	There is nothing in the record that proves what defense counsel represented here.
"Egan's perjured testimony notwithstanding…"	Argument. Page 21, line 15.	None.	There is nothing in the record that proves what defense counsel represented here.

			Instead of acknowledging that there is a question of fact, defense counsel makes the troubling statement that Ms. Egan committed perjury.
"[The Defendant's] views made him a despised figure in the Office."	Argument. Page 21, lines 16-17.	None.	There is nothing in the record that proves what defense counsel represented here.
"Egan's reports contain numerous, materially false statements, some of them based upon evidence she fabricated."	Argument. Page 21, lines 21-22.	None.	There is nothing in the record that proves that Ms. Egan fabricated evidence.
"the Auditor's exclusion of Himes exemplifies her policy of punishing defendants for engaging in protected speech."	Argument. Page 23, lines 20-22.	None.	There is nothing in the record that proves what defense counsel represented here.
"[The seventh charge filed against the Defendant] was a vindictive response by an office that brooks no criticism of its charging decisions..."	Argument. Pages 23-24, lines 25-1.	None.	There is nothing in the record that proves what defense counsel represented here.
"one of the prosecutors is in need of prey in order to impress voters in a Democratic Party primary."	Argument. Page 24, line 19.	None.	There is nothing in the record that proves what defense counsel represented here.
"[Ms. Egan] even made false statements to the FBI concerning Nooney's culpability."	Argument. Page 26, lines 11-12.	Attachment 5 Ludwig Depo., pgs. 106-108 and Attachment 6 Cross Guns Depo., pg. 44.	There is nothing in the record cited by the Defendant that supports what defense counsel represented here.
"Had Himes been given the same opportunity as other suspects to speak with the Auditor's Office prior to a charging decision being made – and if he had been heard by a non bigoted decision maker in that Office, assuming there is one – it is inconceivable he would have been	Argument. Page 28, lines 3-6.	None.	There is nothing in the record that shows that all decision makers are bigoted and there is nothing in the record that shows that had the Defendant been given an opportunity to speak with *any* decision maker in the Auditor's office, then there wouldn't be seven charges filed.

subsequently charged with six (later, seven) felonies."			
"A significant difference between this case and most other selective prosecution cases is that the decision maker responsible for determining whether the defendants should be charged criminally ..."	Argument. Page 29, lines 10-11.	None.	There is nothing in the record that shows that Ms. Egan was responsible for choosing to prosecute the Defendant criminally.
"(the Auditor's Office is at least partially funded by monies it receives from cases it prosecutes)"	Argument. Page 31, lines 27-28.	None.	There is nothing in the record that proves what defense counsel represented here.

1 A. Well, one of them was Tari Nyland. Like
2 I said, Tari -- I think it's well known in the
3 office that she's a practicing Christian. And in
4 her discussion about this alleged affair, she
5 commented on how -- "Well, you know, she's a good
6 Christian." You know, dismissed it and has made
7 lots of negative comments about Christians in
8 general. And the right-wing Christian particularly
9 offend her, whoever that may be. Candidates mostly
10 is who she's talking about when I've -- when she's
11 discussed those things with me.
12 Q. What kind of comments has she made about
13 right wing --
14 A. Well --
15 Q. -- what she describes as right-wing
16 Christians?
17 A. Well, she has a negative feeling toward
18 them. I -- you know, can't remember exactly
19 specific words, you know. And if I try to quote
20 them to you, it will be wrong. But there is no
21 doubt in my mind that she has a very negative
22 feeling toward what she describes as a right --
23 well, one of them is Martin Bower. He was a
24 defendant. We managed to prosecute him
25 administratively.

about Dereck Skees with regard to Mr. Skees' religious beliefs?

A. I'm -- no. I don't even know who that is. Again, I stopped working with her, you know, a year and a half ago.

Q. Other than Ms. Egan, are there other people in the auditor's office who have made remarks with regard to people's religious beliefs?

A. I would say possibly Brett O'Neil. He has, I believe, a bad taste in his mouth. He grew up in Texas, down there in the Bible belt, and I think he's made some, you know, passing comments. Not as vehement, and I didn't work with him very much, so I, you know, didn't spend a lot of time with Brett, but I know he's made some negative comments.

Q. What specifically has Mr. O'Neil said?

A. Just sort of the same kind of stuff. That, you know, "These right-wing Christians are whack jobs."

Q. How many times have you heard Mr. O'Neil make that kind of a comment?

A. Maybe two or three. Again, I didn't spend a lot of time with Mr. O'Neil.

Q. Any other kind of religious-based

Attachment 3

Geoff Serata
dba Image Of Truth

vs.

Pastors
Harris Himes & James Bryant
dba BSCC & DBS

History
Page 1 of 11

I have known Pastor Harris Himes about eight years. I met him at Calvary Chapel, a church in Hamilton, Montana. I knew him to be the Senior Pastor of Big Sky Christian Center, as well as a lawyer. For several years before this scam, I had interacted with Pastor Himes in several capacities and on different projects, considering him to be a friend and confidant. Knowing of my arthritis, diseased liver, fused hip and vertebrae, (I had been crippled for more than twenty-five years), Harris took me to sign up for VA health care - I had never asked for assistance in the past. I have helped him with maintenance and remodeling projects on his house, church, and other properties. I also worked with him as a videographer, producer and editor during interviews of political candidates which he conducted. I got those interviews televised. I also tithed to his church. When Pastor Himes allowed the people using his church to paint it black, I distanced myself some from his church while still participating in many other activities with Pastor Himes. Some of these activities included:

Filming protesting activities at a Missoula abortion clinic.
Attending and filming his Greek class.
Filming his (only 2008?) sermon.
Filming his under Pastor's (Jimmy Rude) sermon/vision.
Extensive electrical work in his church renovation.
Electrical work in his home.
Electrical work on his other buildings.
Helped organize his home and office (first met Pastor Bryant).
Helped with grounds maintenance around his church, home, and other property.
Many times shared meals and discussed Scripture, politics, and Veteran's issues.
Many times shared a drive to Missoula.
Editing film from his Marine Corps reunion.

Sometime in late December of 2007, I received notice that I was to inherit some money from a trust that my grandfather had created.

In early January of 2008, I made an appointment to speak with Pastor Himes, Senior Pastor of Big Sky Christian Center in Hamilton, Montana to seek guidance as to what I might do with this money once it was distributed. I met with him at his office (in his home) at the Big Sky Christian Center. I told Pastor Himes that I was going to inherit about $150,000.00 and wanted to invest it with no risk to have some income to support the ministry work I was doing and be free to serve the LORD in other capacities. I told him that I did not want a new car or any of that stuff but wanted to explore ultra conservative risk free methods of investing this money. He said that was wise being that I was almost 50 with severe physical disabilities and no retirement.

1 who are litigators.
2 I believe that right away Mr. Laslovich
3 was looking for a pretty high profile criminal case
4 because he's going to run for the AG's office.
5 There is absolutely no other reason for him to do
6 that because there's plenty of work to do here.
7 Plenty of work. There's no reason for him not to
8 ask for my help in prosecuting these cases, whether
9 it's Art Heffelfinger or whether it's Don Couinard
10 or whoever it is that he's decided he's going to
11 prosecute. There's -- there's no reason for him not
12 to ask me to sit second chair, in fact, except that
13 he doesn't want somebody with more experience. He
14 wants to appear to be the experienced attorney.
15 This is -- and this is all my opinion.
16 What actually goes on in Jesse's mind I have no
17 clue, you know -- well, I have some clue but not
18 much of one --
19 MR. LASLOVICH: No, you don't.
20 THE WITNESS: -- and I -- there are things
21 about Mr. Laslovich that I really like and that I
22 really respect, but his --
23 BY MR. MONFORTON:
24 Q. Tell me the things you like about him.
25 A. I like that he's willing to -- to step up

1 don't know who was handling that case.
2 So I'm not really sure what happened with
3 that case, but the FBI was also interested in that
4 case.
5 Q. How do you know that?
6 A. Because I'm -- if you want to ask how I
7 was perceived by other agencies, people who worked
8 for the IRS and the FBI think well of my work.
9 Q. When you say the FBI was interested in
10 Mr. Nooney's -- or the complaints involving
11 Mr. Nooney, how do you know that? Did they -- did
12 they make an inquiry of you?
13 A. Yes.
14 Q. What did they say?
15 A. They asked me what we had on the case
16 because they'd been contacted regarding the case.
17 They have several states that may be affected and
18 they want to work the case.
19 Q. And this is -- I'm sorry. This is the
20 FBI that was making this inquiry?
21 A. Yes.
22 Q. What was your response?
23 A. That Lynne had taken over the case and
24 they'd have to get with her and they said they
25 actually hadn't gotten anything more from her

1 except it then looked at it and the gentleman had
2 not made any financial gain off of what he'd done,
3 Mr. Nooney.
4 Q. Was Ms. Egan's statement to the FBI
5 accurate in your opinion?
6 A. I don't know what happened to the case.
7 Except that Mr. McGowan called me two weeks before
8 I left and asked me why nothing been done. And he
9 felt Lynne was office skating.
10 Q. Did he explain why he felt that way?
11 A. Nonresponsiveness and -- and no interest
12 in his request. I -- I would, again, refer to the
13 fact that I was always told to send a close letter
14 if something hadn't -- wasn't worth investigating.
15 And if it were me, I would have had to send out a
16 close letter to notify that person under what
17 basis something wasn't actionable.
18 And I would say one of those isn't that
19 somebody didn't have financial gain after they
20 took advantage of somebody.
21 Q. From your knowledge of the -- the Nooney
22 matter, do you believe Mr. Nooney did receive a
23 financial gain from whatever it was that was being
24 complained of?
25 A. From the documentation I've seen, he

1 clearly solicited people and received investments
2 for money in which money was either lost or kept
3 by him.
4 Q. Do you believe Mr. Nooney had violated
5 any laws?
6 A. I wouldn't have contacted him for
7 information if I hadn't, and he contacted -- the
8 last response I had from him, he sent me e-mail CC
9 to Lynne Egan that he contacted an attorney
10 regarding the matter, and that's the last time I
11 was involved in the matter.
12 Q. Do you have any knowledge as to why
13 Mr. Nooney would have received preferential
14 treatment if indeed that's what occurred?
15 A. Hearsay information, secondhand
16 information, from Roberta Cross-Guns said -- and I
17 don't know this politically, but Mr. Nooney
18 represented the region in which Jesse Laslovich
19 grew up.
20 Q. What specifically did Ms. Cross-Guns say
21 about that?
22 A. That's what she said.
23 Q. To your knowledge, does the state
24 auditor's office receive any kind of federal
25 funding?

1 A. Oh, yes.
2 Q. Tell me about that.
3 A. Well, it's a case of a company out of
4 North Carolina that was basically operating what I
5 considered a pyramid scheme in Montana and other
6 states, and other states had looked at prosecution
7 both administratively and criminally. And I believe
8 we had a pretty good case for -- at least
9 administrative case.
10 And Lynne and Jesse and Jameson Walker
11 flew to North Carolina and cut a deal with these
12 people at the same time that Alan Ludwig and I were
13 in depositions down here at the Motl firm on that
14 very case.
15 We weren't told what was going to happen.
16 We weren't told that a settlement was in the wind.
17 And I -- I -- my biggest disappointment was that
18 we -- we, the State of Montana, traveled to
19 North Carolina to make a deal, not the other way
20 around.
21 My concern about this case -- and I had
22 spoken to a gentleman who contacted us, who held
23 himself out as an expert, particularly with regard
24 to ACN and other similar pyramid schemes. He had
25 told me that lots of states backed off because of

1 agreement that you're getting from 5 percent is
2 becoming 6 percent of ownership or partnership in
3 Duratherm at this time.
4 A. Yeah, I'm not sure what you mean by
5 gentleman's agreement, but that sounds -- can you
6 explain what you mean by that, please?
7 Q. Nothing in writing.
8 A. Correct.
9 Q. And why did you trust pastor Himes?
10 A. Well, I had known him for several years.
11 I knew him to be an attorney and a pastor,
12 appeared to be reliable, successful, very
13 intelligent. I believed that his apparent passion
14 for the Lord's work reflected the character of a
15 man that was trustworthy.
16 Q. And just to sum and issue that he's just
17 not talking, you had seen that he's got a homeless
18 shelter that provides actual living accommodations
19 to homeless people in Hamilton, right?
20 A. I'm sorry, would you --
21 Q. At the Big Sky Christian Center, it's an
22 actual homeless shelter where people can get
23 lodging, correct?
24 A. Recently some people have used one of his
25 buildings for something like that. I'm not sure

1 and try to finish answering the earlier question.
2 As far as a church, I've never known Mr. Himes to
3 conduct a church service or hold a regular service
4 for a congregation. At one time Mr. Himes gave a
5 message to a small group of people and I filmed
6 that for him at his request, but as far as having
7 a church that has regular hours or a congregation
8 I can't say Mr. Himes actually had a church in
9 that sense.
10 Q. Okay. Going back, how much money did you
11 give to his church or to Himes?
12 A. I never gave any money directly. I gave
13 it to him physically, but not for him personally.
14 And I tithed to him or his church, his ministry
15 work on several occasions. Now, I can't honestly
16 say exact numbers, but I know one time it was
17 several hundred dollars.
18 Q. Okay. What is your testimony in a
19 nutshell?
20 MR. LASLOVICH: I think that's vague.
21 MR. O'NEIL: Objection, sorry.
22 THE WITNESS: What do you mean by
23 testimony?
24 BY MR. FLAHERTY:
25 Q. You're attending church, you're talking

1 about your desire for ministry. I understand one
2 thing that believers say is they have a testimony.
3 How they came to believe, do you have a testimony?
4 A. Yeah, if I understand your question
5 correctly, you're asking me of my conversion
6 experience.
7 Q. Yes.
8 A. I was born again in August, I think it
9 was the -- no, excuse me. I was arrested in
10 August of 2002, for a DUI here in Ravalli County.
11 And there were some interesting, if not unique,
12 circumstance in that I could not seem to get a
13 speedy trial. At the same time I was not able to
14 make bail which was set at $50,000 or a bond for
15 that matter. So by default I sat in jail and I
16 watched people get arrested for DUIs, go to court,
17 get sentenced or released or move on. And it was
18 an interesting position to be. And in November of
19 that year I was still in jail. And a fellow that
20 I met brought a bible in to me. And I knew that
21 he was a Christian, although I didn't know what
22 that meant. And I knew that I desired to be
23 careful of my language, which was quite colorful
24 in those days. And I can't explain why I started
25 to read the bible, and through the course of that

1 I had never considered myself to be a sinner. I
2 never understood God's love, his mercy, his
3 holiness. And as I considered my sinful nature,
4 in the light of God's holiness, I felt very much
5 in need for his forgiveness. And as I had read
6 that his forgiveness was really available, that
7 the penalty for my sin had already been dealt with
8 when Christ went to the cross at Calvary and that
9 all I simply had to do was acknowledge, confess in
10 a genuine fashion, understand with a repentant
11 heart, a broken heart my sinful nature and ask God
12 for his forgiveness. And it was for me quite a
13 powerful moment and continues to be. Never
14 knowing of God, his desire of a personal
15 relationship with me or anybody else and never
16 knowing who Jesus is and why he died, being
17 suspicious of something more than this temporal
18 reality that sort of, not having any knowledge or
19 understanding of that. That would have been about
20 November 2, 2002.
21 Q. In a jail cell?
22 A. In a jail cell.
23 Q. Right here?
24 A. Right here in Ravalli County. Thankfully
25 cried out to God for his forgiveness, received it

Exhibit C

1 believe one of them was involving an animal, an
2 injured horse. And we have -- I believe Harris is
3 involved in a, I don't like the term, but a
4 homeless shelter on the north end of town. They
5 call it the Lighthouse, and we have several
6 responses to that location, and I've visited with
7 Harris a couple of times on those responses.
8 That's about the extent of it.
9 Q. And when there are things at the homeless
10 shelter, is that -- what sort of thing is it that
11 you go to the Lighthouse for?
12 A. Disturbances, intoxicated individuals,
13 just nothing real serious, just we got to go, of
14 course, but --
15 Q. Mr. Himes isn't the intoxicated and
16 disorderly one?
17 A. No, no, huh-uh. No, sir. It's the
18 residents, I guess is the word I'm looking for.
19 Q. Okay. Do you know his reputation in the
20 community for truthfulness or honesty?
21 A. I don't.
22 Q. How about Mr. Serata? Do you know Geoff
23 Serata?
24 A. Less than I would know Harris Himes.
25 Q. Okay. Turning to the instant

1 investigation, can you tell me how you got
2 involved investigating this?
3 A. This particular case?
4 Q. Yes.
5 A. I don't remember specific dates, but I
6 was given the call mid afternoon when I was
7 working the day shift, and that is our most busy
8 time for calls on day shift. And I had made a
9 contact with Mr. Serata, kind of got just a brief
10 synopsis of what he was wanting to report, had a
11 feeling it was going to be a lengthy investigation
12 that I didn't have time immediately for with the
13 call volumes that were coming in and scheduled an
14 appointment to meet with him the next morning
15 while the call volume was low and find out what he
16 needed to report.
17 Q. So did he come in the next morning then?
18 A. No, sir. I went to his house.
19 Q. Oh, so on this address here of 874 North
20 Shoshone Loop, that's Serata's houses?
21 A. Yes, sir.
22 Q. And you took a recorded statement in his
23 house?
24 A. Yes, sir.
25 Q. Okay. And then after -- what do you

1 the same time?
2 A. Like I said, you know, I show up, start
3 the interview, have him tell me the story, go and
4 ask some fill-in questions. I come back, type it
5 up, and standard procedure is to go through, you
6 know, print off everybody involved. I like to do
7 their -- the 31, driver's license information, so
8 I know that my information on their name,
9 spelling, everything is correct. Criminal history
10 is standard procedure only when we do reports on
11 individuals; and then reread it and make sure
12 everything looks good and it's put in a report box
13 and then assigned to whoever it needs to go to; or
14 back, if it's known, fill in the issue.
15 Q. I know on May 2, 2009, you take the
16 interview, which I learn now is that is at Mr.
17 Serata's house. And if you turn to page 15 of
18 your report --
19 A. Yes, sir.
20 Q. -- it says date, July 8, 2009. So we're
21 now two, three months later. "As of this date and
22 time, I've had no contact with Geoff Serata
23 pursuant to this investigation," ta da, ta da, ta
24 da. "Due to the amount of time that has passed,
25 I'm going to close this case due to lack of

1 cooperation by the victim, Geoff Serata."
2 MR. LASLOVICH: I think this was
3 Detective Maus, if I'm not mistaken, who did this.
4 MR. FLAHERTY: And this is supposed to be
5 an informal recorded interview, so please jump in
6 and help me. Okay.
7 A. This is the first time I've seen this
8 form.
9 Q. (By Mr. Flaherty) Oh, okay.
10 A. This is Detective Maus' note, not mine.
11 Q. Okay. So you prepare -- I'm looking at
12 page 14. You sign your report 5/2/2009?
13 A. Yes, sir. If I could just clarify real
14 quick, if you refer to pages 11 through 14, and --
15 I would have to say the majority of the background
16 information involving the individuals would have
17 been my report sent to the detective.
18 Q. Okay. The NCIC on the back is --
19 A. Yes.
20 Q. Okay.
21 A. And again, I mean, this was three years
22 ago. Sterling may have added more detailed
23 information on the NCIC stuff to the back. I have
24 no way to recollect how many pages I sent down.
25 Q. And I believe what you've got here in

1 Exhibit 30 is what you gave to Lynn Egan of CSI
2 that they've given to me, and that's all -- I've
3 got this. And at number -- page 14, you say,
4 "This interview was recorded and downloaded to the
5 RCSO server."
6 A. Yes, sir.
7 Q. And I'll be wanting to ask you some
8 questions about Exhibit 29, which is our best
9 effort to transcribe your interview.
10 A. Okay.
11 Q. But after you took the initial interview
12 and this report, did you do anything more?
13 A. Not at that point, no. I was -- like I
14 said, I was following standard procedure of based
15 on the type and the size of the investigation, I
16 did a brief initial and sent it down the line.
17 Q. And when you say "sent it down the line,"
18 that's going to be send it to Sterling?
19 A. To the detectives. It goes generally to
20 Lieutenant Potter and he assigns it to one of his
21 guys.
22 Q. Okay. And ordinarily you would -- as
23 part of how you investigate, do you get statements
24 from the target defendant before you put in a
25 report?

1 on Mr. James Bryant, again referring to the FBI
2 number.
3 Q. Okay. And where does this -- who is
4 generating this report? I see it's sent to Deputy
5 Rob Smith.
6 A. It is. This is when I request criminal
7 history from dispatch, they run state and
8 national.
9 Q. So up at the -- what does this mean at
10 the top? Can you explain this alphabet?
11 A. I really can't other than it is sent to
12 me and my attention. The alphanumerics I'm not
13 really sure.
14 Q. All right. And this is called a rap
15 sheet. Okay. Talking of rap sheets, did you also
16 generate a rap sheet for Serata?
17 A. I don't recall.
18 Q. Would you -- would that be part of your
19 ordinary protocol to request rap sheets on all
20 involved people, complainants as well as victims?
21 A. Generally, yes.
22 Q. Walk me through this, Rob, if you would.
23 A. Let's see. Subject name, James Edward
24 Bryant. Again, referring to the FBI number,
25 Social Security number, physical description, hair

1 NCIC check so we can learn what the real rap sheet
2 is for Mr. Bryant?
3 A. I would presume I can do that.
4 Q. Would you mind doing that? We'll take a
5 break, and we'll take Mr. Maus?
6 MR. O'NEILL: And we're done with Rob?
7 MR. FLAHERTY: Well, I want him to come
8 back with the correct rap sheet.
9 MR. LASLOVICH: Will you get the rap
10 sheet right away?
11 THE WITNESS: I will run down, and if
12 they're not too busy, shouldn't take too long.
13 MR. O'NEILL: I would like to finish up
14 with Rob so he can go home if that's all right,
15 Pat.
16 MR. FLAHERTY: Sure.
17 (Whereupon, the deposition was in recess at
18 2:54 p.m. and subsequently reconvened at
19 3:27 p.m., and the following proceedings were had
20 and entered of record:)
21 EXHIBIT:
22 (Deposition Exhibit No. 31 marked for
23 identification.)
24 Q. (By Mr. Flaherty) Rob, we took a little
25 break, and you went out and ran an NCIC. Is that

1 what you called this? What did you do?
2 A. Yes. I went down to dispatch, showed
3 them the information on Mr. Bryant that we have
4 here and asked them to run a background check, a
5 criminal history on Mr. Bryant. And the only
6 things that they could supply me, because we are
7 unable to find a positive --
8 Q. Social Security?
9 A. -- the descriptors with Social Security
10 number, we were able to find a Colorado Department
11 of Motor Vehicles record, matching date of birth,
12 and relatively close physical descriptors, brown,
13 brown, 5'11", 164 with no history ran on there.
14 Again, if you notice here, it says Social Security
15 number is unavailable.
16 Q. Okay.
17 A. So we can't run any further there. Out
18 of Maryland, we had a matching photograph. Again,
19 previous history you can see here a younger
20 version.
21 Q. Yes.
22 A. I would presume it would be the same
23 male.
24 Q. Okay.
25 A. Again, no Social Security number

1 available. Again, relatively close descriptors,
2 matching date of birth with it looks like
3 violation dates from May 27, 1978 through roughly
4 March 10, 1997.
5 Q. Okay. And are those all traffic
6 offenses?
7 A. Looks like, just running through them
8 real quick, starting at the first one, 1978,
9 discharge refuse from a motor vehicle.
10 Q. Littering, huh?
11 A. I would say, threw something out of a
12 car. Automatic signal, not sure exactly what that
13 is. Driving ability impaired by alcohol,
14 exceeding, improper pass, failed to obey flashing
15 signal, something in reference to suspended court,
16 failed to appear; failed to obey stop, yield sign;
17 speeding, exceeding the speed limit; failed to
18 appear; failed to appear; improper position, not
19 exactly sure; speeding maximum speed; exceeding
20 maximum speed; exceeding maximum speed; exceeding
21 maximum speed; failed to wear seat belt, not exact
22 verbatim, but that's what it is.
23 Not sure about the persisity (sic),
24 failed to comply. I'm not sure what that is. And
25 then it looks like just speeding, not wearing a

1 seat belt, speeding.
2 Q. Okay. So basically it's all
3 traffic-related offenses on this rap sheet?
4 A. I think there was one DUI.
5 Q. Okay. Did we get this numbered?
6 A. I'm sorry. It's in there. It's on the
7 very bottom, sir, and it is numbered.
8 Q. Thanks.
9 MR. O'NEILL: What number did you put on
10 that, 31?
11 Q. (By Mr. Flaherty) Quite a different rap
12 sheet than the one that got transmitted to the
13 Commissioner of Securities and Insurance?
14 A. Yes.
15 Q. Just last few questions here. Did Serata
16 discuss with any officer in the sheriff's
17 department his discussions with the attorney that
18 was going to represent him? Do you know?
19 A. I don't know, sir.
20 Q. Has Mr. Serata ever done any work with
21 the Ravalli County Sheriff's Office?
22 A. I don't know. Going back to the attorney
23 thing, the only reference he made to an attorney
24 was he had consulted, I think, with Mr.
25 Datsopoulos at one point prior to our

Exhibit D

1 Q. Did you know that he had Lasik surgery?
2 A. No, sir.
3 Q. I want to learn about your contact with
4 the Commissioner For Securities and Insurance.
5 How did you come to contact the CSI office?
6 A. There had been an article in the paper
7 that talked about increasing occurrence of frauds
8 and that the State Auditor's Office I think
9 investigated that kind of stuff. And that was in
10 the back of my mind, I guess. I think I might
11 have called the State at one point looking again
12 for advice as what I might be able to do,
13 believing that I had been ripped off. And then
14 when I brought the evidence to the sheriff's
15 department, I believe they forwarded it to the
16 State, and that's how the State officially got
17 involved.
18 Q. Did they call you, or did you call them?
19 A. I don't remember.
20 MR. LASLOVICH: By them, you're meaning
21 the Office of Securities and Insurance?
22 MR. FLAHERTY: CSI, yeah.
23 Q. (By Mr. Flaherty) What was the answer?
24 A. I don't remember.
25 Q. Okay. Did you discuss with Mrs. Egan

Exhibit E

1 MR. O'NEILL: You already have all the
2 information in there, Pat.
3 A. You have all the information. It's all
4 there except for that night I admitted to you that
5 I probably didn't copy that because those are my
6 notes.
7 Q. (By Mr. Flaherty) Okay. All right.
8 Well, and I also notice in your case file that --
9 let's at least -- you'll hold this, right? We can
10 subpoena this at the time of trial?
11 A. Yeah.
12 Q. I want to ask you some questions about
13 this, but before I do that, tell me what you know
14 about this case.
15 A. This case was a fraud investigation that
16 was taken in May of 2009. It was transferred to
17 detectives. I ended up with it. Shortly after
18 the initial report, I ended up having contact with
19 Mr. Serata who advised me that he had been in
20 contact with an attorney and had provided his
21 records to them.
22 Q. Do you know who that attorney was?
23 A. I couldn't tell you.
24 Q. Okay.
25 A. In July, I hadn't heard anything from

1 Mr. Serata, so I filed the case or closed it, and
2 it was reopened in January of 2009, or,
3 correction, 2011.
4 Q. Why? Why was it closed and why was it
5 reopened?
6 A. Well, closed file. I closed it because I
7 hadn't had any contact with Mr. Serata, and I
8 didn't know what the status was in regards to him
9 and his attorney. I reopened it because
10 Mr. Serata had had contact with one of my
11 detectives and asked what the status of the case
12 was. I contacted him. He advised me -- yes?
13 Q. Something's banging.
14 A. It's my foot. I'm sorry. I'm tapping
15 the desk. I'm sorry. So where was I?
16 Q. You can tap just so long as we know where
17 it's coming from.
18 A. Yes. Where was I? He asked what the
19 status of the case was. And at that point, I
20 contacted Mr. Serata, had him come in. We went
21 over the case, all of his documents. And at that
22 point, I spoke with my lieutenant, Lieutenant Dave
23 Potter. He stated it appears to be a security
24 fraud case and suggested that we contact the State
25 Auditor's Office.

1 Q. Okay.
2 A. I contacted Lynn Kurtz, spoke with him on
3 that same day after I had gotten done speaking
4 with Serata, and he said he was very interested in
5 this case. And at that point, I copied that whole
6 case file on that date and sent it to him.
7 Q. Who is Lynn Kurtz?
8 A. Not Lynn Kurtz. It's Lynn --
9 MR. LASLOVICH: Egan.
10 A. -- Egan. Excuse me. Lynn Kurtz works at
11 the State Crime Lab. I apologize.
12 Q. (By Mr. Flaherty) I'm happy that you're
13 not the only one that has miswires in the brain.
14 A. I do.
15 Q. I have them too.
16 A. So the case was sent to the State
17 Auditor's Office, and that's the last I have had
18 any dealings dealings with it.
19 Q. Why Lynn Egan? Why did you refer to --
20 send it to Lynn Egan?
21 A. Because I discussed this with my
22 lieutenant, Detective Lieutenant Dave Potter. We
23 looked at the case. It appeared that it was
24 security fraud, which is better handled by the
25 state auditor' office. So I called Neil Burnett

1 who is a friend of mine who I worked insurance
2 cases with in the State Auditor's Office. He put
3 me to Lynn Egan. I spoke with Lynn Egan,
4 explained to him what I was looking at. He said
5 to send the case file to him and that they would
6 take it.
7 Q. Okay. And the detective that Serata was
8 -- first contacted in your department to resurrect
9 the case, what was that detective's case?
10 A. Resurrect it?
11 Q. It was closed, and I thought I heard you
12 say now and earlier that somebody in your office
13 he was working with.
14 A. It would have been me. I'm the only one
15 working -- I was the only one -- Dave Potter was
16 involved in it a little bit, I believe, at the
17 beginning of this. I ended up with the case. I'm
18 the one that had contact with him, with Serata.
19 I'm the one that closed it. And then there was
20 some conversation about resurrecting it, and I
21 don't know. I would have to look at those because
22 I haven't really looked at that.
23 Q. Okay. Was Serata doing any work with
24 anybody in the sheriff's office?
25 A. Not to my knowledge. In regards to work, 12

RAVALLI COUNTY SHERIFF'S OFFICE - CASE ACTIVITY LOG

CASE #	08050008	CASE NAME:	Fraud	OFFICER:	Mears

DATE	TIME	DESCRIPTION
01-24-11	1512	Contacted Geoffrey Serafa # 369-1336, to meet and review documents pertaining to Fraud Investigation Serafa filed with RCSO. Arranged meeting for 1-25-2011, time 1000 hours at RCSO
1-25-11	0951	meeting with Geoffrey Serafa at RCSO
		Serafa spoke with Harris Himes about investing his inheritance that he was going to receive.
		Himes talked Serafa into investing his inheritance into a Structural Insulation Panel Company in Mexico.
		Factory was already setup for production but needed a glue machine which would cost $150,000.00.
		Himes and Jim Bryant assisted Serafa in obtaining a Non-Profit Organization under the name Image of Truth.
		Serafa advised that the $150,000.00 was wired from his Non-Profit account at Bewell County Bank to Monarch Beach Properties LLC which he believes his owned by Himes and Bryant to Harris Bank in Burkville MD.
		Serafa requested some type of Contract which Himes provided a Subscription Agreement out of Mexico for a gold mine.
		Serafa provided a three ring binder containing documents pertaining to investigation

RAVALLI COUNTY SHERIFF'S OFFICE - CASE ACTIVITY LOG

CASE #	0905008	CASE NAME:	Fraud	OFFICER:	MCWA

DATE	TIME	DESCRIPTION
01-25-11	0951	(1) Introduction (2) Time line and History (3) Documents (4) E-mails
		Documents - Subscription Agreement, wire transfer of money $150,000.00 from Image of Truth to Monarch Beach Properties LLC
		Emails between Harris Himes and Jim Bryant Email #18 Letter of Intent, wire Instructions
1-25-11	1330	Spoke with Lynn Egan, State Auditors Office by telephone. Discussed case with Egan who advised that case was Security Fraud and would take over case. Egan requested that a complete copy of case be sent to her for examination.
		Note: a complete copy of case was sent to Egan.
1-31-11	1555	Contacted Geoffrey Searle # 369-1336. Advised Searle of case details. Advised that Criminal Investigator Lynn Egan with the State Auditor's Office was investigating case as Security Fraud. Advised Searle that Egan would be in contact with him. Advised Searle not to discuss case with anyone other than my self or investigator Egan.

PETITIONER'S EXHIBIT H 369

RAVALLI COUNTY SHERIFF'S OFFICE - CASE ACTIVITY LOG

CASE #	09050008	CASE NAME:	Fraud	OFFICER:	Mauss

DATE	TIME	DESCRIPTION
12-20-10	1130	Spoke with Det. Lt. Potter in regards to the Serate Case. Lt. Potter advised that Serate failed to provide this office with documents in a timely manner and that we were not re-opening this investigation. This was also discussed with U.S. Johnson who agreed with Det. Lt. Potters decision.
1-3-11	1336	Contacted Geoffrey Serate by telephone # 369-1336.
		In speaking with Serate, I advised that I had discussed his case with Det. Lt. Potter and U.S. Johnson and the decision was made not to re-open his case. I then went over the dates in the report where I tried to contact Serate and the message I left him. The message he left me and the date I closed his case. During my conversation with Serate he advised that he had spoken with several attorneys about his case but they wanted money up front which he did not have. Serate advised that he had surgery in December 2008 and complications after surgery. Serate also advised that the deputy that took his report told him that there was no statute of limitations since the case was a felony. Serate asked for my supervisors name and contact # which I provided to Serate.

RAVALLI COUNTY SHERIFF'S OFFICE - CASE ACTIVITY LOG

CASE #	09050008	CASE NAME:	Freund	OFFICER:	Meus

DATE	TIME	DESCRIPTION
12-13-10	1156	Contacted Geoffrey Serate by telephone # 369-1336
		In speaking with Serate he was advised that the reason for me contacting him was due to a conversation he had with Detective Cathell pertaining to the status of his case. I advised Serate that the case was closed as unfounded due to Serate failing to provide the needed documents pertaining to this investigation in a timely manner. I advised Serate that I would speak with my supervisor Det. Sgt. Potter and that I would get back with him.
		Note on May 11, 2009, time 1620 hours, I attempted to contact Serate by telephone # 369-1336. I did leave a message for Serate to call me with the status of organizing his records. I left my desk # 375-4007
		Note on May 14, 2009, time 0946 hours, I received a voice mail message from Serate who advised that he had dropped off the documents to his attorney to review. Serate advised when his attorney was finished reviewing the documents he would get them to me.
		Note on July 8, 2009, time 0937 hours, I have not had any contact from Serate pertaining to this investigation nor have I received any documents that Serate was going to drop off to me after his attorney had reviewed them. Due to the amount of time that has passed this case will be closed

RAVALLI COUNTY SHERIFF'S OFFICE - CASE ACTIVITY LOG

CASE #	09050008	CASE NAME:	FRAUD	OFFICER:	FOTHER

DATE	TIME	DESCRIPTION
5/5/09	1615	S/W SERATA - HE will call ME AS SOON AS HE COMPLETES ORGANIZING THE FILE.

PETITIONER'S EXHIBIT H 371

Exhibit F

MONTANA SECURITIES DEPARTMENT
INVESTIGATION REPORT

CASE NUMBER: 02-01-11-341 I

PREPARED BY: Lynne Egan

SUBJECT: James Bryant, Harris Himes, Duratherm Building Systems, Inc. and Monarch Beach Properties LLC

DATE: April 20, 2011

This investigation was opened as the result of a conversation with and referral from Detective Sergeant Sterling Maus (Detective Maus) of the Ravalli County Sheriff's Office on January 26, 2011 regarding a $150,000 investment made by Geoffrey Serata (Serata), a resident of Hamilton, Montana. Detective Maus told the Department that Serata had contacted the Sheriff's Office regarding an investment he had made with two pastors of his church, Calvary Ministries, in Hamilton. Serata reported that he made the $150,000 investment in a company called Duratherm Building Systems, Inc. (DBS) on June 6, 2008 and, to date, has received no evidence of his ownership in the company, no return on his investment as promised, and that Pastor Harris Himes (Pastor Himes) and Pastor James Bryant (Pastor Bryant) will not return his telephone calls or provide him any information regarding the investment.

I. BACKGROUND OF SUBJECTS

James Edward Bryant *(a/k/a Jeb Bryant)* – Bryant's last known address is P.O. Box 540, Hamilton, MT 59840 and 116 Bowman Road, Hamilton, MT 59840. Bryant's date of birth is November 11, 1960. Bryant's Social Security number is 414-11-1745. Bryant is a pastor with Calvary Chapel in Hamilton. Bryant is not now nor has he ever been licensed to offer and sell securities in Montana. Bryant has the following criminal history record:

Date	Issue	State
6/20/1999	DUI	Tennessee
5/12/2000	Public Intoxication	Tennessee
3/30/2001	DUI	Tennessee
10/14/2003	Driving on Revoked/Suspended License; Speeding; Aggravated Burglary	Tennessee
3/12/2004	Evading Arrest; Speeding; Driving on Revoked License	Tennessee
4/8/2004	Contempt/Evading Arrest; Driving on Revoked License; Aggravated Burglary	Tennessee
4/26/2004	Contempt/Violation Registrations, Speeding; Evading Arrest,	Tennessee

	Resisting Arrest; Drug Possession Marijuana; Possession Cocaine; Possession Drug Paraphernalia	
5/14/2004	Resisting Arrest; Evading Arrest	Tennessee
5/29/2004	Possession of Drug Paraphernalia; Possession marijuana	Tennessee
12/22/2005	Attachment for Contempt, Violation Probation Misdemeanor; Violation of Probation - Felony	Tennessee
7/23/2006	Criminal Impersonation	Tennessee
1/20/2007	Driving on Revoked License	Tennessee

Harris Day Himes – Hime's last known address is P.O. Box 540, Hamilton, MT 59840 and 116 Bowman Road, Hamilton, MT 59840. Hime's date of birth is March 26, 1942. Hime's Social Security number is 555-60-4998. Himes is allegedly an attorney and he is also a pastor at Big Sky Christian Center in Hamilton. Himes is not now nor has he ever been licensed to offer and sell securities in Montana.

Duratherm Building Systems, Inc. – Duratherm Building Systems, Inc. (DBS) does not appear to be registered in any of the 50 states as a business entity. DBS has not made any filings with the Securities and Exchange Commission nor has it made any filings with the Montana Securities Department. Duratherm has a web site of http://durathermsips.com. On its website it purports to build structural insulated panels. It lists a contact address of dura @gmail.com. It lists a phone number in Mexico of 52.954.104.2415, however, the number does not work. It lists a phone number in the USA of 202-239-2009 and the person who answers is James Bryant. On its website it purports to have a facility in Costera, Puerto Escondido, Oxaca, Mexico.

Monarch Beach Properties LLC – Monarch Beach Properties LLC, according to instructions provided to Serata by Pastors Himes and Bryant on where to send his $150,000 investment, is located at 876 College Parkway, Rockville, MD 20850. A review of this address indicates this location is an apartment complex. A review of the Maryland Secretary of State's records indicates Monarch Beach Properties has never filed LLC documentation. Monarch Beach Properties LLC, according to the documents on file with Harris Bank, is located at P.O. Box 540, Hamilton, MT 59840. Monarch Beach Properties has never filed with the Montana Secretary of State. The two signatories for the Harris Bank account are James and Diana Bryant.

II. BACKGROUND OF VICTIM:

Geoffrey Serata, is 52 years old, lives in Hamilton, MT, and can be reached at (406) 369-1336. Serata suffers from advanced liver disease from hepatitis C, arthritis, has multiple fused vertebrae and a failing fused hip that is leaking cobalt into his body. Serata is disabled. Prior to his being disabled, Serata was a master electrician. Serata has no retirement and no retirement savings.

III. TIMELINE OF INVESTMENT:

December, 2007 - Serata received notice that he would be inheriting approximately $150,000 from a step-grandmother.

January/February 2008 – Serata discussed his impending inheritance with Pastor Himes. Himes introduced Serata to an investment in DBS. Himes told Serata that, in exchange for a $150,000 investment, Serata would receive a 20% minimum annual return for 2 years or a 5% ownership with DBS with a 20% annual return and "perks" for a longer-term investment.

March 2008 – Pastor Bryant did a Power Point presentation for Serata about DBS. Serata agreed to a $150,000 investment, which would give him a 5% ownership in DBS.

June 6, 2008 – Serata wired $150,000 from his account (entitled "Image of Truth") to Harris Bank in Chicago, IL f/b/o Monarch Beach Properties, LLC, Acct. 4802208553

June 26, 2008 – Serata travelled to and arrived in Lewisville, TX to join Pastor Bryant. Serata did so because he was told he would be paid to provide electrician services.

July 24, 2008 – Serata and Bryant left Texas for Mexico, arriving in Puerto Escondido, where DBS's facility was allegedly located.

August 10, 2008 – Pastor Bryant left Puerto Escondido, leaving Serata behind and alone.

August 27, 2008 – Serata left Puerto Escondido and returned to the United States.

IV. INVESTIGATION:

The Department reviewed information provided by Serata to Detective Maus.

In early January 2008, Serata discussed with Pastor Himes the fact that he was about to inherit $150,000. Serata told Himes he wanted to invest the money in an ultra-conservative, risk-free investment that would provide income to support ministry work and provide a retirement income. Pastor Himes solicited Serata to invest in DBS, a company Pastor Himes and Pastor Bryant told Serata they had created to build structured insulated panels (SIPs). The Pastors told Serata that they, too, would be investing in DBS once they sold their interests in a mining venture.

Serata claims the Pastors told him the DBS investment was a "sure thing" and that the investment would be doing the "Lord's work" by making SIPs to build churches, orphanages, hospitals and shelters for the homeless. The Pastors told Serata, both verbally and in e-mail, that DBS could produce 200 panels per day at its facility in Puerto Escondido, Oaxaca, Mexico, with a profit of $10.00 per panel. They told him, both verbally and in an e-mail dated May 28, 2008 from Pastor Bryant that DBS had buyers waiting to purchase 800 homes. They told him a group in Costa Rica wanted DBS to build them a similar structural insulated panel factory and that two more deals were being worked out with Canada and China.

Serata claims the Pastors told him DBS had a factory in Puerto Escondido as well as a 5-year access to a beach house. Serata claims the Pastors enticed him into the investment by telling him they would use him as an electrician at the factory, setting up a new glue gun. He was to

be paid by DBS at a rate of $1,000/week plus expenses. In an e-mail dated May 28, 2008 from Pastor Bryant (jeb1160@yahoo.com), Pastor Bryant told Serata he would earn 24%, or $36,000 a year, on his investment. He went on to state the long term looks much stronger for the investment.

The Pastors provided Serata with a Subscription Agreement for his investment in DBS. A review of the subscription agreement indicates the following:

a. Page 1 includes language that "Each share controls POINT ZERO ZERO TWO (.002) percent of the company and all ore values. (***According to the Pastors, DBS built structured insulated panels and was not involved in mining***);
b. Page 1 includes language that "It [each share] also guarantees that the subscriber shall receive POINT ZERO ZERO TWO (.002) percent royalties of the mine's defined net profits. (***Again, DBS allegedly built structured insulated panels, it was not a mine.***)
c. Page 1 indicates DBS relied on Sections 3(b), 4(2), 4(6) and if applicable, Regulation D of the Securities Act of 1933. (***Again, DBS has never filed with the Securities and Exchange Commission.)***
d. Item 7 on page 2 indicates "Subscriber is accepting shares in DBS solely as an investment" (***This clearly articulates the fact this opportunity is an <u>investment</u> opportunity***)
e. Item 10 on page 2 indicates "all distributions of funds are overseen by the [DBS] board of directors. (***There does not appear to be a Board of Directors and all of Serata's investment funds went into a bank account for Monarch Beach Properties, LLC which was controlled solely by Pastor Bryant and his wife, Diana.***)
f. Item 10 on page 2 indicates "the officers shall keep books of accounts into which each transaction shall be fully and accurately entered. These books of account shall be kept at the company's principal office and shall be available during reasonable business hours for inspection and examination by any investor or representative.." (***Serata's investment funds were placed in an account entitled Monarch Beach Properties at Harris Bank which is an account owned and controlled by Pastor Bryant and his wife. Serata has not been provided access to DBS financial records.***)
g. Page 3 includes language that "Subscriber understands that DBS will issue certificates of ownership and royalty income in the form of Cash Dividends and Cash Dividends, Villa, Annuity. (***Serata has not receive a certificate of ownership nor has he received any Cash Dividends or Cash Dividends, Villa, Annuity.***)
h. Page 4 indicates in exchange for $150,000, the subscriber (Serata) would receive POINT EIGHT THREE percent (6%) ownership in DBS. (***.0083 is not equal to .06***).

On June 6, 2008 Serata wired $150,000 from Ravalli County Bank in Hamilton to Harris Bank in Rockville, MD. According to bank wiring instructions provided to Serata by the Pastors, the recipient account was Monarch Beach Properties, LLC, located at 876 College Parkway, Rockville, MD 20850. A review of the Harris Bank account statements and supporting financial instruments indicate Serata's money was spent as follows:

$ 56,668.78	Various payees, including Bryant and Himes
$ 17,312.46	American Express credit card
$ 99.71	Bank of America credit card
$ 46,884.44	Chase credit card

$ 12,729.34	Discover credit card
$ 1,319.00	Goel Forwarding Agency
$ 10,860.55	Various providers
$ 4,029.42	Merchandise (groceries, etc.)
$ 96.30	Bank fees
$150,000.00	TOTAL

Serata travelled to Texas in late June 2008 and purchased multiple items to take to the DBS facility in Puerto Escondido where he understood he would be providing his electrician services for compensation of $1,000 per week. He them travelled to Puerto Escondido with Pastor Bryant. When he arrived at the location where the DBS facility was supposed to be located he described it to the Securities Department as a "shed" on a farmer's land. Serata spent 17 days in Puerto Escondido with Pastor Bryant, attempting to get DBS up and running but determined there had been nothing purchased, there was no electricity to the "shed", there was no documentation for DBS and there was no beach house.

In an e-mail to Pastor Bryant dated August 17, 2008, Serata demanded the following information regarding his investment in DBS:

1. All assets held by DBS
2. Names of partners, their percentage of ownership, their type of investment (cash, real estate, etc.)
3. The relationship between DBS and Monarch Beach Properties, LLC, Monarch Beach Cloisters, and any other related businesses, companies, corporations
4. Qualification of his DBS position as a 6% shareholder
5. Qualification of the other shareholders and their position
6. Any other investors and their Investments
7. Duratherm's expenses, to date
8. All other pertinent information
9. Technical information on everything

Pastor Bryant's e-mail response to Serata dated August 20, 2008 was that DBS is "50% held by God's Eternal Testament; .5% by Filipe; 6% by Serata; 39% by Monarch Beach (note, this does not add to 100%.) Pastor Bryant further states that Monarch Beach's 39% ownership owners are his wife Diana, his mom, 3 of his cousins, Ryan Bell, Brad Hyde, Kathy Sayer and Pastor Harris. Pastor Bryant remained silent to all of Serata's additional requests for information.

In an e-mail from Serata to Pastor Harris dated August 22, 2008, Serata confronted him with allegations of fraud. He stated there was no factory, no beach house, and that he had been scammed.

In an e-mail dated September 9, 2008 to both Pastors, Serata summarizing events leading up to his investment and his trip to Mexico and the fact that he believed he had been scammed At the end of the e-mail he explained he was planning on filing criminal complaints and invited them to participate in "reconciliation."

In a response to Serata's September 9, 2008 e-mail dated September 16, 2008, Pastor Harris claimed that he had never suggested Serata invest in DBS; he stated Serata was a sophisticated businessman; he stated Serata was never offered an investment with a 20% per year return; he stated the venture was a start-up venture; he told Serata that he and Pastor Bryant had turned down another potential investor in anticipation of Serata's investment and that Serata's $150,000 came 2-months later than expected; he told Serata he was not asked to go to Mexico; he accused Serata of driving a DBS vehicle back to the United States without permission; and admitted the beach house was not on the beach. At the end of the e-mail he stated that he was parting friends with Serata and that DBS was under no obligation to "buy you out but will endeavor to do so."

After not hearing from the Pastors for over six months, Serata filed a police report with the Ravalli County Sheriff's Department on May 3, 2009. To date, Serata has not received any documentation of his investment, has not received a return on his investment and has not received a return of his principal.

POSSIBLE VIOLATIONS:

Violations by Pastor Bryant and Pastor Himes

Pursuant to §30-10-201(1), MCA, "it is unlawful for a person to transact business in this state as a broker-dealer or salesperson, except as provided in 30-10-105, unless the person is registered under parts 1 through 3 of this chapter.

Pastor Bryant and Pastor Himes may have violated §30-10-201(1), MCA, when they offered and sold and investment in Duratherm Building Systems, Inc. to Geoffrey Serata without being registered in Montana as a salespeople.

Pursuant to §30-10-201(13)(g), MCA and ARM 6.10.126, forgery, theft, non-disclosure, incomplete disclosure, misstatement of material facts, manipulative and deceptive practices are all deemed fraudulent, dishonest and unethical practices.

Pastor Bryant and Pastor Himes may have engaged in dishonest and unethical practices in the securities business when they misappropriated the money entrusted to them by Geoffrey Serata and by engaging in other conduct such as forgery, theft, non-disclosure, incomplete disclosure, misstatement of material facts, manipulative and deceptive practices.

Pursuant to §30-10-301(1)(b), MCA, it is unlawful for any person, in connection with the offer, sale or purchase of any security in, into, or from this state to "make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading."

Pastor Bryant and Pastor Himes may have violated §30-10-301(1)(b), MCA in connection with the offer and sale of a security when they made untrue statements of material fact when they told Geoffrey Serata that Duratherm Building Systems, Inc. had buyers waiting to purchase 800 homes, when they told him a group in Costa Rica wanted Duratherm Building Systems, Inc. to build them a similar structural insulated panel factory and when they told him that two more deals were being worked out with Canada and China when the factory was actually only a shed and was not producing SIP panels.

Pastor Bryant and Pastor Himes may have also violated §30-10-301(1)(b), MCA when they, in connection with the offer and sale of a security,

- Omitted the fact that they were not registered to sell securities in the State of Montana;
- Omitted the financial condition of Duratherm Building Systems, Inc.
- Omitted specific information about how the proposed rates of return on the investment were to be generated
- Omitted background information on the officers and directors, including but not limited to their names, principal occupations for the previous five years, ownership or interest held by each person
- Omitted the risks involved with the investment;
- Omitted the fact that Serata's investment monies would be held in an account controlled by Pastor Bryant and his wife;
- Omitted the fact that Serata's investment monies would be used for purposes other than operating Duratherm Building Systems, Inc.
- Omitted the issuer's background and/or history, including but not limited to, any regulatory or criminal action issued against the issuer or its offers and directors, among other things.

Pursuant to §30-10-301(1)(c), MCA, it is unlawful for any person, in connection with the offer, sale or purchase of any security in, into, or from this state to engage in any act, practice or course of business that operates or would operate as a fraud or deceit upon any person."

Pastor Bryant and Pastor Himes may have violated §30-10-301(1)(c), MCA in connection with the offer and sale of a security when they engaged in an act, practice or course of business that operates or would operate as a fraud or deceit upon Geoffrey Serata by offering him an investment in Duratherm Building Systems, Inc. and told him they had buyers waiting to purchase 800 homes, when they told him a group in Costa Rica wanted Duratherm Building Systems, Inc. to build them a similar structural insulated panel factory and when they told him that two more deals were being worked out with Canada and China, when the factory was actually only a "shed" and not producing SIP panels.

Pastor Bryant and Pastor Himes may have violated §30-10-301(1)(c), MCA when they engaged in an act, practice or course of business that operates or would operate as a fraud or deceit upon Geoffrey Serata, in connection with the offer and sale of a security, by

- Omitted the fact that they were not registered to sell securities in the State of Montana;
- Omitted the financial condition of Duratherm Building Systems, Inc.
- Omitted specific information about how the proposed rates of return on the investment were to be generated
- Omitted background information on the officers and directors, including but not limited to their names, principal occupations for the previous five years, ownership or interest held by each person
- Omitted the risks involved with the investment;
- Omitted the fact that Serata's investment monies would be held in an account controlled by Pastor Bryant and his wife;
- Omitted the fact that Serata's investment monies would be used for purposes other than

operating Duratherm Building Systems, Inc.

- Omitted the issuer's background and/or history, including but not limited to, any regulatory or criminal action issued against the issuer or its offers and directors, among other things.
- By failing to produce the promised rates of returns, among other things.

Violations by Duratherm Building Systems, Inc.

Pursuant to §30-10-202, MCA, it is unlawful for any person to offer or sell any security in this state, except securities exempt under §30-10-104 or when sold in transactions exempt under §30-10-105..."

Duratherm Building Systems, Inc. may have violated §30-10-202, MCA when it offered and sold an investment to Geoffrey Serata without proper registration in this state and without the benefit of an exemption.

Pursuant to §30-10-301(1)(b), MCA, it is unlawful for any person, in connection with the offer, sale or purchase of any security in, into, or from this state to "make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading."

Duratherm Building Systems, Inc. may have violated §30-10-301(1)(b) when it represented to investors that its offering was qualified pursuant to Regulations D of the Securities and Exchange Act of 1933 when the offerings may not have qualified.

Duratherm Building Systems, Inc. may have violated §30-10-301(1)(b) when it made its securities available to Montana residents without proper registration in this state and without the benefit of an exemption.

He asked me if I had considered investing in the Lord's work. It was at this time that he told me about Duratherm, a company he and Pastor James Bryant had created to build SIPs (Structural Insulated Panels). That with the profits from this company, they were going to build churches, orphanages, hospitals and shelters for homeless people. Pastor Himes told me that Pastor Bryant had Letters Of Intent from several sources and that this opportunity was a sure thing ordained by God, "His timing being perfect." He went on referring to this as a "sure thing" and told me that they were looking for a Christian to invest $150,000.00 for the purchase of a glue machine that would be used to glue hardy backer boards to the EPS (Expanded Poly Styrene), and with this machine they were ready to begin production. Pastor Himes told me that Duratherm would be in full production in the summer of 2008. Pastor Himes said that they needed an investor because their money was tied up in a mine they (he and Pastor Bryant) had in New Mexico, which was selling for close to a billion dollars, but the sale was not to close for several months yet. He went on to say that they were putting all of that money into Duratherm as soon as they closed on the sale. He went on to describe the factory they had and the details they ironed out to begin production in Mexico. Those details included the ownership of real estate where the factory was located and the "Fabracadora" or factory they owned in Oaxaca, Mexico. That was our first discussion on the subject. During that conversation, Pastor Himes said that I should create a formal ministry for the video work I was doing (he recommended a Corp Sole), and said that I could invest the money with him to create a secure income because with my physical disabilities it would only become more difficult for me to earn a living. Pastor Himes was teaching Biblical Greek then (I was one of his students), and we met several times a week for meals, tutoring (Greek) and to share a ride to Missoula. He began asking me if I had decided to "come on board," calling me partner, and that they were going to need someone to supervise production in Mexico and I was his recommendation. He told me to start "polishing" my Spanish.

Pastor James Bryant (aka Jeb) and his wife came to visit Pastor Himes late March of 2008. I had met Pastor Bryant a year or two before through Pastor Himes. During this visit, Pastor Bryant said that this was a sound investment in the LORD's work. He also said that I could expect annual returns of 20% or better. He showed me several power point presentations; of the panel construction process, of their beech house and factory (they claimed to be owned by Duratherm), architectural designs for several different styles of housing, mini-storage facilities, and views of the coast. Pastor Bryant stated that he had letters of intent from clients ready to purchase SIPs from Duratherm and that everything was in place to start production. All that was needed was a glue machine. Pastor Bryant went on to speak of everything being in place to participate in these contracts and that Duratherm would be up to full speed by the summer. He also spoke of a large project/contract in Costa Rica (again in EM 05) and didn't yet know if they should export from Mexico or build another facility there. He said that there was a port near by. He told me of a contract to produce SIPs for a 800 home project in Mexico, two years worth of production, and other people wanting "our" product yesterday.

geoff serata <gserata@gmail.com>

"...and let us reason together..." Isaiah 1:18

4 messages

geoff serata <gserata@gmail.com> EM-137 **Tue, Sep 9, 2008 at 2:00 PM**
To: Terry Reynolds <CCOF@calvarychapel.com>, Harris Himes <bigskycc@aol.com>, James Bryant <jeb1160@yahoo.com>

Brothers,

I pray for God's wisdom as I compose this letter so that our LORD would be glorified and that we may embrace the ministry of reconciliation given to us from above.

A brief history of events:

Around the beginning of this year I received a letter informing me that I was to inherit what I thought was going to be about $180,000.00. I went to Harris Himes whom I considered to be a friend and brother in Christ as well as a successful attorney, seeking wise council from a pastor. Being young in the LORD, I did/do not want to blow what the LORD has entrusted to me. Harris told me of an activity that he and James Bryant were involved in, and that they needed an investor to purchase a glue machine to begin production of a SIP (Structural Insulated Panel) factory in Mexico. I was led to believe that there was going to be opportunity to build churches and other facilities in Mexico as well as in Central and South America, and possibly Asia from the profits of this company. I was led to believe that everything was in place, that they had a building, equipment, customers, and just needed glue machine. Hey, I was excited by the proposition of being a part of something that might make a difference for His glory. I was presented with the option of a two year investment with a return of 20% per year, or a partnership. After listening to all of the things that they were planning to do, churches, shelters, etc., I thought this might be a good thing, complementing my passion for missions. They defined a 6% interest in the company Duratherm, the use of a beach house

geoff serata <gserata@gmail.com> EM-138 **Tue, Sep 9, 2008 at 3:28 PM**
To: Terry Reynolds <CCOF@calvarychapel.com>, Harris Himes <bigskycc@aol.com>, James Bryant <jeb1160@yahoo.com>

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Around the beginning of this year I received a letter informing me that I was to inherit what I thought was going to be about $180,000.00. I went to Harris Himes whom I considered to be a friend and brother in Christ as well as a successful attorney, seeking wise council from a pastor. Being young in the LORD, I did/do not want to blow what the LORD has entrusted to me. Harris told me of an activity that he and James Bryant were involved in, and that they needed an investor to purchase a glue machine to begin production of a SIP (Structural Insulated Panel) factory in Mexico. I was led to believe that there was going to be opportunity to build churches and other facilities in Mexico as well as in Central and South America, and possibly Asia from the profits of this company. I was led to believe that everything was in place, that they had a building, equipment, customers, and just needed glue machine. Hey, I was excited by the proposition of being a part of something that might make a difference for His glory. I was presented with the option of a two year investment with a return of 20%

per year, or a partnership. After listening to all of the things that they were planning to do, churches, shelters, etc., I thought this might be a good thing, complementing my passion for missions. They defined a 6% interest in the company Duratherm, and the use of a beach house. I have a generic draft of this arrangement prepared by Harris Himes.

I was instructed to deposit the money (wire transfer) into the account of Monarch Beach Properties (another company owned by Harris and James - possibly others) held by the Harris Bank of Chicago, which I executed the end of May as soon as I received my distribution.

I was led to believe that things were in place to begin production by August. I was asked to go to Mexico to help with the preparations.
James said that he wanted me to meet him in Texas on the 24th of June to help him cross the border by the end of June. I had just returned from a missions trip/economic development in the Philippines, and raced to meet James in Texas. I arrived in Texas on the 26th where I found nothing ready and that is when what I saw began to conflict with what I was told. More than a month later we crossed the border. When we arrived in Puerto Escondido, there was no beach house, nothing ready to go for a factory, and not enough equipment to consider unpacking it. James and his wife left for the states mid August after telling me they were crossing back into Mexico on the 20th of August. We had agreed to communicate by email, that being the most reliable and economical method. James never let me know that he was not returning as planned, failed to respond to my emails, and basically, abandoned.me. I wont run down the long list of abuse that I've been subjected to over the last two months.

Documentation was to be provided to me by James once I arrived in Texas, according to Harris. Once there, James said that he would have something for me in Mexico City. Once there, I was told that it would be in Puerto Escondido. Once in Puerto Escondido, I was told that a contract was ready to be signed by another partner (the owner of the house we were using and the "factory building"), however there was always some excuse when I asked to review the documentation including "that it was in Spanish and I wouldn't understand it.

To date, I have not seen any documentation. I have seen nothing that resembles any other financial contribution to this effort. I requested that James provide me with an accounting of the other partners, their contribution to this effort, as well as an accounting of where the money I invested is or has been spent, as well as a list of assets and debts. I got no response. I contacted Harris with similar results. It appears that I am the only partner exposed to any financial risk. Instead of purchasing a $150,000.00 glue machine, James got a 50 year old one for $7-8,000.00 dollars. I am no longer entertained by stories, smoke and mirrors.

Harris and James,
I am ready to file criminal complaints. I am heartbroken by the deceptions and your lack of interest in resolving these issues. I have tried to come along side of the both of you in love requesting accountability and reconciliation of these discrepancies, but you wont reply.

Again, I invite you to participate in reconciliation, for His glory ...geoff

EM-139

Bigskycc@aol.com <Bigskycc@aol.com> **Tue, Sep 16, 2008 at 11:27 AM**
To: gserata@gmail.com, CCOF@calvarychapel.com, jeb1160@yahoo.com

Geoff,

I find no effort on your part for reconciliation when you make false accusations about James and me, try to defame us to Calvary Chapel – since you know we're both Calvary Chapel pastors, and

then threaten us with criminal prosecution. You have asked to be bought out, and efforts to grant your request are being made.

Having said that, I will respond to some of your more egregious misrepresentations.

- I never suggested that you invest your money in Duratherm. You overheard James and me discussing what was going on in Mexico, and you actively pursued an investment, using your "Christian connection" to ask for more than the 5% offered. At one point, I advised you not to do it if you had any misgivings. You insisted on going ahead. Nobody manipulated you, certainly not James or I.
- You are not unsophisticated in business, as you have been an independent electrical contractor for many years and are almost fifty years old – and a big, strong man.
- You were never offered a two-year investment with a return of 20% per year or a partnership. Furthermore, you are not entitled to knowledge about other investors.
- The investment was not for just a glue-machine. You knew it was a start-up venture. Ultimately, as the Lord wills, there will be churches built by/with Duratherm.
- You indicated that you would have the money within two weeks, and James turned down another potential investor during the approximate two-month period it took for you to actually receive the money. During that time, the glue machine originally considered was sold to someone else, requiring the purchase of another, older machine.
- You were not asked to go to Mexico. You asked to go along so you could help, and James agreed.
- Later, when James and Diana went back to the States for supplies, you decided to stay in Mexico so you could work out. James did correspond to you by email and called you several times – I received his emails copied to me. In fact, you called me to complain. When I told you he had emailed you, you turned your vitriol on me, this last email of yours being an example.
- Then, before James returned and without telling him – certainly without permission – you took one of the cars which had been cleared to be in Mexico and drove it back across the border – without its papers. Then, you dropped it off at Noe's without telling him or even thanking him for storing your car free of charge – and left. When Diana attempted to drive the paperless car back across the border – since they now had two vehicles to drive back – they threatened to take away her green card.
- You also took tools back with you which you had bought to be used at the factory, telling James that he didn't need to buy them, but which he no longer has in Mexico for the project – after James had paid the 15% sales tax to bring them down – including your weight set.
- Oh, yes, you were right about the house – it's a block away from the beach.

Under the circumstances, I feel it best if we part friends. Duratherm has no obligation to buy you out but will endeavor to do so. In the meantime, I would appreciate it if you would call my friend Peanut and give her the two video cameras, the tripod, all the video/film of mine for the Greek classes, my sermons, my reunion in DC, trip to Tennessee, and any others. Her phone number is 406-363-4472.

James and I are truly sorry things have turned out this way. We wish you well and pray that your surgery is successful.

Blessings,

PETITIONER'S EXHIBIT 44 284

Harris

Psssst...Have you heard the news? There's a new fashion blog, plus the latest fall trends and hair styles at StyleList.com.

geoff serata <gserata@gmail.com> EM - 140 **Tue, Sep 16, 2008 at 8:55 PM**
To: Bigskycc@aol.com

Harris,

Again, I will attempt to encourage you to consider your course...and to whom it brings glory. The evidence exists contradicting most of what you allege in your email. Furthermore, it is not nor has ever been my intent to defame you or anyone else. I have consulted with 3 attorneys, all of whom say that they can recover my investment. I am ready to sign a contract to initiate that recovery. I sent the email to Terry because I had not heard from you or James and wanted to make one more attempt to remedy this without the public. If I wanted to damage your character, I WOULD HAVE ALREADY begun legal action. Sure, an attorney will cost me. It's my last choice.

If you have any desire to resolve this than I suggest that you establish a schedule (time frame) and specific dollar amount (a well defined method for remedy) and present it via email before Terry Reynolds and myself, as a good faith effort, to be followed up with a promissory note. I will prayerfully wait until Friday of this week for a response, Note that this is a private email to you from me, geoff
[Quoted text hidden]

Exhibit G

1 guessing. I don't know.
2 Q. Okay. And I didn't -- I didn't mention
3 this before. Obviously, we don't want you to guess.
4 A. Right. I -- I don't know.
5 Q. Okay. When did you start with the
6 auditor's office?
7 A. Valentine's Day 1994.
8 Q. And when you started in 1994, Lynne, what
9 was your position?
10 A. I was a securities examiner analyst.
11 Q. How does that differ from what you're
12 doing today?
13 A. When I was a securities examiner analyst,
14 I did a lot of the things that I do today, but I did
15 not manage the division. I did not administer the
16 securities act. I wasn't in an administrative
17 capacity. I simply was on the ground working,
18 analyzing, examining.
19 Now I oversee the entire division, but I
20 also do some of the same tasks I did back in 1994.
21 Q. When you say you oversee the division, is
22 that the securities division?
23 A. I -- I'm the -- correct. It's the
24 securities department.
25 Q. Securities department. Okay. Why -- why

1 agency and there's a substantial amount of material
2 with it, it facilitates less gathering of materials.
3 But, again, I would review the matter to its logical
4 conclusion.
5 Q. When you receive a referral from a --
6 from an outside agency, is it fair to say that
7 there's usually more work done on the file before it
8 gets to you?
9 A. Sometimes.
10 Q. Sometimes? Sometimes not?
11 A. Right.
12 Q. Once a referral from another agency hits
13 your desk, does your process of evaluating and
14 investigating that file differ in any substantive
15 manner than the other kinds of complaints we've
16 discussed?
17 A. Generally, no.
18 Q. Talking about complaints that come in
19 where an allegation of fraud exists or the
20 complainant believes he or she has been scammed,
21 what do you look for in terms of referring the
22 matter for a criminal filing?
23 A. That -- I -- I follow the same
24 investigative process whether or not I believe at
25 the onset it will be administrative or criminal. I

1 see the investigation through to a logical
2 conclusion, and I let the legal department or the
3 attorney that's going to handle the matter make the
4 decision of whether or not it is administrative or
5 criminal. It would not change the way I
6 investigated the matter at all.
7 Q. When you receive the kind of complaints
8 that I've described a moment ago, ones in which
9 there's an allegation of fraud or potentially other
10 criminal violations, in your own mind, what -- what
11 things are you looking for to determine, in your
12 opinion, whether a case should be proceeded upon in
13 a criminal fashion or an administrative fashion?
14 A. Again, I don't -- I don't make that
15 decision. I gather the information. Once the
16 information is completely gathered that -- and a
17 conclusion is reached, then I might form an opinion,
18 my own personal opinion, but I don't file charges.
19 It's not --
20 Q. I understand.
21 A. -- up to me. But, again, until I have
22 all the information, I'm strictly the objective
23 fact-finder.
24 Q. Once you complete an investigation on a
25 complaint that's been assigned to you or -- or that

1 would be -- what exactly happened would make me
2 formulate an opinion in my mind, one way or the
3 other, if I thought it was criminal in nature.
4 Q. When you advise the legal department of
5 your opinion that a certain matter should be dealt
6 with in a criminal fashion, what typically happens
7 after that?
8 A. The legal department reaches its own
9 conclusion and does what it sees fit.
10 Q. Do they ever disagree with you?
11 A. Yes, I believe so.
12 Q. Can you identify some cases for me in
13 which you've recommended criminal filings and
14 they've -- the legal department has declined your
15 suggestion?
16 A. The matter of David Tacke.
17 Q. And do you know why the legal department
18 declined your suggestion that Mr. Tacke be
19 prosecuted criminally?
20 MR. LASLOVICH: Objection, foundation.
21 THE WITNESS: I would be speculating.
22 BY MR. MONFORTON:
23 Q. Did anyone in the legal department tell
24 you why they did not follow your recommendation to
25 criminally prosecute Mr. Tacke?

1 the promoters, to disclose all business and tell
2 them to stop doing business.
3 I didn't think that was the case here. I
4 had no reason to believe they were making additional
5 investment offers.
6 Q. So you believed, when you first heard
7 of -- when you first became aware of Mr. Serata's
8 complaint, that the wrongdoing had occurred over a
9 year prior, and that was the reason for not
10 attempting to contact either Mr. Bryant or -- or
11 Mr. Himes?
12 A. I believe it had occurred three years
13 prior to me becoming aware of it, and I had no
14 reason to believe that the two individuals were
15 still offering securities to or from Montana.
16 Q. Just so the record is clear: There was
17 no attempt to contact either of these gentlemen by
18 you?
19 A. Right.
20 Q. Let me ask you about a previous matter
21 that your office has handled. I believe it's the
22 ACN case. Does that ring a bell?
23 A. Yes, it does.
24 Q. Give me a brief description of that case.
25 A. ACN was a multilevel marketing company

1 that came in and started doing business in Montana
2 without filing here first. MLM companies have to --
3 are required to simply put us on notice that they're
4 doing business in Montana. We started getting
5 complaints from people who had purchased -- had
6 gotten involved in ACN, and they were unhappy.
7 I believe Mr. Ludwig handled the matter,
8 and he investigated it to a logical conclusion, and
9 the agency took appropriate action based on his
10 investigation.
11 Q. What was the action that the agency took?
12 A. I believe the agency issued a Notice of
13 Proposed Agency and a Cease and Desist Order [sic],
14 if I recall correctly.
15 Q. Was there a point in time in which ACN
16 threatened to engage in negative advertising, for
17 lack of a better term, with regard to Ms. Lindeen?
18 A. I don't -- I don't recall if -- if they
19 did. I -- they didn't make that comment to me. But
20 by the time an agency action was taken, legal was
21 handling it, not the department.
22 Q. Had you ever heard of threats being made
23 by ACN against either Ms. Lindeen or against --
24 against your office?
25 A. A negative advertising campaign? That

1 doesn't ring a bell, doesn't -- I don't recall that.
2 Q. Okay. My question is more general. Do
3 you recall any kind of -- had you heard or been
4 aware of any threats made by ACN either against
5 Ms. Lindeen or against the office in general?
6 A. I -- I -- they may have -- I think they
7 lawyered up. I don't even recall -- their in-state
8 counsel, I believe, was Lynne Deola. I don't recall
9 that, no.
10 Q. Give me a brief summary on the Two
11 Feathers case, if you're familiar with it.
12 A. Daniel Two Feathers was a former federal
13 felon -- well, I guess you can't be a former felon.
14 He's a federal felon. He was in prison from about
15 1996 to 1999 for operating a securities scam. He
16 moved to Montana in early 2000 sometime and started
17 his scam up again.
18 In the fall of '08, we started getting
19 complaints from people who had invested with Mr. Two
20 Feathers and were not getting the promised returns
21 that he promised them. The agency investigated it
22 to a logical conclusion, took action -- I think it
23 was in probably October of 2008 -- and we
24 referred -- the feds got involved because we had an
25 investor in Switzerland, I believe, and most of the

1 investors were outside the state of Montana. So we
2 took administrative action at the state level, and
3 the FBI and the U.S. attorney's office got involved
4 and did a federal action in that matter.
5 Q. Was there any reason you could not have
6 brought a criminal action against Mr. Two Feathers
7 on behalf of your office?
8 A. I don't bring criminal charges, so I
9 can't answer that question.
10 Q. Okay. So the answer is: No, you don't
11 know of any reason --
12 A. I do not know --
13 Q. Okay. You've got to let me finish my
14 question. So the answer is: No, you do not know of
15 any reason why the auditor's office or someone in
16 the auditor's office could not have brought criminal
17 charges with regard to Two Feathers?
18 A. I do not know why we could not have
19 brought criminal charges.
20 Q. The same question with ACN: Is there any
21 reason that you know of that would have prevented
22 the auditor's office from bringing criminal action
23 against ACN?
24 MR. LASLOVICH: Objection, foundation.
25 THE WITNESS: I can't -- I do not know.

1 BY MR. MONFORTON:
2 Q. Do you know who Bill Nooney is?
3 A. Yes, I do.
4 Q. Tell me who that person is.
5 A. He is an individual that lives in
6 Missoula that has a company where he appears to do
7 hard-money lending. It's called William Nooney
8 Investments. I'm just guessing on the name. It's
9 got his name incorporated in the name. His -- his
10 business name has his name incorporated in it. It's
11 William Nooney or Nooney Investments. I don't know
12 the exact name of his business, but he is a
13 businessman in Missoula.
14 Q. How has Mr. Nooney come to your
15 attention?
16 A. He first came to my attention as a victim
17 in the Two Feathers matter. He was an investor
18 with, I believe, Shawn Swor, possibly Dan Two
19 Feathers. Shawn Swor and Dan Two Feathers had an
20 investment scheme. He was a victim in Two Feathers.
21 Then about a year later the agency got a
22 complaint from somebody who had invested with Bill
23 Nooney. So he was a victim in the Two Feathers
24 matter, and then we have an open investigation in
25 regard to Mr. Nooney for soliciting investors in a

1 scheme.
2 Q. When was that investigation opened?
3 A. I don't recall.
4 Q. Is that an investigation that you're
5 handling?
6 A. Mr. Ludwig initially handled it. I am
7 now handling the matter.
8 Q. Has there been more than one complaint
9 lodged with your office against Mr. Nooney?
10 A. I believe there have, but I'd -- I'd have
11 to verify that. I believe there's more than one.
12 Q. Have any of the alleged victims of
13 Mr. Nooney expressed any concern to you about how
14 that matter is being handled?
15 A. One of the victims refused to talk to me.
16 Q. Who is that?
17 A. The last name was McGowan. I don't
18 remember the first name. He didn't want to talk --
19 I called -- I called the victims, I reached out to
20 the victims, after reviewing bank records, seeing
21 who had invested in -- or who had invested.
22 He didn't want to talk to me because he
23 was paranoid, I guess, is what he told me. And then
24 later on he talked to Bill Nooney, and Bill said,
25 "Cooperate with them," and so he called me back.

1 regard to Mr. Nooney?
2 A. No. Not that I can recall. The IRS may
3 have called me, but I -- I don't recall.
4 Q. We're almost done. It's my understanding
5 that Harris Himes -- strike that. Let me rephrase
6 the question.
7 It's my understanding that a condition of
8 Mr. Himes' attorneys being able to interview
9 witnesses in this matter -- a condition of those
10 interviews was that Mr. Harris not attend the
11 interviews or depositions. Is that your
12 understanding?
13 A. I do not know.
14 Q. You don't know anything about that?
15 A. No.
16 Q. Okay. When did Mr. Laslovich start with
17 the office?
18 MR. LASLOVICH: Objection, foundation.
19 BY MR. MONFORTON:
20 Q. If you know.
21 A. I would say the spring of 2009.
22 Q. Were you involved in any way in the
23 hiring of Mr. Laslovich?
24 A. No.
25 Q. Who was responsible for that?

1 Q. Mr. Monforton also discussed Exhibit 36,
2 your investigative report, and page 7 specifically,
3 and that last bullet point on page 7.
4 Do you know if that was a basis for
5 charging Mr. Himes or Mr. Bryant?
6 A. I don't believe it was.
7 Q. And then, also, he discussed with you the
8 criminal background of James Edward Bryant which was
9 included in your report. Where did you get that?
10 A. As I previously stated, I got it either
11 from Detective Sterling Maus -- it may have been
12 included in what I got in the referral. If it
13 wasn't, I would have asked our chief of enforcement,
14 who I don't recall who that was back when I got this
15 matter, to run the background for me.
16 I do know that I did get the driver's
17 license printout with all the relevant date of
18 birth, Social Security number, that information.
19 This may have been there when the
20 referral came in. If it wasn't, I asked our chief
21 of enforcement to do it. I -- I can't tell you
22 which way. If I don't get it, I ask our insurance
23 investigator, who has CGEN access, to get it for me.
24 Q. Where did you get the copy of the
25 driver's license?

1 A. It -- it came with the referral from
2 Detective Maus. There was one of both Mr. Bryant
3 and Mr. Himes.
4 Q. And are you certain that it included a
5 Social Security number?
6 A. I -- I believe it does, but I can't say
7 for certain that it does.
8 Q. So the information, whether it came from
9 Detective Maus or whether you provided information
10 to the chief of enforcement, that information came
11 from the referral from the Ravalli County sheriff's
12 department; is that correct?
13 A. Yes.
14 Q. With regard to ACN, do you know who the
15 lawyer assigned to that was initially?
16 A. I believe -- I believe it was Roberta
17 Cross Guns. Possibly co-counsel Jameson Walker. I
18 don't know for certain if it was co-counsel, but I
19 believe Roberta was the initial counsel on the case.
20 Q. And what was her performance like as she
21 prosecuted the case?
22 A. Well, the case was never prosecuted.
23 We -- we settled.
24 Q. Well, let me back up. Was there an
25 administrative action filed?

1 Navarro is.
2 A. Patrick Navarro is an assistant examiner
3 in the securities department.
4 Q. And what does he do generally?
5 A. Generally, he assists in the examination
6 of broker-dealer firms and investment advisory
7 firms. That's his -- the purpose of the position is
8 assisting in the examination process.
9 He also helps -- he assists me in
10 scheduling bank records, broker-dealer records and
11 so forth, because he's attended financial statement
12 scheduling analysis training.
13 Q. Does he investigate himself?
14 A. No.
15 Q. If Patrick testified that it was very
16 important to contact a company when an issue arises,
17 would that be consistent with your belief?
18 A. No.
19 Q. Why?
20 A. It's not very important. It can be
21 helpful if time -- if -- if -- if -- as I previously
22 testified, if -- if there's ongoing activity at the
23 present time. But it's not very important.
24 It's one of the ways that we investigate,
25 but it's used on a case-by-case basis, depending on

1 the nature of the issue at hand.
2 Q. Do you -- do you utilize the insurance
3 investigators in your securities investigations?
4 A. Occasionally I will have securities
5 investigations that will also involve insurance, and
6 then I will team up and work with an insurance
7 investigator. But the expertise is limited to they
8 do investigatory work on the insurance side. They
9 don't do securities investigation. And I don't do
10 insurance investigation.
11 And then I will use the insurance
12 investigators to -- the chief of enforcement to get
13 CGEN reports and information like that because they
14 are plugged into the system and securities is not.
15 Q. Is it fair to say then, if it solely
16 involves securities, then it's solely being
17 investigated by you or your staff?
18 A. I can think of at least two occasions
19 where I borrowed an investigator to help because the
20 matter was so voluminous, I didn't have resources.
21 Q. Was this case one of them?
22 A. No.
23 Q. Do you know if there's a complaint form
24 available on this CSI website?
25 A. There is a securities complaint form and

1 positive and not a negative.
2 Q. Do you know if people are afraid of you
3 in this agency?
4 A. I'm not aware of that no.
5 Q. Has anyone come to you saying that people
6 are afraid of you?
7 A. No.
8 Q. Have any people that you've investigated
9 received preferential treatment by this office?
10 A. I don't understand what you mean by
11 "preferential treatment."
12 Q. Have any individuals -- strike that.
13 Has this office not pursued an individual
14 based on that individual's political affiliation?
15 A. Not that I'm aware of.
16 Q. Has the office pursued somebody based on
17 their religious beliefs?
18 A. Not that I'm aware of.
19 Q. Have you --
20 A. No.
21 Q. -- investigated someone based on your
22 religious beliefs?
23 A. No.
24 Q. Based on their religious beliefs?
25 A. No.

1 Q. Have you investigated someone based on
2 their political affiliation?
3 A. No.
4 Q. Have you investigated someone based on
5 their political views?
6 A. No.
7 Q. Do you know the political views of
8 Mr. Himes?
9 A. No.
10 Q. I want to back up briefly to Mr. Ludwig.
11 And you testified that he had expressed concerns to
12 you about not being happy with his job.
13 A. Right.
14 Q. Did you ever help him pursue other
15 employment?
16 A. Yes. He came to me once and said that he
17 had found what he thought was his ideal job as a
18 mutual funds analyst with D.A. Davidson.
19 Alan Ludwig was brilliant when it came to
20 the financial market. He followed it on a
21 day-to-day basis. He worked a flex schedule so he
22 could be home and monitor the markets in the
23 morning. I wouldn't require him to come to work
24 until anytime between nine and ten.
25 And he found a job as a mutual fund

1 evaluation that caused that evaluation to be less
2 than -- less than the previous evaluations?
3 A. It's evident I had fallen out of favor
4 with Lynne Egan or I would still be working there.
5 Beyond that, I've speculated on different things.
6 The people in charge changed. And about the same
7 time Lynne's relationship with me changed.
8 For example, when Monica Lindeen and
9 Jesse Laslovich came into the office, Lynne told
10 them I was Republican. I never told her I was
11 Republican, but she told me she told them that.
12 I was treated differently in my dealings
13 with Lynne and how cases were handled and I really
14 don't know why.
15 Q. Elaborate for me on how you were treated
16 differently after Ms. Lindeen and Mr. Laslovich
17 joined the office?
18 A. I was just excluded from things.
19 Q. Tell me what things you were excluded
20 from.
21 A. Well, as my comment letter said, there
22 was a case involving a -- a Mr. Reynolds, and I
23 had started the case. Lynne took over the case
24 and worked it herself.
25 And she had brought on a person to assist

1 her, Patrick Navarro, and he basically was -- she
2 told him the groundwork to do, the bank scheduling
3 and stuff, and worked the case with him, excluding
4 me from cases I already started.
5 So really the last year I was given dead
6 end matters that really wouldn't give me any
7 reason to look like I'd accomplished anything.
8 For instance, I would walk into Lynne's
9 office and she would already have a complaint form
10 there and say, Here, I've looked at this, just
11 send out a close letter. For some reason she
12 received complaint letters that looked like
13 complaint forms when previously I had.
14 So I really didn't have a -- I was really
15 being excluded from work and it was -- it didn't
16 leave me much purpose.
17 Q. Do you know who was responsible for this
18 exclusion that you've described?
19 MR. LASLOVICH: Objection. Speculation.
20 THE WITNESS: Lynne Egan is the only
21 person I really worked with the whole time I was
22 at the office. Well, unless a case went upstairs
23 in which case I worked with the attorneys.
24 BY MR. MONFORTON:
25 Q. Did anyone ever give you an explanation

1 as to why you ended up getting dead end
2 assignments?
3 A. No.
4 Q. Alan, when did you leave the state
5 auditor's office?
6 A. I'm sorry, did you say why?
7 Q. No, no. We'll get to that in a second.
8 When did you leave the state auditor's
9 office?
10 A. May 1 of 2012.
11 Q. Why did you leave the auditor's office?
12 A. For the reasons I expressed in my exit
13 letter.
14 Q. Was one of those reasons a result of what
15 you believe to be an anti-Christian bias?
16 A. Yes.
17 Q. Describe what you meant by that.
18 A. Over the four years I was there and
19 because I work closely with Lynne -- she was
20 really the one contact I had on a daily basis --
21 it was difficult dealing with comments in response
22 to situations that were anti-Christian.
23 Q. Before we go into those, let me ask you,
24 did you explain to Ms. Egan or anyone else at the
25 office your religious beliefs or your religious

1 the office to your knowledge?
2 A. He was when I left the office. I don't
3 know if he is anymore.
4 Q. All right. I think I'd asked you
5 previously -- the question we left off with was
6 regard to whether you had heard anti-Christian
7 remarks made by Ms. Lindeen and your answer to
8 that question was?
9 A. No.
10 Q. How about Mr. Laslovich?
11 A. No.
12 Q. Did you ever hear him make any comments
13 of that nature?
14 A. No.
15 Q. How about Mr. O'Neil? Did he -- have you
16 ever heard him make any remarks about Christians?
17 A. From the comments Brett's made I don't
18 think he's too keen on pastors per se, but I don't
19 know his attitudes towards Christians in general.
20 But the comments on the pastors relate to the
21 pastors occasionally come up as either victims or
22 subjects in these investigations and he uses the
23 word "proselytizing" a bit regarding pastors, or
24 has used.
25 Q. Describe for me the kind of comments that

1 Brett O'Neil has made with regard to pastors.
2 A. Proselytizing.
3 Q. Specifically what does he say about
4 proselytizing?
5 A. It's very limited. I don't speak to
6 Brett O'Neil much. The Reynolds case that's
7 ongoing involved pastors soliciting investors and
8 Brett seems pretty down on those pastors and the
9 fact that they're proselytizing.
10 That's all -- that's the only comment he
11 made to me but he made it a few times regarding
12 the Reynolds case. Two times I think regarding
13 the Reynolds case. And that was just in
14 conversation regarding Mr. Reynolds and the fact
15 he evaded capture for so long.
16 Q. And Mr. O'Neil's references to pastors
17 were pastors who were alleged victims or pastors
18 who were alleged perpetrators?
19 A. I think he was speaking of the
20 perpetrators that were tied into the events.
21 Q. Was he discussing pastors involved in
22 specific investigations that you were involved in
23 or knew of or pastors in general?
24 A. It was just the Reynolds matter.
25 Q. Besides Ms. Holman, were there other

1 coworkers that you discussed your concerns about
2 anti-Christian remarks with?
3 A. No, I -- I worked by myself and my circle
4 of friends was pretty limited because I work by
5 myself and I wouldn't have brought it up. I would
6 have -- I -- in most cases I would have thought
7 more likely somebody not sympathetic than
8 sympathetic.
9 Q. Besides Ms. Paulson, did any coworkers or
10 employees discuss concerns they had about
11 anti-Christian bias with you?
12 A. No.
13 Q. Besides anti-Christian bias, what were
14 some other reasons that you left the office, if
15 any?
16 A. Well, I listed four in my exit comments.
17 One was that Lynne was difficult to work with
18 because of her propensity for gossip and creating
19 stories. And she just has a -- she enjoys the
20 misfortune of others. And I found that a
21 difficult environment to work with particularly
22 because she was my main contact in working there.
23 And the incident with the praying and me
24 on the back dock and finding out she gossiping
25 about it was important because I went through a

1 A. Oh, I don't know anything about that.
2 Q. Okay. All right. I want to switch gears
3 a little bit.
4 Does the name Harris Himes ring a bell at
5 all?
6 A. You mentioned Harris Himes to me when you
7 called me.
8 Q. And tell me if you -- tell me when you
9 first heard the name Harris Himes, the first time.
10 A. The first time I can actively recall the
11 name Harris Himes is you calling me. When you
12 spoke to me and encouraged me to do an Affidavit
13 regarding the matter, I could not connect on who
14 Harris Himes was.
15 And so I Googled you. I Googled Harris
16 Himes. And when I read stuff I saw on Google,
17 there's a connection with Harris Himes to a case
18 that I probably took a call on over two years ago
19 from a man in Hamilton who said he'd been left in
20 Mexico.
21 And the only thing I remember about that
22 call was the man couldn't give me enough
23 information for me to determine whether or not it
24 was a security, because it sounded like when he
25 was talking to me it was a business venture. He

1 had gone down there and look at a piece of
2 equipment in some industrial building or something
3 with someone and been left there.
4 And though I encouraged that person to --
5 to send something to me, he never did. When I
6 read the information, the -- the news that's on
7 Google, it appears that Himes is connected with
8 another man name Bryant who's involved in
9 solicitations of funds that went into Bryant's
10 account.
11 I don't remember Himes' name from that
12 incident two years ago and I never worked that
13 matter, but I do remember that Lynne was starting
14 to work on that when I left, because I remember
15 talking to her about it. And I said, This is the
16 guy that got dumped down in Mexico, and she said
17 yes. And I was wondering why after so long a time
18 we were on it, because the guy had -- as I know --
19 unless Lynne received something from him -- after
20 I tried to contact him to send information, I
21 didn't -- I didn't know it was still relevant.
22 Q. Let me backtrack a little bit. Can you
23 give me an approximate date as to when this
24 gentleman called you with his concerns about --
25 about Mr. Himes?

1 were -- the federal authorities were
2 investigating?
3 A. That's one that on my level I'm not
4 certain of. I think it has to do with duplication
5 of effort and due process under the law. That's a
6 question for Ms. Egan or Jesse Laslovich. But
7 there seems to be -- both parties can't play the
8 game together.
9 Q. Okay. I want to backtrack a little bit
10 to the conversation you had with Ms. Egan with
11 regard to the gentleman complaining about being
12 left in Mexico.
13 What was the next contact or event
14 regarding that case that you heard about or knew
15 about?
16 A. Are -- are we speaking from the time when
17 I received the call years ago or from when Lynne
18 Egan brought it up in her office?
19 Q. From when Lynne Egan brought it up in her
20 office.
21 A. I -- I really don't know anything of that
22 case after that point. Again, I was really being
23 excluded from a lot of the goings on in the
24 office.
25 Q. Did anyone else besides Ms. Egan talk

1 about the case involving the caller who was
2 stranded in Mexico?
3 A. No. Not to me.
4 Q. Did anyone else?
5 A. No.
6 Q. Now, you mentioned you had looked up
7 Mr. Himes' case; is that correct?
8 A. Googled his case, yes.
9 Q. When did that occur?
10 A. After you called me.
11 Q. When did -- when did that call occur, if
12 you can recall?
13 A. This is how bad I am with time. What, a
14 week ago, two weeks ago.
15 Q. And when you Googled Mr. Himes' case,
16 what -- what resulted?
17 A. I saw a filing written by Jesse Laslovich
18 and Brett O'Neil mostly regarding a gentleman
19 named Mr. Bryant and a number of victims involved
20 of some type of endeavor in which funds were moved
21 into Mr. Bryant's and wife's bank account under a
22 bogus corporate name with the intention of gaining
23 off of the people's investments from which unknown
24 amounts were paid -- from that account amounts
25 were paid to Mr. Himes for whatever reason.

1 because she writes so well. The -- the group of
2 attorneys who are in the -- who work for Jesse
3 Laslovich at this time are young and they're
4 unseasoned. And they appreciate the in-depth
5 knowledge that Lynne has of securities, the
6 documents she can prepare, the investigator
7 reports and how she writes them, the -- her
8 detailed nature. She's great with numbers. She's
9 great with spreadsheets. She's great at making a
10 case.
11 Q. So it's your understanding that Ms. Egan
12 typically prepares at least the drafts of
13 documents that are filed in court?
14 A. I can't use the word "typically" because
15 I don't work in Lynne Egan's office. Lynne Egan
16 has been glad to tell me she's prepared the
17 documents and glad to me that she pleased that the
18 attorneys are please she can prepare the
19 documents. And she even educates them on how to
20 prepare the documents effectively so that they
21 look good in court.
22 Q. Does Exhibit 34 appear to be something
23 that, to your knowledge, Ms. Egan wrote?
24 A. I don't know that she wrote it. And I
25 may be wrong in that I don't think it's a great

1 piece of writing. But she may have been in a
2 hurry or busy doing other things. But it's not
3 her best work, and if you compared it to something
4 like other cases that have gone to court, it's --
5 it's -- I don't think it's as good.
6 Q. To your knowledge, have persons with
7 similar culpability levels to Himes, at least as
8 demonstrated in document 34, been dealt with
9 civilly by the auditor's office?
10 MR. LASLOVICH: Objection. Foundation.
11 THE WITNESS: I don't have the nature --
12 I don't have the details of the information that
13 implicates Mr. Himes in the matter. Mr. Himes may
14 have gone into these homes and gotten people to
15 write checks out in his name and taken them to his
16 bank account as well as what's in here.
17 He may have deposited checks in his name
18 into this bank account that was created. There
19 may be lots of information that I'm not privy to,
20 but normally that kind of information would be
21 explicit in there related to Mr. Himes, instead of
22 so many times Mr. Bryant being mentioned in there
23 with the reference to Mr. Himes.
24 But that doesn't exclude the possibility
25 that Mr. Himes is complicit in all these matters.

1 Q. Did Lynne ever say to you that she was
2 taking a negative action toward you because of
3 your faith?
4 A. No.
5 Q. Did anyone in the office --
6 A. What do you mean by negative action?
7 Q. Your performance review --
8 A. No.
9 Q. -- being distant from you?
10 A. No.
11 Q. Did you ever file a complaint against
12 Ms. Egan?
13 A. I went to Nita Holman who thought that
14 would not be a good idea. And I actually went to
15 my friend, John Morrison, who asked me
16 occasionally about securities and asked him what
17 he thought. And he advised me against it because
18 financially it wasn't worth it.
19 Q. So you never filed a complaint?
20 A. No.
21 Q. And by complaint, are you -- you're
22 talking about the civil context?
23 A. I was seeking to get educated, Jesse. I
24 don't know the nature of what a complaint would
25 entail today.

1 around. And she says, Isn't -- wasn't that a
2 great joke.
3 Q. Did you end up with anything else out of
4 the basket?
5 A. I got the box of peanut brittle.
6 Q. Of what? I'm sorry.
7 A. Peanut brittle.
8 Q. Peanut brittle?
9 A. Yeah.
10 Q. How did you get that?
11 A. Two days or so later she started letting
12 the basket be parted out.
13 Q. By she you mean Ms. Egan?
14 A. Yes.
15 Q. You also testified that Nita was
16 surprised when you told her that you were a
17 Christian in March of 2012; is that correct?
18 A. Yes.
19 Q. So up until that point, March of 2012,
20 you hadn't expressed anything to Ms. Holman about
21 your faith?
22 A. I don't work with Nita. I don't
23 socialize with Nita.
24 Q. So that's --
25 A. So, no, I haven't brought up too much of

1 anything with Nita. At least about my personal
2 life.
3 Q. You also talked about Ms. Cross-Guns
4 being forced out by me. Do you know the
5 circumstances of her leaving the office?
6 A. From what she's told me.
7 Q. From what -- from whom?
8 A. From Ms. Cross-Guns.
9 Q. Roberta. Do you have any direct
10 knowledge about her leaving besides what
11 Ms. Cross-Guns has told you? Have you talked to
12 anyone else about her leaving?
13 A. Lynne Egan.
14 Q. Did you talk to me?
15 A. I had trouble talking to you, Jesse, so I
16 haven't --
17 Q. So that was a no?
18 A. No.
19 Q. Did you talk to Commissioner Lindeen?
20 A. No.
21 Q. Did you talk to Adam Schaeffer?
22 A. I'm sorry. I was trying to remember who
23 Adam Schaeffer is. He's the person who came in in
24 the last year?
25 Q. Correct.

1 VIDEOGRAPHER: Okay. Let's go off the
2 record. The time is 1:33 p.m.
3 (Whereupon, a break was
4 then taken.)
5 VIDEOGRAPHER: Let's go back on the
6 record. The time is 1:44 p.m.
7 BY MR. LASLOVICH:
8 Q. You also testified about Bill Nooney.
9 Did you talk to anyone in the legal bureau about
10 Mr. Nooney?
11 A. Yes.
12 Q. Who?
13 A. Oh, in the legal bureau?
14 Q. Correct.
15 A. No.
16 Q. Do you know what the status of that case
17 is?
18 A. No. I don't work there anymore.
19 Q. Did you know what the status was prior to
20 your leaving?
21 A. Lynne told me it was being worked on
22 upstairs. That was her response.
23 Q. You also testified that the IRS and the
24 FBI think well of your work.
25 Who at the FBI and the IRS?

1 THE WITNESS: I do not have knowledge
2 that preference was given to Mr. Nooney because of
3 where you grew up.
4 BY MR. LASLOVICH:
5 Q. Then what, Mr. Ludwig -- Ludwig, was the
6 context of your statement?
7 A. I don't recall the nature of the question
8 that preceded that comment I made in regards to
9 where you grew up.
10 Q. Do you know where I grew up?
11 A. Anaconda I believe.
12 Q. Do you know where -- what -- where --
13 what district Mr. Nooney represented in the House?
14 A. I didn't -- I didn't allege that I knew
15 any of that, so no.
16 Q. Do you know what town that he
17 represented?
18 A. No.
19 Q. Do you know his political affiliation?
20 A. I believe he's a -- was a republican or
21 served as a state republican, but I'm not sure of
22 that.
23 Q. What did Mr. Monforton say to you when he
24 called you about this case?
25 A. He asked me -- he asked me what I knew

1 about Har -- Harris Himes. And I said, Nothing.
2 He asked me regarding my time at the office why I
3 left the office. He asked me if I would write an
4 Affidavit on behalf of Mr. Himes. It wasn't a
5 long conversation.
6 Q. Approximately how long?
7 A. Less than two minutes.
8 Q. And then have you -- have you talked to
9 him since then?
10 A. No.
11 Q. Have you talked to Mr. Flaherty?
12 A. No.
13 Q. Did you talk to anyone else besides your
14 counsel about this deposition?
15 A. Preliminary Wittich, being my counsel.
16 Q. Yeah. Besides Mr. Wittich?
17 A. I have spoken to a gentleman named Bill
18 Bierbat.
19 Q. How do you spell that?
20 A. I don't know. B-i-e-r-b-a-t. I don't
21 know.
22 Q. And who is that?
23 A. As I understand it, he's an investigator.
24 Q. Where does he live?
25 A. I don't know.

1 BY MR. LASLOVICH:
2 Q. I'll just -- did you talk to anyone else
3 besides those three people about this deposition
4 or about Mr. Himes?
5 A. No, I don't believe so.
6 Q. You also testified that Ms. Egan is good
7 at her work --
8 A. Very good.
9 Q. -- did I understand that?
10 I'm sorry?
11 A. Very good.
12 Q. Do you trust it? And I'm just talking
13 about the securities regulation aspect.
14 A. Yes.
15 Q. You do trust it?
16 A. Yes.
17 Q. You -- there was also some discussion,
18 Mr. Ludwig, about the number of charges. Did you
19 ever participate directly in how many charges the
20 office decided to issue against any individual?
21 A. No. I wish I'd learned that, but no.
22 Q. Do you know how many charges Mr. Reynolds
23 was charged with?
24 A. No.
25 Q. Mr. Heffelfinger?

1 compare one case to another.
2 Q. Okay. I -- I guess one comparison was
3 Sherri Heffelfinger and Mr. Himes. That was a
4 comparison?
5 A. The documentation.
6 Q. Oh, the documentation, okay.
7 Do I understand your testimony to be that
8 Mr. Himes is innocent?
9 A. Oh, I -- I said in specifically I don't
10 know Mr. Himes. And the -- it -- it tends to be
11 that people who wind up being involved in these
12 matters are complicit in some matter and some of
13 those charges are relevant I'm sure.
14 I'm not sure of that, but I have to take
15 the fact that filing means that there's some --
16 some strength to it or you wouldn't do it, but --
17 Q. And are you --
18 A. -- and I -- I wouldn't -- I don't know
19 the case. I don't know the internals of the case
20 at all. Just from the documents available on
21 Google.
22 Q. And Exhibit 34 that Mr. Monforton
23 discussed with you, it's a motion, do you know if
24 that motion was granted?
25 A. I don't know anything about it. That's

more accurate description of what we did.

Q. Do you have an estimate as to how many matters you handled on an administrative basis during your time in the auditor's office?

A. I don't.

Q. More than ten?

A. Oh, yeah.

Q. More than 50?

A. Probably.

Q. More than 100?

A. Maybe. Jesse might know. He has a better handle on that than I do. I just did the work. I don't -- I didn't keep track, honestly.

Q. Who determined whether a case would be handled administratively or criminally? Was that your determination?

A. Not usually. Usually that came from the deputy, either the insurance commissioner -- deputy insurance commissioner or the deputy securities commissioner. I don't know, honestly, how much involvement chief legal had in those decisions --

Q. Okay.

A. -- I really don't.

Q. To your knowledge, did Ms. Egan have -- have any influence or say in whether cases were

1 handled criminally?
2 MR. LASLOVICH: Objection, speculation,
3 foundation.
4 THE WITNESS: Well, until Mr. Laslovich
5 appeared on the scene, yes, she had significant.
6 After that, I don't know what happened. I don't
7 know if she continued to have that say or not
8 because I didn't -- I asked to be, as you know,
9 relieved of doing any securities cases. But up
10 until then, up until I stopped doing securities
11 cases, it was pretty much her determination what she
12 wanted to do.
13 I mean, essentially, she's the client or
14 the representative for the client. The client is
15 really the people of Montana. But, you know, for a
16 live body, that's your -- that's your client.
17 BY MR. MONFORTON:
18 Q. How did you know that Ms. Egan made
19 determinations with regard to whether cases are
20 filed criminally or administratively?
21 A. Because I worked so closely with her.
22 Like I said, I was essentially the attorney for the
23 securities department. And for a number of years,
24 the only criminal activity, other than Tracy
25 Henderson, which was a fluke in a lot of ways --

1 first fraud film. I -- I'm not really sure what
2 that's all about, but I felt like he should have
3 been subject to the same fate that Pat Davison was
4 subject to because he engaged in the same types of
5 activities. He was helping to keep it inside the
6 UBS office. He didn't drag it outside. And there
7 was a lot of client crossover.
8 BY MR. MONFORTON:
9 Q. He should have -- Mr. Cladis should have
10 been charged criminally, in your opinion?
11 A. Right.
12 Q. Were you involved in the Two Feathers
13 matter?
14 A. Yes, I was.
15 Q. Is that another case that, in your
16 opinion, could have been prosecuted criminally by
17 the auditor's office?
18 A. It is being prosecuted criminally, I
19 believe, by the feds. That's actually the case
20 where Lynne became disenchanted with the FBI because
21 they brought in a new agent to work on the case, and
22 she was very unhappy with him and talked about maybe
23 going to a state criminal prosecution but decided
24 not to and just kind of dropped it and went on her
25 way.

1 Q. Did she ever explain to you her basis for
2 not pursuing criminal action against
3 Mr. Two Feathers?
4 A. She was mad at the feds. That was her
5 biggest reason. She was mad at them.
6 Q. How about James Andrews? Is that a
7 matter that you were involved in?
8 A. Yes.
9 Q. Was the Andrews matter one that could
10 have been prosecuted criminally by the auditor's
11 office?
12 A. That one would have been a little more
13 difficult because I believe the transactions
14 occurred -- the -- the initial meeting occurred in
15 California. The transactions occurred in the
16 victim's account. They were made by James Andrews
17 when he was in Arizona. There was less of a nexus.
18 He certainly had all the makings of a
19 criminal prosecution, and I don't believe the victim
20 has ever gotten a penny from him, so it would have
21 been nice to see him do some jail time. But because
22 of the factual situation, I don't think it was a
23 prosecution -- criminal prosecution that we could
24 have done.
25 Q. Are you familiar with the ACN matter?

1 that far. It may be -- I think it's the only time
2 I've ever seen it in 12 years.
3 Q. Did Lynne -- Lynne Egan ever explain to
4 you what factors she relied upon in determining
5 whether a matter should be handled criminally versus
6 administratively?
7 A. You know, I don't think she had, like, a
8 checklist, didn't have any set concept about that.
9 It is my opinion that she makes those decisions
10 based on her emotions. So if she's upset with
11 somebody or not upset with somebody, that sort of
12 determined how things went.
13 Nick Cladis is a good example of that
14 when he sits here and cries and she's like, "Oh,
15 poor man." Instead of, "No, I don't care if you
16 cry. You harmed people." It was disheartening to
17 see that, that she could be swayed through emotions.
18 I know that -- also, if she felt like a
19 case wasn't classy enough or sexy enough or
20 whatever, she wouldn't -- wouldn't touch it.
21 We had a call from the county attorney in
22 Fergus County, Tom Meissner, with regard to a
23 gentleman over there named Rick Young. And we did
24 talk to him. We made a phone call. She asked me to
25 come and sit in on it, which happened a lot. I'd

1 sit in on the phone call.
2 And the guy -- he was -- he was pretty
3 crazy. He kept telling us, "Hold on. Hold on.
4 I've got to pick up the red phone over -- yes,
5 Mr. President." And he was just nuts. But two
6 years later Nevada -- the feds went after him and
7 prosecuted him criminally.
8 We didn't do anything. We just -- it was
9 not interesting enough to her, so we didn't do
10 anything, even though we worked closely with Tom
11 Meissner on other cases.
12 In fact, there was a criminal case over
13 there or two, but we did a -- what do you call
14 it? -- a deferred prosecution.
15 Q. What -- what case was that? Do you
16 recall?
17 A. Yes. Let's see. It was Grupo Economico,
18 and the guy's name was -- I can't remember his name.
19 He was a Canadian national. We actually had him
20 arrested in here. He came in to do -- to talk to us
21 with his attorney, and we had him arrested here.
22 Q. Do you remember when this happened?
23 A. Five or six years ago. Jerry Stier,
24 S-t-i-e-r, was the investigator on the case, so --
25 and he's been gone three or four years.

1 The two criminal cases -- one victim was
2 an Alzheimer's victim, and his attorney asked for
3 another medical review, and the family refused to
4 have that done, so we dismissed that criminal
5 action. But she knew he was a pastor at a church in
6 the Troy area, and she made lots of denigrating
7 comments about him.
8 And we'd show up, and he'd have --
9 supporters from his church would be there, and she'd
10 talk about how they looked like -- oh, my gosh --
11 like they were Hutterite types. You know, they were
12 very conservatively dressed and conservative
13 haircuts, and they had beards. But she would talk
14 about -- you know, make fun of them, essentially.
15 Q. How about with regard to my client,
16 Harris Himes? Has Ms. Egan made any comments about
17 Mr. Himes' religious beliefs?
18 A. Not in my presence, but I -- I don't
19 really know anything about this case. I sort of
20 remember it, you know, coming across the table, but
21 I really don't -- I had no involvement in the case,
22 so I don't know.
23 Q. Did you hear from other people that
24 Ms. Egan has made comments about Mr. Himes?
25 A. Oh, sure.

1 Q. What have you heard?
2 A. I heard, you know, from Alan and others
3 who worked closely -- in close proximity that, you
4 know, she had made denigrating comments. And I'm
5 not surprised by it because, you know, he's also a
6 sort of self-proclaimed pastor or leader in a church
7 down in the Bitterroot, and the Bitterroot is a
8 stronghold for right-wing, you know -- both
9 Republican and Christian and -- so I'm not
10 surprised. I would -- I would not doubt that she
11 had made the comments that were relayed to me?
12 Q. What -- what were the specific comments
13 relayed to you?
14 A. You know, that he's a whack job and
15 he's a -- I guess that's probably the most
16 denigrating thing. He's a right-wing Christian.
17 Q. Have other people relayed that to you
18 besides Alan Ludwig?
19 A. You know, I don't remember specifically.
20 Jameson Walker may have said something as well about
21 it, but that's -- I had so little involvement in the
22 case that I really don't specifically remember.
23 It was particularly hurtful to Alan
24 because he's also a practicing Christian. He's
25 strong in his faith. And I think it's hurtful for

1 about Dereck Skees with regard to Mr. Skees'
2 religious beliefs?
3 A. I'm -- no. I don't even know who that
4 is. Again, I stopped working with her, you know, a
5 year and a half ago.
6 Q. Other than Ms. Egan, are there other
7 people in the auditor's office who have made remarks
8 with regard to people's religious beliefs?
9 A. I would say possibly Brett O'Neil. He
10 has, I believe, a bad taste in his mouth. He grew
11 up in Texas, down there in the Bible belt, and I
12 think he's made some, you know, passing comments.
13 Not as vehement, and I didn't work with him very
14 much, so I, you know, didn't spend a lot of time
15 with Brett, but I know he's made some negative
16 comments.
17 Q. What specifically has Mr. O'Neil said?
18 A. Just sort of the same kind of stuff.
19 That, you know, "These right-wing Christians are
20 whack jobs."
21 Q. How many times have you heard Mr. O'Neil
22 make that kind of a comment?
23 A. Maybe two or three. Again, I didn't
24 spend a lot of time with Mr. O'Neil.
25 Q. Any other kind of religious-based

1 comments by Mr. O'Neil that you can recall?
2 A. No.
3 Q. How about with Mr. Laslovich?
4 A. Not that I recall. I actually believe
5 he's a practicing Christian. He maybe Catholic.
6 I'm not sure. But I think he goes to church. And I
7 don't think he publicly has made -- at least not in
8 the office, you know -- made comments about people's
9 faith.
10 Q. Have you ever had discussions with
11 coworkers in the office, the auditor's office, about
12 anti-Christian remarks?
13 A. You know, that's kind of a tough question
14 because while I have many good friends here, I think
15 many of them are not sure about my own faith. One
16 of the first things Alan told me was, "Well, I'm a
17 Christian, you know."
18 And I'm like, "Okay. Where are we going
19 with this?"
20 So I don't think -- I think the things
21 that I've heard were, again, because the things that
22 came out of Lynne's mouth were vehement. I mean,
23 they weren't just passing comments. I -- I don't
24 recall others even discussing religion.
25 Q. When you say Lynne comments were

1 A. Oh, sure. Yeah.
2 Q. We talked a little bit about
3 Mr. Laslovich's experience, the trials that he's
4 done in this office.
5 What is your overall impression of
6 Mr. Laslovich?
7 A. Let's see --
8 Q. And, yes, you are being compelled.
9 A. That's a difficult question from -- for a
10 lot of reasons, and maybe the most important reason
11 is that I believe that all of us have to start
12 somewhere as lawyers, and we have to try to grow and
13 progress.
14 I think -- I think Jesse is earnest in
15 his desire to do that, but I think he is extremely
16 politically motivated, and that has caused me -- it
17 caused me a great deal anxiety while I worked here
18 to see him do things for political purposes rather
19 than, you know -- for me, I talk about the moral
20 high ground a lot, and I try to take the moral high
21 ground. I'm not always perfect. I don't do that
22 100 percent of the time, but I try. And I have a
23 bad taste about what happened here with the
24 political motivation for doing some of the case work
25 that was done.

1 Q. Tell me how, in your opinion, political
2 motivations have played a role in how matters are
3 handled by this office?
4 A. When Jesse started here, he had very
5 little, if any, trial experience. As you know, I
6 have 20 years, and I've been a trial lawyer from the
7 minute I hit the floor. I've done lots of trials.
8 I've done lots of judge trials, I've done lots of
9 administrative trials, and lots of jury trials. I
10 have a wealth of experience. And not only that,
11 pretty successful. I win a lot. And I win because
12 I know how, and it came from hard experience, but I
13 figured it out.
14 I believe Mr. Laslovich can do the same
15 thing. I told him, when he first came on board as
16 the chief legal, that I would like to mentor the
17 other attorneys because I'm tired of litigating. It
18 wears you out as, you know.
19 Q. So I've heard.
20 A. Yeah. Well, you know, we have -- we're
21 the No. 1 profession for suicides. We have a high
22 rate of alcoholism, lots of divorce, you know,
23 because of the ruling nature of litigation. And not
24 all attorneys are litigators, and the ones who
25 aren't are actually much healthier than those of us

1 who are litigators.
2 I believe that right away Mr. Laslovich
3 was looking for a pretty high profile criminal case
4 because he's going to run for the AG's office.
5 There is absolutely no other reason for him to do
6 that because there's plenty of work to do here.
7 Plenty of work. There's no reason for him not to
8 ask for my help in prosecuting these cases, whether
9 it's Art Heffelfinger or whether it's Don Couinard
10 or whoever it is that he's decided he's going to
11 prosecute. There's -- there's no reason for him not
12 to ask me to sit second chair, in fact, except that
13 he doesn't want somebody with more experience. He
14 wants to appear to be the experienced attorney.
15 This is -- and this is all my opinion.
16 What actually goes on in Jesse's mind I have no
17 clue, you know -- well, I have some clue but not
18 much of one --
19 MR. LASLOVICH: No, you don't.
20 THE WITNESS: -- and I -- there are things
21 about Mr. Laslovich that I really like and that I
22 really respect, but his --
23 BY MR. MONFORTON:
24 Q. Tell me the things you like about him.
25 A. I like that he's willing to -- to step up

1 when something goes wrong. I feel like he's willing
2 to say, "I shouldn't have done that." I could be
3 wrong about that, but I think that he has that kind
4 of ethic.
5 I like that he has a good work ethic. He
6 shows up every day, you know. He's in the office
7 doing stuff. I don't, as I've said before -- and
8 this is my own issue -- I don't like the political
9 motivations for what he does because I think he
10 could have been so much better -- a better attorney,
11 a better human, a better person all around -- if he
12 had not chosen the political route.
13 And I feel that way about a lot of
14 people. But, you know, because it spilled over into
15 my life, it caused me a lot of anxiety.
16 And when he was involved in the
17 Heffelfinger case particularly -- and this is where,
18 I guess, I get a little crossways and a little upset
19 about what happened, is that Lynne invites me to sit
20 and watch because she knows my experience, and she
21 knows it well. I basically taught her how
22 litigation worked. She taught me securities, and I
23 taught her litigation. And she asked me to come and
24 sit and watch.
25 And one day -- and partly because she

1 Q. And you just spoke with him once?
2 A. I talk to Alan almost every day.
3 Q. Yeah. My question, Ms. Cross Guns, is
4 with regard to the case. Did you speak with --
5 A. Well --
6 Q. Okay.
7 A. -- probably just once, yeah.
8 Q. And what did you talk about with him?
9 A. Well, we went riding, and when we got
10 done, he said, "Let's go get something to eat," so
11 we did. He said, "I need to tell you something."
12 He said, "You might not want to be my friend
13 anymore."
14 And I said, "What happened?"
15 So he tells me about this deposition that
16 he had been involved in a week prior I believe it
17 was. I'm not 100 percent sure on that, but sometime
18 before I talked to him. And I'm like -- he goes,
19 "And your name came up."
20 "Well, what was it about?"
21 So he explained to me about the Harris
22 Himes case, because I honestly don't know anything
23 about it. And he said, "There's a pleading online.
24 You can look at it. There's" -- you know, "This is
25 basically what my deposition was about, that there

1 fund.
2 Q. You also testified about closed-door
3 conversations going on behind --
4 A. Um-hum.
5 Q. -- Lynne's door; is that right?
6 A. Yes.
7 Q. Do you know -- were you a part of those
8 closed-door conversations?
9 A. No.
10 Q. You also testified about your jury trial
11 experience and that it was significant and that
12 you've been pretty successful; is that correct?
13 A. That's correct.
14 Q. I want to just talk about some of your
15 cases that you testified to with Mr. Monforton while
16 here at the office.
17 Tracy Henderson, what was the result of
18 that?
19 A. We had a conviction.
20 Q. Was that --
21 A. It was not a jury trial --
22 Q. Sorry. Okay.
23 A. -- he pled. We engaged -- we entered
24 into a plea bargain agreement.
25 Q. Okay. Dave Johnson --

1 A. That was --
2 Q. -- was that a jury trial?
3 A. No. That was, again, a pleading. He
4 pled guilty, a plea bargain agreement. We did wind
5 up engaged in a very significant argument, as -- as
6 you recall, with regard to how you value those
7 annuities that he is getting people invested in.
8 And, in fact, Lynne was the expert.
9 He went all the way to the Supreme Court
10 on that, and we won. That was my briefing, by the
11 way.
12 Q. Yeah. I'm just interested in the jury --
13 A. Yeah --
14 Q. -- trial experience.
15 A. -- I'm just saying.
16 Q. So Mr. Henderson was not a jury trial.
17 Mr. Johnson was not.
18 Martin Bower, was that a jury trial?
19 A. Yes.
20 Q. And what was the result?
21 A. There was a directed verdict.
22 Q. For us?
23 A. No.
24 Q. Mr. Thielen, from Butte, a jury trial?
25 A. Yes.

1 Q. What was the result?
2 A. He was acquitted.
3 Q. And then the Glendive insurance case that
4 you testified --
5 A. He pled guilty.
6 Q. To your knowledge, can you think of any
7 other jury trials that you handled on behalf of this
8 office?
9 A. No.
10 Q. So to be clear: The two jury trials that
11 you prosecuted resulted in either a directed verdict
12 or an acquittal?
13 A. That's correct. That's at this office.
14 Q. Do you know who prosecuted the
15 Heffelfinger case with me?
16 A. Mike Winsor.
17 Q. Is Mr. Winsor more experienced than I am?
18 A. He is.
19 Q. Do you know when that took place,
20 approximately -- when that trial was held?
21 A. Oh, the trial? No, I don't remember. A
22 year ago?
23 Q. Would the fall of 2010 seem accurate?
24 A. I honestly don't know.
25 Q. And then ultimately, too, you testified

1 happen. She wasn't happy with my disagreement.
2 Q. Okay. And your testimony was that you
3 thought he should have been treated similarly to
4 Mr. Davison; is that right?
5 A. Yes. That's correct.
6 Q. And Mr. Davison was prosecuted
7 criminally; is that right?
8 A. That's correct.
9 Q. And was that done by the state or the
10 federal government?
11 A. Federal government.
12 Q. And, to your knowledge, was the federal
13 government prohibited from prosecuting Nick Cladis
14 criminally?
15 A. No. But they did the prosecution based
16 on our referral.
17 Q. You also testified about ACN and the
18 travel to North Carolina.
19 Did I understand your testimony to be
20 that the travel took place the same day that
21 Mr. Ludwig was getting deposed?
22 A. It was either the same day or you were in
23 North Carolina when he was being deposed.
24 Q. Was Mr. Walker at his deposition?
25 A. No, I was. I was the attorney of record

1 first state, actually, that identified that. So it
2 depends on how the case comes in.
3 When Tom Meissner calls us from, you
4 know, Lewistown and says, "I want you to look at
5 this guy" -- eh, may or may not. Probably not.
6 You know, we talked -- we made one phone
7 call, and we didn't really -- I know that an
8 investigation was opened, but it was never pursued.
9 Even though I believe we found information and facts
10 to support the prosecution, we didn't do it. I
11 believe she just grew tired of it. She -- and that
12 happens from time to time.
13 Again, if it's not high profile enough --
14 I mean, she loved Art Heffelfinger, of course,
15 because it was a great case. It was a wonderful
16 case. You know, here's a guy who's stolen money
17 from old people. He's stolen money from people who
18 certainly did not deserve to be victimized. Why
19 didn't she do the same with Bill Nooney, who
20 victimized people as well, and he's a legislature?
21 Q. Do you know the status of Bill Nooney?
22 A. I don't. I just know that he wasn't
23 included -- he actually got restitution funds when
24 she knew he was a perpetrator. And I believe that's
25 because when she talked to him -- like Nick Cladis,

1 he said the right things and she said, "Okay. I
2 understand your daughter might not get to go to
3 college if you don't get these funds." That's not
4 right. That's not how we do things.
5 Q. And you expressed concerns to her about
6 all that?
7 A. Yes, I did.
8 Q. So did you trust Ms. Egan's work while
9 you were here?
10 A. That's a good question, too, because
11 there are parts of her work -- she's excellent --
12 she's amazingly excellent at identifying where the
13 money goes, following the money. She can do that
14 like nobody I know, including the feds. They can't
15 do it, and they hire people specifically for that.
16 But she can do it.
17 That part of her work I trust and would
18 trust today. But when, then, you transfer that into
19 going after a live human, I don't necessarily trust
20 that.
21 Q. Why?
22 A. Because of these kinds of experiences
23 where she's either backed off or -- or she's pursued
24 somebody because she didn't like them, you know.
25 Q. And if I can just talk briefly about the

1 Q. Is it fair to say that you relied on the
2 numbers?
3 A. Absolutely.
4 (Off the record)
5 BY MR. LASLOVICH:
6 Q. Was Eric Schultz prosecuted federally or
7 by the state?
8 A. Federally. Again, on our referral.
9 Q. And do you know if they're required to
10 act on our referral?
11 A. They're not.
12 Q. When you left in January, did you leave
13 voluntarily?
14 A. Yes.
15 Q. Would it surprise you to hear that
16 Mr. Ludwig said you were forced out?
17 A. No. He's told me that, and in some ways,
18 he's right. In some ways, the way you treated me
19 was pretty horrible.
20 Q. Did you reference that at all in your
21 resignation letter to the office?
22 A. No. I didn't find it necessary. You're
23 going to stay regardless of what I say.
24 Q. That's true.
25 A. Okay.

Exhibit J

JESSE LASLOVICH
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MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT,

RAVALLI COUNTY

STATE OF MONTANA, Plaintiff, vs. HARRIS HIMES, Defendant.	Cause No.: DC 11-117 **EXHIBIT J**

The following is a list of criminal cases and result filed by the office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), since 2009.

1. State of Montana v. Donald Chouinard (DC-09-576B), Flathead County

   Guilty of Theft by Embezzlement and Securities Fraud (Ponzi Scheme)

2. State of Montana v. Jack Light (DC-09-0453), Yellowstone County

   Pending

3. State of Montana v. Arthur Heffelfinger (CDC-2010-21), Lewis & Clark County

   Guilty of Theft, Securities Fraud (Ponzi Scheme), and Elder Exploitation

4. State of Montana v. Terry Parks (DC-10-371), Missoula County

   Guilty of three counts of Fraudulent & other prohibited practices

5. State of Montana v. Matthew Gillespie (DC-10-455), Flathead County

   Guilty of Insurance Fraud/Theft

6. State of Montana v. Timothy Perry (DC-10-456C), Flathead County

   Guilty of Insurance Fraud/Theft

7. State of Montana v. Richard Schaeffer (DC-11-015B), Flathead County

   Guilty of Insurance Fraud/Theft

8. State of Montana v. James Bryant (DC-11-116), Ravalli County

   Pending

9. State of Montana v. Lionel Ellison (DC-11-0767), Yellowstone County

   Pending

10. State of Montana v. Cynthia Henderson, (ADC-2012-122), Lewis and Clark County

    Pending

11. State of Montana v. Kevin Kolenda, (DC-12-200), Missoula County

    Pending

12. State of Montana v. Jeremy Hoscheid, (DC-12-50), Butte-Silver Bow County

    Guilty of Insurance Fraud/Theft

13. State of Montana v. Richard Reynolds, (DC-12-152C), Gallatin County

    Pending

14. United States of America v. Anne Schlenker, (CR 11-07-BU-DWM-1)

    Guilty of Wire Fraud

15. State of Montana v. Eugene Lavey (DC-10-2011-1), Daniels County

    Guilty of Insurance Fraud/Theft

16. State of Montana v. Jeffrey Rapp (DC-11-93C), Gallatin County

    Pending

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MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT,

RAVALLI COUNTY

STATE OF MONTANA, Plaintiff, vs. HARRIS HIMES, Defendant.	)))))))))	Cause No.: DC 11-117 **EXHIBIT K**

The following is a list of administrative actions and result filed by the office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), since 2009.

1. In the Matter of Donald Chouinard, et al. (SEC-2009-46)

   Consent Agreement with LPL Financial Corporation.

2. In the Matter of Cornerstone Financial Corporation, et al. (SEC-2009-6)

   Final Agency Decision against the Defendants for restitution and fines.

3. In the Matter of Robert Koostra, et al. (SEC-2009-56)

   Consent Agreement and Final Order.

4. In the Matter of ShareValue, Inc. and Richard Reynolds (SEC-2009-37)

   Pending

5. In the Matter of Ronald Moschetta, et al. (Sec-2009-14)

   Consent Agreement and Final Order.

6. In the Matter of Fortune Hi-Tech Marketing, Inc (SEC-2010-12)

   Consent Agreement and Final Order.

7. In the Matter of ACN, Incorporated (SEC-2010-82)

   Consent Agreement and Final Order.

8. In the Matter of Robert L. Sherry (SEC-2011-239)

   Pending

Montana, then we send them a letter.

Q. Or an individual, right? If an individual's not registered, they get a come clean letter too?

A. Yes.

Q. And that's not written down, but that is the standard operating procedure as is taught and trained to you, right?

A. You could say yes to that, yeah.

Q. All right.

MR. FLAHERTY: That's all I've got.

(Whereupon, the deposition was concluded at 3:00 p.m.)

1 EXAMINATION
2 BY MR. O'NEIL:
3 Q. Do you know when the CSI started keeping
4 visitors' logs?
5 A. I do not.
6 Q. Okay. Do you know who decides whether or
7 not to prosecute or take administrative action?
8 A. I do not.
9 Q. Do you send the come clean letter to
10 every single company?
11 A. Me personally, I do not.
12 Q. Okay. Thank you.
13 MR. O'NEIL: No further questions.
14
15 EXAMINATION
16 BY MR. FLAHERTY:
17 Q. Let me back up on that. How do you
18 determine when to send out a come clean letter or
19 not?
20 MR. O'NEIL: Asked and answered, Pat.
21 BY MR. FLAHERTY:
22 Q. He said, do you do it in every single
23 case. So let's just, how many cases that you
24 investigate do you send a come clean letter out on?
25 A. If the company is not registered with

1 A. I was the assistant to the rates and
2 licensing bureau chief.
3 Q. And who was that?
4 A. It was, at the time, Rosann Grandy.
5 Q. And did she leave?
6 A. No. She's still there, but I'm no longer
7 underneath her.
8 Q. Where did you go then? Did she transfer
9 out or did you move?
10 A. I moved out.
11 Q. Okay. Why did you move out?
12 A. I was moved into a securities assistant
13 examiner position.
14 Q. So that was a vertical promotion then
15 from being an administrative assistant to
16 securities, what did you describe that as?
17 A. Assistant examiner. Yes, it was.
18 Q. And how long have you been a securities
19 examiner?
20 A. For a year and four or five months.
21 Q. Okay. And what does a security examiner
22 do?
23 A. I review records; look at MLMs, it's a
24 multilevel marketing, whenever they send in
25 documents to securities department.

Exhibit M

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MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT,

RAVALLI COUNTY

STATE OF MONTANA, Plaintiff, vs. HARRIS HIMES, Defendant.	)))))))))	Cause No.: DC 11-117 **AFFIDAVIT OF NICHOLAS CLADIS**

STATE OF MONTANA)
: ss
Yellowstone County)

Nicholas Cladis, after being first duly sworn, deposes and states as follows:

1. I am a Montana registered securities salesperson and investment advisor representative for Cladis Investment Advisory LLC in Billings, Montana, which is where I also reside.

2. I have been involved in the securities industry since 1973.

3. In December 2006, an administrative action was filed against me by the office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), alleging that I had violated certain provisions of the Securities Act of Montana.

4. I subsequently entered into a Consent Agreement with the CSI, which fully resolved the CSI's allegations.

5. The Federal Bureau of Investigation (FBI) also conducted an investigation into my activity in 2006 and determined not to pursue criminal charges.

6. The investigation stemmed from my former partner's criminal activity, which I reported, twice, as soon as I suspected he was engaged in illicit activity. He is now in federal prison.

7. As part of the investigation, not one of my clients said that I was a part of any unlawful activity.

8. I did not assist in the CSI investigation of Harris Himes and I know nothing about the CSI's case against him.

9. I have reviewed the portion of the Defendant's *Motion to Compel Production of Selective Prosecution Evidence; Brief in Support of Motion*, filed with the Court on September 24, 2012, in which the Defendant's lawyer states that Ms. Egan finds devout Christians "particularly repulsive … as she makes clear almost on a daily basis."

10. I have never talked with either of the Defendant's lawyers, nor have I spoken with Mr. Himes.

11. I am a Christian.

12. I am very active with the Billings Catholic schools, my church, Bible studies, and attend Mass.

13. In the 6 years I have known Ms. Egan, I have never heard Ms. Egan refer to Christians as "right wing whack jobs."

14. I disagree with the Defendant's lawyer's statement that Ms. Egan finds devout Christians "particularly repulsive … as she makes clear almost on a daily basis," as she has

never said anything to me, nor have I heard her say to someone else, that she finds Christians "particularly repulsive."

15. Ms. Egan is not an "anti-Christian bigot."

16. I submit this Affidavit voluntarily and no threats or coercion have been made against me by the CSI.

17. I declare under penalty of perjury under the laws of Montana that the foregoing is true and correct.

DATED this 4TH day of October, 2012.

NICHOLAS CLADIS

SUBSCRIBED AND SWORN to me before this 4TH day of October, 2012, by NICHOLAS CLADIS.

TRACY W. HAWBAKER
NOTARY PUBLIC for the
State of Montana
Residing at Billings, Montana
My Commission Expires
March 19, 2016

TRACY W. HAWBAKER NOTARIAL SEAL STATE OF MONTANA

Exhibit N

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MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT,

RAVALLI COUNTY

STATE OF MONTANA, Plaintiff, vs. HARRIS HIMES, Defendant.	)))))))))	Cause No.: DC 11-117 **AFFIDAVIT OF TARI NYLAND**

STATE OF MONTANA)
: ss
Lewis & Clark County)

Tari Nyland, after being first duly sworn, deposes and states as follows:

1. I am currently an Insurance Compliance Specialist with the office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), a position I have held since December 4, 2006.

2. My work for the CSI focuses on helping Montana consumers who have questions about their insurance, including assisting consumers with their insurance claims.

3. I did not assist in the CSI investigation of Harris Himes and I know very little about the CSI's case against him.

4. I have reviewed portions of Roberta Cross Guns' deposition in which my name is discussed.

5. I have also reviewed portions of Alan Ludwig's deposition in which my name is discussed.

6. I have also reviewed portions of Lynne Egan's deposition in which my name is discussed.

7. I have also reviewed the portion of the Defendant's *Motion to Compel Production of Selective Prosecution Evidence; Brief in Support of Motion* in which my name is discussed and which was filed with the Court on September 24, 2012.

8. I was very hurt and upset when I heard from Ms. Cross Guns that Lynne Egan said things about me that were not true and I continue to be hurt and upset.

9. I was also very hurt and upset to read that the Defendant's lawyer publicized my name, and further that he referenced my name in support of the argument that the CSI "routinely harasses employees who are devout Christians."

10. I have never talked with either of the Defendant's lawyers, nor have I spoke with Mr. Himes.

11. I consider myself a devout Christian.

12. I disagree with the Defendant's lawyer's characterization that the CSI "routinely harasses employees who are devout Christians," myself included.

13. Based on my almost 6 years of experience working for the CSI, it is my opinion that the CSI would not investigate, nor would its lawyers prosecute, an individual based on their religious or political beliefs, including Mr. Himes.

14. I submit this Affidavit voluntarily and no threats or coercion have been made against me by the CSI.

15. I declare under penalty of perjury under the laws of Montana that the foregoing is true and correct.

DATED this 4th day of October, 2012.

TARI NYLAND

SUBSCRIBED AND SWORN to me before this 4th day of October, 2012, by Tari Nyland.

SYBIL L SHULTS
NOTARY PUBLIC for the
State of Montana
Residing at: East Helena Montana
My Commission Expires
January 1, 2014

SYBIL L SHULTS NOTARIAL SEAL STATE OF MONTANA

Exhibit O

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MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT,

RAVALLI COUNTY

STATE OF MONTANA, Plaintiff, vs. HARRIS HIMES, Defendant.	)))))))))	Cause No.: DC 11-117 **AFFIDAVIT OF JOHN NIELSEN**

STATE OF MONTANA)
: ss
Missoula County)

John Nielsen, after being first duly sworn, deposes and states as follows:

1. I am a Special Agent for the Division of Criminal Investigation of the Internal Revenue Service (IRS), a position I have held since March 1, 1987.

2. Generally, the scope of my work involves investigating allegations of Federal tax law under Title 26 of the United States Code as well as other Federal financial violations of the law under Title 18 and 31 of the United States Code.

3. I did not assist in the CSI investigation of Harris Himes and I know nothing about the State's case against him.

4. I have reviewed the portion of the Defendant's *Motion to Compel Production of Selective Prosecution Evidence; Brief in Support of Motion*, filed with the Court on September 24, 2012, in which the Defendant's lawyer states that "[f]ederal officials are concerned about an improper relationship between [Bill] Nooney and the Auditor's office."

5. I have also reviewed the portion (123:25-127:23) of Alan Ludwig's deposition, taken on July 31, 2012, in which he references conversations he had with myself and a Special Agent of the Federal Bureau of Investigation (FBI).

6. I had a working relationship with Mr. Ludwig prior to him leaving the Auditor's office.

7. In his deposition, Mr. Ludwig testified that I asked him about Bill Nooney, but actually Mr. Ludwig asked me about Mr. Nooney when he called around the time he was leaving the Auditor's office.

8. Mr. Ludwig told me that he had concerns about the way the Auditor's office was handling the investigation into Mr. Nooney.

9. I told Mr. Ludwig that if he had those concerns, then he should talk to someone who was in a position to investigate those concerns.

10. At no time in my conversations with Mr. Ludwig did I express concerns about whether there was an improper relationship between Mr. Nooney and the people at the Auditor's office.

11. At no time in my conversations with Mr. Ludwig did I express concerns about whether there were improper actions that resulted from a relationship between Mr. Nooney and the Auditor's office.

12. I declare under penalty of perjury under the laws of Montana that the foregoing is true and correct.

PETITIONER'S EXHIBIT H 459

DATED this 4th day of October, 2012.

JOHN NIELSEN

SUBSCRIBED AND SWORN to me before this 4th day of October, 2012, by John Nielsen.

Sheryl L Nordahl

SEAL

SHERYL L NORDAHL
NOTARY PUBLIC for the
State of Montana
Residing at Missoula, MT
My Commission Expires
May 14, 2013

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EXHIBIT I

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MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT
RAVALLI COUNTY

STATE OF MONTANA, Plaintiff, vs. HARRIS HIMES, Defendant.	)))))))))))	Case No. DC 11-117 [Assigned to the Honorable Loren Tucker] **DEFENDANT'S REPLY RE MOTION TO COMPEL DISCOVERY OF SELECTIVE PROSECUTION EVIDENCE**

INTRODUCTION

In its response to Himes' Motion to Compel Selective Prosecution Evidence, the Auditor's office insists that "nothing can be shown that the prosecutors had discriminatory intent when they filed charges against the Defendant." (State's Resp., p. 23.) Himes begs to differ. The evidence he has produced shows the following:

- The prosecution team routinely describes conservative Christians as "whack jobs" and "nut cases" and harasses Christian employees in the Auditor's Office;
- The State charged Himes with six felonies when it has no evidence that he obtained any money, then falsely alleged otherwise to this Court;
- The State denied Himes a pre-filing conference, something it gives to all other suspects, and something that would have significantly reduced the chances of Himes being charged;
- Shortly after Himes publicly criticized the Auditor for charging him, the Auditor's office filed an additional securities count against Himes without any evidence of a "security," then falsely informed this Court that it did have such evidence;
- The State excluded Himes from witness interviews, something it does not do to other defendants;
- At least four similarly situated suspects who stole significant sums of money received only administrative sanctions (or none at all), evidence that the State completely fails to rebut.

The State stresses that Himes has not produced a direct admission from prosecutors that they based their charging decisions on Himes' conservative Christian statements. This is not terribly surprising, because "[d]efendants of even minimal sophistication will neither admit discriminatory animus or leave a paper trail demonstrating it." *Riordan v. Keminers*, 831 F.2d 690, 697 (7th Cir.1987). Instead, "a trier of fact may infer [discriminatory] motive from the total circumstances proved." *New Breed Leasing Corp. v. NLRB*, 111 F. 3d 1460, 1466 (9th Cir.1997). Contrary to the State's repeated assertions, Himes need not "prove" anything to prevail on this motion but instead need only present "*some* evidence of both discriminatory effect and discriminatory intent." *Bass*, 536 U.S. at 864, emphasis added; *Armstrong*, 517 U.S. at 469. As explained in his opening brief,

and as described in detail below, Himes has not produced *some* evidence of discriminatory intent and effect, he produced a mountain of it.

ARGUMENT

The prosecution begins its response to Himes' Motion to Compel Discovery of Selective Prosecution Evidence by mischaracterizing Himes' claim as one in which he is being "specifically targeted and charged by the State due to his religious beliefs." (State's Resp., p. 2.) In fact, as emphasized throughout his opening brief, Himes' claim is based upon selective prosecution arising from his conservative Christian *speech*. This is why Himes' arguments are based upon his being an "outspoken conservative Christian" who for years has communicated to the press and testified before the Legislature on abortion and gay rights issues and why most of the cases he cited in his opening brief involve selective prosecution claims arising from protected speech.

The State also misstates the law when it argue that "[w]hile the case law rightfully gives protection to those the government pursues based on an individual's religion, it is apparent that no additional protection is afforded to a defendant simply because a defendant is 'outspoken'." (State's Resp., p.14.) A prosecution based upon a defendant being "outspoken," however, directly implicates First Amendment rights. Both state and federal courts bar selective prosecution not only on the basis of traditional suspect classifications, such as race, but also in cases in which charging decisions are based upon a defendant's exercise of First Amendment rights:

> ....[T]he conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation absent an allegation and showing that the selection was deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification, such as sex, *or the exercise of the First Amendment right to free speech.*

State v. Maldonado, 176 Mont. 322, 329, 578 P.2d 296, 300 (1978), emphasis added, quoting *Oyler v. Boles*, 368 U.S. 448, 456 (1962); see also *U.S. v. Schmucker*, 721 F.2d 1046, 1051 (6th Cir.1983), quoting *U.S. v. Falk*, 479 F.3d 616, 620 (7th Cir.1973) ("just as discrimination on the basis of religion or race is forbidden by the Constitution, so is discrimination on the basis of the exercise of protected First Amendment activities, whether done as an individual or, as in this case, as a member

of a group unpopular with the government"); *Hunt v. Tucker*, 875 F.Supp. 1487, 1501 (N.D.Ala. 1995) ("A prosecutor may not select an individual for prosecution solely because of the exercise of rights under the First Amendment")

Similarly, the Auditor's Office argues that Himes' conservative Christian speech cannot form the basis of a selective prosecution claim because speech by liberal Christians would thereby be excluded. (State's Brf., p. 14.) This reasoning is also puzzling, because it is the Auditor's office itself that has clearly defined the contours of the protected class at issue in this case. Both Deputy Securities Commissioner Lynne Egan and Brett O'Neil, who is counsel of record in this matter, have repeatedly referred to conservative Christians as "whack jobs" and "nut cases." (Cross Guns Depo., pp. 52, 59, Exhibit 3.) As discussed in detail below, they have treated Himes far differently than other suspects who do not engage in the kind of "whack job" or "nut case" conservative speech in which Himes engages.

The State's analysis of the law is deficient in several other respects. For example, prosecutors complain that Himes "completely fail[s] to provide this Court with the standard to prove both discriminatory effect and discriminatory intent." (State's Resp., pp. 11-12.) As the United States Supreme Court has held, however, obtaining discovery for a selective prosecution claim requires "some evidence of both discriminatory effect and discriminatory intent." *Bass*, 536 U.S. at 864, emphasis added; *Armstrong*, 517 U.S. at 469. And "although the 'some evidence' standard is 'rigorous,' it is still relatively light, because obviously a defendant need not prove his case in order to justify discovery on an issue." *United States v. Thorpe*, 471 F.3d 652, 657 (6th Cir.2006). If the prosecutors believe the some-evidence rule established in *Bass* and *Armstrong* is insufficiently precise, their quarrel is with the Supreme Court, not with Himes.

Similarly, the State argues repeatedly that Himes' motion should be denied because he cannot "prove" discriminatory intent. (See, *e.g.*, State's Resp., pp. 21, 24, 29, 30, 31.) The law does not require Himes to "prove" anything at this stage. Rather, he simply needs to present "*some* evidence of both discriminatory effect and discriminatory intent." *Bass*, 536 U.S. at 86.4, emphasis added; *Armstrong*, 517 U.S. at 469. After Himes receives the discovery to which he is entitled under

the Constitution's guarantee of equal protection, he will then seek to prove at an evidentiary hearing the merits of his selective prosecution claim.

The State also argues, incorrectly, that this Court is not permitted to draw inferences based upon Himes' evidence. (State's Resp., pp. 24-25.) This is not the rule in equal protection cases in general, (see, *e.g., New Breed Leasing Corp. v. NLRB*, 111 F. 3d 1460, 1466 (9th Cir.1997) ("in the context of a discriminatory discharge, a trier of fact may infer motive from the total circumstances proved")), nor in selective prosecution cases in particular. *People v. Superior Court (Baez),* 79 Cal.App.4th 1177, 1196, 94 Cal.Rptr.2d 706, 719 (2000) ("the trial court could reasonably have concluded, based on the evidence presented by Baez and the reasonable *inferences* arising therefrom, that Baez had presented 'some evidence' and made a 'credible showing' " of biased charging)(emphasis added); *U.S. v. Tuitt*, 68 F.Supp.2d 4, 18 (D.Mass.1999) (defendant satisfied *Armstrong*'s intent prong by presenting evidence showing "an inference of discriminatory intent").

Even though Himes has direct evidence of discriminatory animus by the prosecution team, the State criticizes him for not "submit[ing] a study or any kind of statistical evidence whatsoever showing that people who are not 'outspoken conservative Christians' could have been prosecuted for crimes similar to the Defendant's." (State's Resp., p. 24) The State has it backwards. The direct evidence of bias provided by Cross Guns and Ludwig is far more probative of the prosecution team's state of mind than inferences derived from statistics. *U.S. v. Avery*, 137 F.3d 343, 356 (6th Cir.1997) ("only in rare cases will a statistical pattern of discriminatory impact conclusively demonstrate a constitutional violation"). Nor is statistical evidence even required for a selective prosecution claim, particularly at the discovery stage. *U.S. v. Alameh*, 341 F.3d 167, 173 (2d Cir.2003) (selective prosecution can be "demonstrated through circumstantial *or* statistical evidence") (emphasis added.)

A HIMES HAS MORE THAN ADEQUATELY MET THE SOME-EVIDENCE TEST REGARDING DISCRIMINATORY INTENT

1. Egan Decides What Cases to File Criminally and What Cases to Decline

Himes has met the "some" evidence burden regarding Egan's authority over charging decisions in the Auditor's Office. Egan is "second under [Commissioner] Monica Lindeen" with

regard to securities. (Egan Depo., p. 23, Exhibit 2.) She determines whether securities cases are filed criminally. (Cross Guns, pp. 32-33, Exhibit 3; Ludwig Depo., p. 35 ("Lynne would make a determination as to -- as to whether something appeared to be a civil or criminal matter, or both").

Evidence of selective prosecution includes not only evidence concerning which suspects are charged, but also which ones are not. Put another way, declination authority is every bit as important in analyzing selective prosecution issues as charging authority. And it is undisputed that Egan has unfettered declination authority, because she has the power to stop a case in its tracks before any civil or criminal actions are commenced. (Ludwig Depo., pp. 29 ("Lynne would be the determiner of what matter would actually become an investigation"); *id.* p. 33 "Lynne would determine which report went forward for action and assign a case number to it"); *id.*, p. 103, Exhibit 4, (describing Egan as "the real gatekeeper on cases going forward or not going forward.")

Egan's declination authority is demonstrated not only by Ludwig's testimony but also circumstantially. When suspects seek leniency from the Auditor's office, they don't go to the prosecutors. Instead, they go to Egan. (See, *e.g.*, Egan Depo. p. 118, Exhibit 2 (acknowledging several meetings between her and Nooney); Cross Guns Depo., p. 47, 100 (testifying the Egan had "let[Cladis] off pretty easy" after he cried in front of her). That suspects seeking to avoid prosecution by the Auditor's office plead their cases to Egan speaks volumes regarding her declination authority.

Nor has the State even attempted to refute evidence (much of it supplied by Egan herself) of Egan's extensive campaign activities on behalf of Lindeen and Laslovich, including collecting campaign contributions from the Post Office and campaign checks brought to the office, (Cross Guns Depo., pp. 20, 21, 25, Exhibit 3), depositing campaign contributions during the workday, (Egan Depo., p. 85, Exhibit 2; Cross Guns Depo., p. 25, Exhibit 3), preparing disclosures to the Commissioner of Political Practices, and maintaining contributor lists for the campaigns. (Egan Depo., pp. 85-87, Exhibit 2.) Nor can the State dispute what these activities say about Egan's influence in the Office.

Against this evidence, the State insists that "the filing of charges is a prosecutorial decision, not one made by the investigator. The prosecutors sign the pleadings, not the investigator." (State's Resp., p. 23.) This response has several deficiencies.

First, Egan is not a mere investigator. She is the Deputy Securities Commissioner and therefore is "second under [Commissioner] Monica Lindeen" with regard to securities. (*Id.*, p. 23.) Second, the State ignores the fact that while Egan might not sign pleadings, she directs those who do. Finally, the State ignores the undisputed evidence of Egan's unfettered declination authority.

The State also tries to undermine Himes' evidence by asserting that "[a]fter Mr. Laslovich took over ...Ms. Cross Guns said she didn't 'know what happened' and didn't know "if [Ms. Egan] continued to have a say or not." (State's Resp., p. 7.) The State fails to mention that Ludwig remained in the office's securities department until May 2012, (see Ludwig Exit Interview, attached as part of Exhibit 4), well after prosecutors filed charges against Himes.

All of the evidence presented by Himes, therefore, more than sufficiently satisfies the "some" evidence standard regarding her authority over charging and declination decisions. None of the State's arguments negates this evidence.

2. <u>Himes Has Presented Significant Evidence of Animus Against Conservative Christians By the Prosecution Team</u>

The State does not, and cannot, refute the many bigoted statements made by the prosecution team. O'Neil and Egan have stated several times that "right-wing" Christians are "whack jobs" and "nut cases." (Cross Guns Depo., p. 52, 59, Exhibit 3.) Egan, the person who determines which cases move forward, (Ludwig Depo, pp. 26, 29, 33, 103, Exhibit 4), and how they are charged, (Cross Guns Depo. pp. 32-33, Exhibit 3), spews bigoted, anti-Christian remarks almost reflexively. She makes "lots of negative comments about Christians in general." (Cross Guns Depo., p. 53, Exhibit 3; Ludwig Depo, pp. 56-57, Exhibit 4 ("I've cited three or four [anti-Christian remarks] to you but there's been a dozen since I worked there.") Egan has a "negative feeling towards" right-wing Christians, (Cross Guns Depo. 53, Exhibit 3), and admits telling employees that the Boy Scouts are "Nazis." (Egan Depo., p. 100.) Her hatred of the Boy Scouts arises from their affiliation with

Christian churches. (Cross Guns Depo. p. 53.) Egan tells employees that the Christian church is a "negative influence on things" and that all organized religion is a "fairy tale." (Ludwig Depo, pp. 54-55, Exhibit 4.) She ridicules church members who appear in court. (Cross Guns Depo. p. 106, Exhibit 3). Egan's animus towards devout Christians is so pronounced that she becomes physically agitated when they are discussed. (*Id.*, p. 61.) She calls Lindeen's political opponent a "right wing nut case" simply because he is a member of the Assembly of God. (*Id.*, p. 52.) Of particular importance to this case is her smearing of Himes as a "whack job" and a "right-wing Christian." (*Id.*, p. 55.) She has also referred to a federal prosecutor as "such a smart guy. I don't know where he gets, you know, caught up in this Christian stuff." (*Id.*, p. 57.)

Nor have prosecutors negated Himes' evidence showing how the Auditor's office routinely targets Christian employees for harassment, prompting Nita Holman, a Human Resources staff member, to note that "Christians weren't treated too well in the office" and that, for employees, "it was better not to share that you were Christian." (Ludwig Depo., p. 144, Exhibit 4.)[1] Egan falsely slanders devout Christian employees as adulterers in front of other employees. (Cross Guns Depo., pp. 13-15, Exhibit 3; Ludwig Depo., p. 82, Exhibit 4.)[2] She ridicules employees who pray during their breaks and subjects them to rants concerning other employees' pubic hair. (Cross Guns Depo., pp. 16-17, Exhibit 3; see also Exit Letter attached to Ludwig Deposition, Exhibit 4.)

Such evidence in discrimination cases is extraordinary because most of the time "violators have learned not to leave the proverbial 'smoking gun' behind." *Aman v. Cort Furniture Rental Corp.*, 85 F.3d 1074, 1082 (3d Cir.1996); see also *Jalal v. Columbia University in City of New York*,

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[1] The State had previously committed to making Ms. Holman available for a deposition. It has since reneged and refuses to make her available without an order from this Court. As discussed in more detail in Section III, this is yet another reason why an order compelling production of selective prosecution evidence is essential.

[2] The Auditor's office included in its response an affidavit from the victim of Egan's slander in which the victim denies that there is anti-Christian bias in the Office. (State's Resp., Exhibit N.) Notably, the victim does not attempt to deny that she had been viciously slandered by management in the Auditor's office. And, unlike Cross Guns and Ludwig, this victim is still depends on the office for a paycheck, so her attempts to minimize management's despicable conduct should be taken with a grain of salt.

4 F.Supp.2d 224, 235 (S.D.N.Y. 1998) ("....bias will rarely manifest itself in obvious ways"). Egan and O'Neil didn't just leave a smoking gun behind, they left an armory. This evidence, standing alone, satisfies the some-evidence standard for showing discriminatory intent. *United States v. Jones*, 399 F.3d 640, 645-46 (6th Cir.2005) (*prima facie* case of discriminatory intent when police officers who referred case for federal prosecution wore insulting t-shirts with defendant's picture during arrest and sent racially motivated postcard to defendant in prison).

The State dismisses this evidence as "innuendo about the Boy Scouts [and] Christians in general." (State's Resp., p. 24), as well as "office gossip and hearsay." (State's Resp., pp. 25-26.) It is not. Ludwig and Cross Guns both gave sworn, first-hand testimony of Egan and Brett O'Neil repeatedly using derogatory epithets against conservative Christians, such as referring to them as "whack jobs" and "nut cases." (Cross Guns Depo., pp. 52, 59, Exhibit 3.) Egan has even admitted to making derogatory statements. (See, *e.g.*, Egan Depo., p. 100.)

Prosecutors trumpet the fact that, while Egan and O'Neil describe conservative Christians as "nut cases" and "whack jobs," Laslovich does not. (See, *e.g.*, State's Resp., p. 22.) The argument that "only" two-thirds of the prosecution team uses bigoted statements in referring to members of a defendant's protected class is not exactly a ringing endorsement of the State's ethics. The argument is weakened further by Laslovich adding Count VII shortly after Himes publicly criticized the Auditor's office for charging him. As shown below, there was absolutely no probable cause to support Count VII and the supporting affidavit Laslovich filed alleging that Himes offered to sell a "security" is patently false.[3] The argument is weakened even further by Laslovich's refusal to allow Himes to be present during witness interviews, an exclusion not imposed upon other defendants.[4]

The State also tries to minimize the seriousness of its prosecutors using bigoted epithets by arguing that Himes "cannot show that either prosecutor made any kind of 'anti-Christian epithet' <u>*against the Defendant.*</u>" (State's Resp., 23, emphasis added.) This would be akin to Marcia Clark arguing to the jury that Dennis Furhman's repeated use of the word "n****r"

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[3] See pp. 14-15, *infra*.

[4] See p. 15, *infra*.

throughout his law enforcement career should be disregarded because he never specifically called O.J. Simpson a "n****r." Though the Simpson prosecutors made many ill-advised arguments in that case, this was not one of them. That Furhman never specifically called Simpson a "n****r" did not diminish what his prior uses of that term said about his state of mind regarding African-Americans in general. The trier of fact could properly infer that this general attitude might have tainted his testimony in a case involving a specific African-American. This Court is likewise permitted to infer that the prosecution's many bigoted remarks about conservative Christians in general influenced their charging decision regarding Himes.

The State offers Egan's self-serving statement that she "has never investigated someone based on her religious beliefs, their religious beliefs, or their political affiliation." (State's Resp., p. 8). Courts have long recognized that such denials often have little evidentiary value:

> Actual motive, a state of mind, being the question, it is seldom that direct evidence will be available that is not also self-serving. In such cases, the self-serving declaration is not conclusive; the trier of fact may infer motive from the total circumstances proved. Otherwise no person accused of unlawful motive who took the stand and testified to a lawful motive could be brought to book.

Shattuck Denn Mining Corp. v. *NLRB*, 362 F. 2d 466, 470 (9th Cir.1966); see also *Healthcare Employees Union v. NRRB*, 441 F.3d 670, 680 (9th Cir.2006) ("an employer will seldom admit that it was motivated by anti-union animus when it made its adverse employment decision"). Reliance upon self-serving declarations by the prosecution team is particularly inappropriate for purposes of this motion because Himes need not win a credibility contest at this stage. Rather, he need only present some evidence of discriminatory intent in order to meet the *Armstrong* test.[5]

Prosecutors also argue that "the only evidence the Defendant offers in support of his argument that the prosecutors knew of the Defendant's belief prior to charging him was that Mr.

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[5] Besides being self-serving, this claim begs the question of whether she has sought to *prosecute*, or declined to prosecute others, based upon religious beliefs.

Laslovich heard the Defendant testify before the Senate Judiciary Committee from 2005 to 2010 and even asked the Defendant some questions, and that the Defendant has been named in four newspaper articles in 2010 and 2011." (State's Resp., p. 26.) Even if this actually was the "only" evidence Himes had showing that prosecutors knew of his conservative Christian statements, it would be more than sufficient to meet the some-evidence test. It is not a stretch to infer that Laslovich discussed Himes' statements with the other members of the prosecution team when this matter was being investigated by the Auditor's office and during the time when a charging decision was being made. *Cf. Dey v. Colt Const. & Development Co.*, 28 F. 3d 1446, 1459 (7th Cir.1994) ("although Dey bears the burden of establishing that her employer was aware of her protected expression when it discharged her, she may meet that burden through circumstantial evidence"). The State insists that "no one's religious beliefs were ever discussed until July 31,2012 -- the day Alan Ludwig, a former employee of the State Auditor's office, was deposed." (State's Resp., p. 5.) Besides offering another self-serving statement, the State does not even attempt to support it by citing to the record.

Moreover, there is a significant amount of other evidence showing that the prosecution knew of Himes' conservative Christian activities. The State acknowledges, as they must, that "[i]t is self-evident that someone who is a Pastor at a church named Big Sky Christian Center is a Christian. The victim's relationship with the Defendant, moreover, was based on shared religious beliefs with the Defendant and he was lured to invest because of the Defendant's offer to invest in the 'Lord's work.' " (State's Resp., p. 26.) The State neglects to mention the evidence it had demonstrating not just that Himes was a run-of-the-mill Christian, but one fitting into the nut-case-whack-job category of Christians. (See, *e.g.*, State's Discovery Documents, Bates No. 47, attached as Exhibit 8 (describing Himes' abortion clinic protests)). And, of course, Himes' abortion and gay rights speech has received extensive coverage in the press, both statewide and in Helena, where the prosecutors reside. (Himes Opening Brf, pp. 8-9.)

3. The State Does Not Explain Why It (1) Charged Himes With Six Felonies When It Has No Evidence That He Obtained Any Money and (2) Falsely Alleged Otherwise to This Court

Aside from the numerous epithets made against conservative Christians by decision makers in the Auditor's Office, perhaps the most striking evidence of a discriminatory prosecution in this matter is that the Auditor's Office has charged Himes with *six felonies* even though *it has no evidence that Himes instructed the victim where to wire funds, had any control of the funds after they were wired, or profited in any way from the alleged crimes*. The term "overcharging" does not even begin to describe what prosecutors have done in this case.

Even more striking is the prosecutors' false allegations to this Court that Himes used monies derived from the alleged victim to pay off "credit cards in [Himes'] name," and that Himes "also had his credit cards in his name paid off by the Monarch Beach account." (Amended Information, pp. 2, 4.) As demonstrated in detail in Himes' opening brief, the State's allegations are completely false, and it is the State's own records that demonstrate the allegations to be false. (Himes Opening Brf., pp. 11-13.)

The Auditor's Office makes no attempt whatsoever to explain why it falsely alleged to this Court that Himes took victim's funds. Nor has it explained why pursuing a 70 year-old decorated veteran with no criminal record and no evidence of taking any money is such a high priority for the office, especially given the "limited extent of prosecutorial resources." (State's Resp., p.18.) The Court is therefore entitled to treat the State's false allegations to this Court of profit by Himes -- and its failure to explain why, exactly, it is prosecuting this man -- as evidence of biased selection.

4. The State Contradicts Itself Trying to Explain Why, Unlike With Other Suspects, It Denied Himes a Pre-Filing Conference

It is undisputed that Egan did not issue a "come-clean" letter to Himes or offer him a pre-filing conference to explain his side of the story and perhaps dissuade her from seeking a criminal prosecution against him. According to the Auditor's current employee, such letters are sent to all

suspects. (Navarro Depo., pp. 35-36, Exhibit 6.) Suspects usually benefit when they respond positively and "come clean" by telling the Auditor's office their side of the story. (*Id.*, pp. 66-67.)

The State contends that "as far as [Egan's] investigations go, 'come-clean' letters are 'used on a case-by-case basis.' " (State's Resp., p. 7.) There are several problems with this assertion. For starters, the assertion depends upon the Auditor's office discrediting Patrick Navarro, its own *current* employee, something it attempts (and fails) to do. (State's Resp., p. 19.)

Even more problematic is that the State's current position that pre-filing conferences are given on a case-by-case, a position based upon Egan's August 2012 testimony, conflicts with statements Egan made five months earlier. When interviewed in March 2012, Egan claimed she attempted to contact Himes prior to charges being filed by leaving a voice mail identifying herself and asking him to return her phone call. (See Egan Transcript (3/21/2012), pp. 27-28, attached as Exhibit 1G to Defendant's Compendium of Evidence.) The obvious conclusion is that Egan was offering Himes an opportunity to "come clean" and explain his side of the story before she decided whether or not a criminal filing against him was appropriate.

When Egan was deposed five months later (and two weeks after Ludwig's deposition in which Ludwig raised the issue of anti-Christian bias in the Auditor's Office), she changed her story. Egan now states that she never attempted to contact Himes. (Egan Depo., pp. 112, Exhibit 2.) She also now claims that Himes was not eligible for a come-clean letter or, presumably, a pre-filing conference because she will "generally only do that if I think the problem is ongoing and I need to get it stopped right away." (Egan Depo., p. 111, attached as Exhibit 2.)

Egan's contradictions on this issue (and others) are highly probative. *Cf. Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 147 (2000) ("the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose. Such an inference is consistent with the general principle of evidence law that the factfinder is entitled to consider a party's dishonesty about a material fact as "affirmative evidence of guilt.")

When Egan was deposed in August 2012, Himes had by then made clear his belief that he was the victim of a selective prosecution. A proper inference arising from Egan's inconsistent testimony is that she knew she needed to manufacture a bias-free explanation as to why she had

never given Himes an opportunity to "come clean" as she had with other suspects. Egan's explanation that she offers pre-filing conferences -- and the chance for leniency -- to those suspected of committing multiple offenses, but not to those who have committed a single offense, is particularly unpersuasive.

Egan's current story contradicts her statements made in March 2012, as well as Navarro's sworn testimony. What is undisputed is that other suspects, such as Bill Nooney and Nick Cladis, suspects accused of taking enormous sums from investors, are nevertheless afforded pre-filing conferences, conferences that are often beneficial to suspects and certainly were for Nooney and Cladis. Himes, however, was not given this opportunity.

The consequences of this discrimination cannot be overstated. Himes is a 70-year old decorated veteran with no prior criminal conviction. (Exhibit 8, Bates No. 22.) As stated earlier, Himes did not take money from the alleged victim. Himes was not a signatory on the bank account to which the allegedly stolen funds were wired. He did not disperse any of those funds or even know what became of them. Had Himes been given the same opportunity as other suspects to speak with the Auditor's office prior to a charging decision being made -- and if he had been heard by a truly open mined decision maker in that office, assuming there is one -- it is inconceivable he would have been subsequently charged with six (later, seven) felonies.

The State's new claim -- that it offers pre-filing conferences on "a case by case" basis -- is contradicted by numerous other statements.[6] This new story also begs the question of why the State denied *Himes* a pre-filing conference when it offers them to other suspects who have taken enormous sums from investors, suspects who have availed themselves of these conferences to avoid criminal charges. The obvious inference is that decision makers in the Auditor's office felt differently about Himes than other suspects, an inference that points directly to the same state of mind that routinely produces bigoted statements about conservative Christians by these same decision makers.

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[6] If indeed Egan grants pre-filing conferences on a case-by-case basis, this is yet another stage in which she has unfettered discretion to act upon her religious biases.

5. The State Offers No Explanation Why, Unlike With Other Suspects, It Filed a Securities Count Against Himes Without Any Evidence of a "Security"

Shortly after Himes' radio interview in which he referred to Commissioner Lindeen as someone who is "very pro-gay, very pro-abortion" who was bringing a "very weak" case against him because of his opposition to gay-rights legislation, (Exhibit 8, Bates Nos. 298-303), the Auditor filed Count VII, which, as explained in Himes' opening brief, was not only time-barred but completely lacking in probable cause. (Himes' Opening Brf, pp. 13-14.)

Prosecutors claim they filed Count VII because "certain persons approached the State claiming Defendant had also offered them *securities*." (State's Resp., p. 5, emphasis added.) This is false. The State's only evidence was hearsay by the wife and a friend of the alleged victim alleging that Himes encouraged the victim to participate in an "investment." (Bates 70-72, attached as **Exhibit 10**.) As prosecutors in the Auditor's office well know, however, not all investments are securities – only those having "a reasonable expectation of profits to be derived from the *entrepreneurial or managerial efforts of others*." *State v. Duncan*, 181 Mont. 382, 392, 593 P.2d 1026, 1033 (1979), quoting *United Housing Foundation v. Forman*, 421 U.S. 837, 852 (1975), emphasis in original. When they filed Count VII, prosecutors did not have a shred of evidence showing that Himes' investment derived profits from the entrepreneurial or managerial efforts of others, as opposed to other investments that are not securities, such as bank CD's, rental property, precious metals or jewelry. In fact, the charge was so weak that the Ravalli County Sheriff rejected it over a decade ago. (Bates No. 70.)

Testimony regarding the Auditor's filing procedures makes the filing of Count VII all the more suspicious. The State insists that it had a "prosecutorial prerogative to choose not to ignore evidence of further victimization." (State's Resp., p. 30.) While the State may have a "prosecutorial prerogative" to evaluate evidence, it does not have a prerogative to file a felony securities charge without evidence of a security being offered. The Auditor's office rejects filings precisely because the investments at issue are not "securities" under Montana law. (See, *e.g.*, Egan Depo., p. 48 (describing prosecutors' rejection of a case because the "product that [the suspects]

were offering and selling to investors may not be a security"); *id.* at p. 27 ("I listen to what [complainants] are complaining about to determine if it is, indeed, a security"). Yet prosecutors filed Count VII without any evidence that Himes attempted to sell a security, and went so far as to submit an affidavit to this Court falsely alleging that Himes represented an "issuer" while "attempting to effect sales of securities," (State's Affid. In Support of Mtn to Amend (dated 11/10/11), p. 8), knowing that there was no evidence supporting these allegations.

Prosecutors applied a different charging standard to Himes when they filed Count VII than they apply to other defendants. They then submitted a false affidavit to this Court alleging that he attempted to sell a security. They then falsely argued to this Court in their response brief that Count VII resulted from "certain persons [who] approached the State claiming Defendant had also offered them *securities*." (State's Resp., p. 5, emphasis added). The Court is therefore entitled to infer that this charging decision resulted from bias against Himes.

6. The State Offers No Explanation Why, Unlike With Other Suspects, Himes Was Excluded From Witness Interviews

Prosecutors insisted that, as a condition for interviewing their witnesses, Himes be excluded. (Flaherty Affidavit ¶¶ 1-2, attached as Exhibit 7.) They do not impose this condition on other defendants. (Cross Guns Depo., p. 73, Exhibit 3.)

The State offers no explanation for why it excluded Himes from witness interviews when it does not similarly exclude other defendants – no explanation, only indignation that Himes would dare to raise the issue. (State's Resp., p. 30.) This is yet more evidence of discriminatory intent.

B HIMES HAS MORE THAN ADEQUATELY MET THE SOME-EVIDENCE TEST REGARDING DISCRIMINATORY EFFECT

Himes has presented sworn testimony regarding four similarly situated suspects who could have been criminally prosecuted by the Auditor's office, but were not. As explained below, the State has offered nothing to negate the evidence offered by Himes, evidence that more than adequately meets the some-evidence test.

Roberta Cross Guns testified that Bill Nooney was subject to criminal prosecution because of his attempts to sell unregistered securities and defraud investors. (Cross Guns Depo., pp. 76-79, Exhibit 3.) Nooney participated in much of Daniel Two Feathers' criminal activity. (*Id.*, p. 76.) Egan admits receiving multiple complaints against Nooney. (Egan Depo., p. 117, Exhibit 2; Ludwig Depo., p. 105, Exhibit 4) (noting that the Office had received "several complaints" about Nooney). These complaints arise from multiple investors and are in excess of $ 1million. (McGowan Affidavit, ¶ 4, attached as **Exhibit 11**).

The State asserts that Nooney's case does not aid Himes because Nooney "is still under investigation by the Auditor's office, so no decision has been made as to whether he will be prosecuted criminally or civilly." (State's Resp., p. 16, quoting Egan Depo., pp. 116-17.) This is false. Egan told one of Nooney's victims, Jerry McGowan, that the Auditor's office would not prosecute Nooney. (McGowan Affidavit, ¶ 3, attached as **Exhibit 11**). She said this to McGowan well over a year ago. (*Id.*)[7] McGowan's testimony is consistent with Cross Guns' testimony. (Cross Guns Depo., p. 79 ("Bill Nooney, at the point we realized he was also engaging [in fraud], should have been brought into the prosecution, but he wasn't").)

The Auditor's office also argues that Nooney's case is not relevant because Himes cannot show that "anyone at the Auditor's office did not (or will not) criminally prosecute Mr. Nooney because he was/is not an 'outspoken conservative Christian'." (State's Resp., p. 17.) Besides being a confusing double negative, this contention misstates the law. Satisfying the discriminatory effect prong of the *Armstrong* test simply requires Himes to "produce some evidence that similarly situated defendants...could have been prosecuted, but were not...." *Armstrong*, 517 U.S. at 469. Neither *Armstrong* nor any subsequent court imposes upon defendants the added burden of demonstrating a prosecutor's subjective motive as to <u>*why*</u> the prosecutor chose not to charge a similarly situated suspect.[8]

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[7] The Auditor's office audaciously, and falsely, complains that because Nooney is supposedly "still under investigation," Cross Guns and Ludwig "breached" the investigation's "confidentiality" by testifying about it in their depositions. (State's Resp., p. 16, fn.9.)

[8] The Auditor's office makes this same argument regarding the other non-charged suspects.

The State also argues that the Nooney case should be distinguished because of "the strength of the evidence against him, whether he is going to be prosecuted by the federal authorities, his candor and willingness to plead guilty, and the resources that will be affected by pursuing him." (State's Resp., p. 18.) The State does not cite any evidence in the record to support these assertions. What is in the record is that Nooney offered unregistered securities for sale and defrauded victims, the same activities in which Himes is alleged to have engaged.

The State tries to impeach Ludwig with an affidavit from the IRS agent that Ludwig "alluded" to in his deposition." (State's Resp., p. 17.) Besides misstating the record -- Ludwig's conversation was not with IRS Agent John Nielsen but rather FBI Agent Kevin Damuth, (Ludwig Depo. 123-26), someone the State has curiously failed to obtain an affidavit from -- the State errs in suggesting that the Court should make credibility determinations at this stage. When seeking selective prosecution discovery, a defendant need only produce some evidence. Weighing conflicts in the evidence must occur at an evidentiary hearing to resolve the merits of a defendant's selective prosecution claim, not at the discovery stage.

Cross Guns and Ludwig testified that Nooney could have been criminally prosecuted for selling unregistered securities but. The State does not dispute that Nooney had criminal liability – only that it hasn't yet decided whether to proceed against him criminally or administratively, an assertion directly contradicted by Egan's statement last year to one of Nooney's victims. The Nooney case, standing alone, satisfies Himes' burden to "produce some evidence that similarly situated defendants...could have been prosecuted, but were not...." *Armstrong*, 517 U.S. at 469.

The State also fails to offer any evidence demonstrating how Daniel Two Feathers is materially distinguishable from Himes. Two Feathers defrauded out-of-state investors out of $5 million and was ordered by the Auditor's Office to pay an additional $500,000 in restitution on behalf of victims.[9] There is no dispute that the Auditor's office could have criminally prosecuted Two Feathers for securities fraud. (Cross Guns Depo., p. 42, Exhibit 3Egan Depo., p. 115, Exhibit

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[9] See http://sao.mt.gov/legal/securities/pdf/S08_TwoFeathersAmendedII.pdf; http://sao.mt.gov/legal/securities/pdf/S09_SchultzAgreement.pdf

2.)[10] The Auditor's office did not prosecute because Egan "just kind of dropped it and went on her way." (Cross Guns Depo., p. 42, Exhibit 3.)

The State claims Himes cannot rely upon the Two Feathers case because Egan's motive for dropping the case was her anger at federal authorities. (State's Resp., p. 16.) As stated previously, however, Egan's subjective motive as why she "dropped" the case has no bearing on the discriminatory effect prong of the *Armstrong* test. Two Feathers was thus a "similarly situated defendant[ ]" who "could have been prosecuted, but [was] not...." *Armstrong*, 517 U.S. at 469.

Perhaps aware of this problem in its argument, the State also argues that Two Feathers was not similarly situated because "distinguishable legitimate prosecutorial factors" existed, "such as the fact that they were going to be prosecuted by the federal authorities, the limited extent of prosecutorial resources, the amount of resources required to convict them, the potential impact of a prosecution on other investigations and prosecutions, and prosecutorial priorities." (State's Resp., p. 18.) The State presents no evidence of these circumstances existing with regard to Two Feathers or that these circumstances were the reasons for the Auditor's declination. The only evidence in the record as to why the Auditor did not prosecute Two Feathers is Cross Guns' testimony that Egan was "mad at the feds" and therefore dropped the case. (Cross Guns Depo., p. 42-43.) This is not a basis by which Two Feathers' case can be properly distinguished from Himes' case. Thus, Two Feathers' case also satisfies Himes' burden under the some-evidence test.

The State also fails to offer any evidence rebutting Himes' contention that Rick Young was a similarly situated defendant who could have been prosecuted by the Auditor's office. Young was a suspect referred to the Auditor's Office by the Fergus County Attorney. (Cross Guns Depo., p. 47, Exhibit 3.) Egan did not find the case "interesting," and the Auditor's Office therefore never acted upon it. (*Id.*, p. 48.) Instead, federal authorities prosecuted Young two years later. (*Id.*, p. 48.)

The State argues that the Young case had the same "distinguishable legitimate prosecutorial factors" that the Two Feathers case had, "such as the fact that they were going to be prosecuted by the federal authorities, the limited extent of prosecutorial resources, the amount of resources

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[10] See also http://sao.mt.gov/legal/securities/pdf/S08_TwoFeathersAmended.pdf

required to convict them, the potential impact of a prosecution on other investigations and prosecutions, and prosecutorial priorities." (State's Resp., p. 18.) Once again, the State cites no evidence of these circumstances existing with regard to Young or that they were the reasons for the Auditor's declination. The only evidence in the record as to why the Auditor's office declined charging Young is that Egan did not find the case "interesting." This is not a proper basis to distinguish the Young case. Thus, the Young case also satisfies Himes' burden under the some-evidence test.

Finally, with regard to Nick Cladis, the State does not dispute Cross Guns' assessment that he could have been criminally prosecuted by the Auditor's office for aiding and abetting Pat Davison, a former gubernatorial candidate who was later sentenced to prison for securities violations. (Cross Guns Depo., pp. 41-42, Exhibit 3.) Egan, however, met personally with Cladis, who pleaded his case to her while sobbing. (*Id.*, p. 41.) Cladis' emotional outburst dissuaded Egan from prosecuting him or even seeking restitution despite his $4 million net worth. (*Id.*, p. 41, 47.)

As with its efforts to distinguish the other defendants described above, the State's effort to distinguish the Cladis case misses the mark. The State implies that Cladis falls within Himes' protected class because Cladis is a Christian. (State's Resp., p. 15.) There is nothing in the record, however, indicating that Cladis expressed his religious views to Egan and certainly nothing indicating that Cladis was outspoken about abortion and gay rights in a way that would cause Egan and O'Neil to assign him to the same nut-case-whack-job attic as Himes.

The State also contends that "distinguishable legitimate prosecutorial factors existed with regard to Mr. Cladis such as his level of cooperation, the strength of the evidence against him (the FBI didn't think enough existed to prosecute him criminally), his role in his partner's crime, and his candor, among others" (State's Resp., p. 18.) As with its assertions about the other defendants, the State cites no evidence whatsoever to support these assertions.[11]

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[11] Cladis' contention in his affidavit that the FBI declined to prosecute him is inadmissible hearsay.

III HIMES' DISCOVERY REQUESTS DO NOT CREATE ANY UNDUE BURDENS FOR THE AUDITOR'S OFFICE

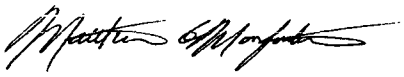
In response to the State's arguments regarding the discovery itself, it should be noted that the evidence Himes seeks does not burden the Auditor's office in terms of forcing it to divert substantial resources to comply with the request. The State has already agreed to allow Himes access to its files. The point of contention between the parties is the State's insistence that the names of the suspects be redacted. As explained in the Himes' opening brief, this would render the files useless for Himes' evidentiary needs.

It should also be noted that the State has reneged on its earlier commitment to permit Himes to depose Nita Holman, a human resources employee with the Auditor's office. Holman told Ludwig that "Christians weren't treated too well in the office." (Ludwig Depo., p. 144, Exhibit 4.) Himes reasonably believes that Holman could shed additional light on the anti-religious bigotry in the office. In response to Himes' request to depose her, the Auditor's stated in a letter dated August 31, 2012, that "Ms. Holman is currently on medical leave, but the CSI anticipates that she will return by mid-September." (Exhibit 1B) Himes' counsel sent several email requests in late September requesting deposition dates. The State did not respond to any of them until October 5, when it informed Himes that it would not permit her to be deposed without an order from this Court. What the State did not disclose, and what Himes subsequently discovered, is that today (October 19) is Ms. Holman's last day in the Auditor's office. Himes does not have any contact information for her aside from her employment address.

Because of the State's gamesmanship with this witness, Himes is requesting that an order from this Court compelling discovery include a provision authorizing Himes' counsel to depose Ms. Holman. Himes reasonably believes that her testimony will shed additional, substantial light on religious biases held by decision makers in the Auditor's office.

DATED: October 19, 2012

Respectfully submitted,



Matthew Monforton
Attorney for Defendant Harris Himes

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that a copy of the foregoing was duly served upon the respective attorneys for each of the parties entitled to service by depositing a copy in the U.S. mail, postage paid, addressed to each at their last known address as shown below, on the 19th day of October , 2012.

Jesse Laslovich
Brett O'Neil
Special Deputy Ravalli County Attorneys
Special Assistant Montana Attorneys General
Office of the Commissioner of Securities and Insurance
Montana State Auditor
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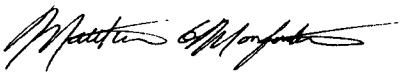


MONTANA SECURITIES DEPARTMENT
CONTACT REPORT

DATE: 10/18/2011 9:09 a.m.

NAME: Herb Bounds **PHONE NUMBER: 406-363-3885**

ORG./ADDRESS: **CASE / SUBJECT: Harris Himes**

PREPARED BY: Egan

SUMMARY:

Spoke with Herb Bounds regarding his recollection of Lester Johnson's investment with Harris Himes. Herb Bounds said he is a good friend of Lester Johnson. Herb Bounds is 79 years old.

In the late 1990's Lester Johnson told Herb Bounds that he had made a $10,000 investment with Harris Himes. Lester told Bounds that Himes had promised him investment returns of $1,000 - $2,000 per week on the investment. Lester said he invested the money because Himes told him he could help the missionaries and make a lot of money for his retirement.

Bounds told the Department that when he heard this from Lester he immediately thought Lester had been conned. He asked Lester if he got paperwork and Lester said no. Bounds they told Janet to get paperwork from Himes on the investment. Bounds told the Department that he had seen a letter Himes had written regarding Lester's investment and was able to accurately relay the entire content of that letter to the Department over the phone. Bounds said he was so upset about Lester being conned that he called the Ravalli County sheriff's office, an officer with light colored hair came out and sat in his kitchen and took a full report about the incident. Bounds said it was over 10 years ago that he gave the report. He said the officer told him there was no law about giving money to the ministry and there was likely nothing that could be done about it.

Bounds has heard that several others in the valley have been taken by Himes. He said that he's heard that a pastor in Stevensville was taken. He also said his own pastor, Pastor Doug Goodell of the Mountainview Wesleyan Church was shown a DVD on an investment opportunity by Himes. Pastor Goodell didn't invest because he didn't have any money.

Bounds provided the Department with Pastor Goodell's phone number of 406-363-2485. Bounds said Pastor Goodell has multiple sclerosis and sleeps until quite last in the morning.

EXHIBIT 10

MONTANA SECURITIES DEPARTMENT
CONTACT REPORT

DATE: 09/29/2011

NAME: Janet Johnson

PHONE NUMBER: 406-369-5474

ORG./ADDRESS:

CASE / SUBJECT: Himes/Bryant

PREPARED BY: Egan

SUMMARY:

The Department received a request from Maggi Liechty, Legal Assistant for the Ravalli County Attorney's Office (406-375-6750), to contact Janet Johnson regarding the Harris Himes/James Bryant matter.

The Department spoke with Janet Johnson regarding an investment her husband, Lester Johnson, made with Himes.

Janet told the Department that Himes learned her husband would be inheriting $22,000 a few years ago. Her husband had been a pastor but left the ministry when he moved to the Bitterroot valley and became a groundskeeper at the Victor cemetery. Janet indicated that Pastor Himes approached them upon learning of the inheritance, telling them that since they had inherited the money, it wasn't money they had planned on and therefore they did not immediately need it. He told them that God wanted them to invest $10,000 of the inheritance so they gave it to him to invest in an investment opportunity he had that he said would provide them with a good return on their investment.

Himes never provided them with any type of paperwork and Janet continued to demand it from him to the point that he ultimately wrote the Johnsons a letter documenting the investment. Janet will try to locate it and contact the Department.

Lester suffers from dementia but has recall of things from his past and Janet says he does remember being coerced by Himes to invest the money. Janet says Himes has not returned the principal and has not paid they any return on the investment.

Janet Johnson will contact the office once she locates the letter Himes gave her.

AFFIDAVIT OF JERRY MCGOWAN

STATE OF MONTANA)
: ss
County of Missoula)

Jerry McGowan, after being first duly sworn, deposes and states as follows:

I reside in Missoula, Montana. I have firsthand knowledge of the facts contained in this Affidavit and, if called to testify at a hearing or trial, could and would testify truthfully to the following:

1) After trying to get resolution with my case against William Nooney Jr. for more than a year and a half, I was finally informed by Ms. Egan directly that they would NOT be prosecuting Mr. Nooney for any of the complaints against him. I was also informed by Ms. Eagan there was a fund Mr. Nooney had set up with her for those of us that filed complaints against Mr. Nooney and that if I elected to go ahead with my personal lawsuit against Mr. Nooney, it would slow down or substantially impair my ability to get any money whatsoever IF I was to get any money.

2) I initiated my first call to Lynn Egans office approximately one and a half years prior to being informed by her that the State Auditors office would not prosecute William

Nooney Jr. for issues related to my complaint. After hearing this, I immediately contacted the FBI in Missoula regarding the case. My call to Ms. Egan took place within one week of my contacting the FBI. I also contacted the Attorney Generals Office and spoke with Chuck Munsford with whom I have maintained communication since that time. He was surprised his office had never even heard of the Nooney Case.

3) My interaction with Ms. Egan was anything but up front and I received no satisfaction whatsoever from my dealings with her. During my 18 months of trying to reach her for an update which I never received, I was finally told by Ms. Egan on or around May/June of 2011 that her office would not be prosecuting Mr. Nooney, I received a call from a person in Ms. Egans office. This person informed me that my case against Mr. Nooney was continually being placed at the bottom of the pile of cases the State Auditors office was working on. The person I spoke (Mr. Alan Ludwig) with was not exactly clear as to why however he felt that this was a serious enough infringement to my rights that he phoned me to let me know. I received several calls from this person over a period of perhaps 5 months which led to this persons inability to work in an office that treated people this way. This person left the employ of the State Auditors Office some weeks later but not before offering me any assistance they could regarding my case and letting the powers to be know that this is in fact what took place.

4) It is my understanding that there are now more than fifty people involved in this debacle with William Nooney and many are out of California It is also my understanding after receiving an email from several of these people, that the amount

EXHIBIT 11

they have invested is over one million dollars. My brother Steven P. McGowan is out $10,000 not to mention any profit. I and my wife are out $30,000 without any profit. I was very concerned when I heard there were this many people who were swindled, that again Ms. Egan chose NOT to prosecute Mr. Nooney.

5) RE Money and state of montana Mike McCabe 3 10.msg This email (See below) will tell exactly when I heard from Lynn Egan the first time. As you can read, Bill Nooney simply told me to tell her all that happened. I had done this already with Lynn but I received no input back from her until Bill Nooney emailed me this email. Lynn Was the least cooperative person I have ever dealt with in any government and I am still waiting to hear back from her regarding an update!!!

MAIL FROM ABOVE:

From: Jerry McGowan
Sent: Thursday, July 07, 2011 2:11 PM
To: 'contactdoj@mt.gov'
Cc: Steve McGowan; Michael P. McCabe (mikem@ddrcopper.com)
Subject: Mr. William Nooney, past State Rep for the State of Montana

Good Afternoon Mr. Bullock, Attorney General for the State of Montana,
My name is Jerry McGowan, I am a resident of Montana currently presiding in Alberton. Almost two years ago, Mr. Nooney sought money for an investment with me, and many others here in Montana, for a company I have come to know, was defunct when the money was raised. After more than two years, the agreement we had was deemed fraudulently

EXHIBIT 11

obtained by Mr. Nooney and others. I have spoken with Lynne Eagan, with the fraud division of Montana. When I spoke with her many months back AFTER she called to obtain information on this case, I was more than concerned when her demeanor was more about NOT having a past Montana State Rep in the public eye for something he had done. I had my brother, who is partner in large law firm back East, contact Lynne and he heard from her that there is probably NO reimbursement for this loss even AFTER Lynne mentioned Mr. Nooney had agreed to work with her and he gave her some money toward us victims.

Since that call, I have heard nothing back from Ms. Eagan or anyone else supposedly working this case. Now, Mr. Nooney has NO licenses to raise funds OR obtain cash and yet, he is still doing so with the full knowledge of your department as his emails keep coming looking for investors.

I am a business owner here in Missoula with several other Montanan's. I am very disappointed that I cannot even get Ms. Eagan to return my call as I have inquired several times regarding this case.

I do NOT know where it stands, or where the victims stand regarding the money owed us, but I would sincerely appreciate your help in finding out.

I thank you for your time and look forward to hearing back from you on this matter.

Sincerely,

Jerry McGowan

Jerry McGowan, President

Flexsolate, LLC

Cell: 406-550-0882

Fax: 406-327-9602

email: jerry@flexsolate.com

www.flexsolate.com

www.gyminabag.net

EXHIBIT 11

FURTHER AFFIANT SAYETH NAUGHT

DATED this 17th day of October, 2012.

Jerry McGowan
Affiant

EXHIBIT 11

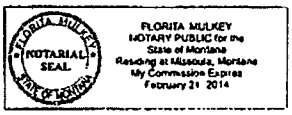
STATE OF MONTANA)

) :ss

County of Missoula)

On this 12th day of October, 2012, before me, a Notary Public in and for the state and county aforesaid, personally appeared Jerry McGowan, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.



Florita Mulkey

NOTARY PUBLIC for the State of Montana

Residing at: Missoula

My commission expires: 2-21-2014

EXHIBIT 11

EXHIBIT J

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6 MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY
7
8 STATE OF MONTANA,) Cause No. DC-11-117
9)
Plaintiff,)
10)
vs)
11)
HARRIS HIMES,)
12)
Defendant.)
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16
17 **TRANSCRIPT OF PROCEEDINGS**
18
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21
22
23 BEFORE: THE HONORABLE LOREN TUCKER
District Court Judge
24 Dillon, Montana
Thursday, February 21, 2013
25

1 MR. MONFORTON: I may have misunderstood
2 counsel's words. I think whatever order the Court would
3 prefer taking these motions in.
4 THE COURT: Well, all right, in general it seems
5 to me that certainly one of the central issues, one of
6 the ones that is important to both parties is this
7 matter of argued selective prosecution. So, that seems
8 to me to be a good place to start.
9 MR. O'NEIL: Yes, Your Honor.
10 THE COURT: That is Mr. Himes' motion, so I'm
11 going to ask you, Mr. Monforton, to commence. Now, I'm
12 assuming, and perhaps I should clear up this assumption
13 at the outset, I've been assuming that we're going to be
14 hearing arguments here. And that today neither of you
15 plan on presenting evidence; am I right?
16 MR. MONFORTON: Correct, Your Honor.
17 MR. LASLOVICH: That's our understanding, Your
18 Honor.
19 THE COURT: Okay, thank you. Well, please go
20 ahead then, Mr. Monforton.
21 MR. MONFORTON: Thank you, Your Honor. With
22 regard to our selective prosecution motion, Your Honor,
23 I was a prosecutor in Los Angeles for almost ten years.
24 And as you can imagine, that office gets its share of
25 certainly race-based selective prosecution allegations.

1 I have never in my career seen anything like this.
2 THE COURT: And under your watch in Los Angeles,
3 of course, none of those allegations about selective
4 prosecution ever were successful.
5 MR. MONFORTON: Not the ones that I was involved
6 with; correct.
7 THE COURT: All right.
8 MR. MONFORTON: That's a good point to emphasize
9 on the record. I certainly was not involved in anything
10 that was granted. But even ... even the most egregious
11 stories that I would hear scuttlebutt in the hallways as
12 far as a prosecutor doing something wrong, a fellow
13 prosecutor doing this or not doing that, Your Honor,
14 nothing that I ever heard of down there compares to
15 this. We've briefed it thoroughly, and I don't want to
16 regurgitate everything. I know the Court has had an
17 opportunity to review the evidence, review our briefs.
18 Suffice it to say that there is substantial evidence
19 that my client did not get a fair shake at the ... at
20 the filing stage of this case. We are entitled to get
21 to the bottom of this, Your Honor. There is enormous
22 evidence of discriminatory intent by this office and
23 enormous evidence of discriminatory effect from the
24 bigoted statements made over and over and over again.
25 The fact that my client was denied a pre-filing

1 conference that every other suspect gets, denied a
2 chance to explain what happened --
3 THE COURT: Well, excuse me, let's focus on that
4 item for just a second. Let's assume for a minute that
5 it is as you described, that he was denied what you have
6 called a -- I think you called it a pre-filing
7 conference. Is that the phrase you used?
8 MR. MONFORTON: They use different phrases.
9 There's a come-clean letter that's described, a
10 pre-filing conference.
11 THE COURT: And I agree that there are different
12 phrases. I'm simply trying to come to an understanding
13 so that we are going to be talking about the same thing.
14 MR. MONFORTON: Yes, Your Honor.
15 THE COURT: Okay. Let's assume for a minute
16 that he is the only person who was, quote, denied that
17 opportunity. There are two things that must be
18 demonstrated in connection with that; are there not?
19 The first is that it was denied based upon some
20 unjustifiable classification; and secondarily, that it
21 was denied with discriminatory intent.
22 MR. MONFORTON: Correct, Your Honor.
23 THE COURT: Correct?
24 MR. MONFORTON: Correct.
25 THE COURT: All right. Well, what is the

1 evidence that Mr. Himes relies on to demonstrate that it
2 was based upon an unjustifiable classification?
3 MR. MONFORTON: The evidence is, among other
4 things, are the many statements made by members of that
5 office with regard to Christians being whack jobs, nut
6 cases, Nazis. We have a whole series of those
7 statements --
8 THE COURT: All right.
9 MR. MONFORTON: -- that are pretty clear --
10 THE COURT: This is the question that I'm
11 concerned about. In order for Mr. Himes to make that
12 showing, he must necessarily make a demonstration that
13 he was denied the pre-filing conference because he was,
14 and now I'm taking up a couple of other phrases here, an
15 outspoken conservative Christian or your phrases, not
16 mine, a Christian whack job or nut. Now, I wouldn't
17 expect that the Defendant might necessarily be able to
18 find a statement that was that explicit and that direct.
19 But the mere fact that a statement was made that that is
20 the opinion that some person has, and that he did not
21 have the benefit of a pre-filing conference, does not
22 translate into a conclusion that he was not accorded the
23 opportunity for a pre-filing conference because of those
24 opinions. So, the question the Court raises with Mr.
25 Himes now is what evidence does he supply to support

1 that inference?
2 MR. MONFORTON: The evidence, Your Honor, is
3 that -- the fact that there was no pre-filing conference
4 or come-clean letter is additional evidence showing the
5 discriminatory intent. If that was all that we had, I
6 think even that would be enough, but we have not only
7 the fact that he was singled out in terms of not being
8 able to have a pre-filing discussion or pre-filing
9 communication, we have the evidence of the statements,
10 offensive, offensive statements being made repeatedly
11 about Christians.
12 We have the fact that Count VII was added literally
13 weeks after he went on the radio and made substantial
14 criticisms about Ms Lindeen, and that Count VII was
15 filed without probable cause on a charge that was ten
16 years old. We have the evidence --
17 THE COURT: Well, let's halt there for a second.
18 The Court doesn't need to hear any arguments today about
19 a count being charged without probable cause. Now, I
20 don't think I inherited this case before that decision
21 was made, but that determination was made by a judge
22 somewhere. So, I don't think there's going to be any
23 benefit in arguing about a count filed without probable
24 cause to support an argument of selective prosecution.
25 Am I missing something here?

1 MR. MONFORTON: Your Honor, it shows the intent
2 of these prosecutors. The fact that this -- that
3 counsel --
4 THE COURT: Well, excuse me. The intent that
5 we're focusing on here is a matter of two things.
6 Selective prosecution, first, that the prosecution
7 occurred or didn't occur because of some unjustifiable
8 classification; and secondarily or secondly, equally
9 importantly, that there was a discriminatory intent.
10 Now, I repeat, I am unable to see any connection
11 whatsoever between a matter of probable cause as
12 determined by a judge somewhere and the premise that
13 he's proceeding on.
14 MR. MONFORTON: And it is our opinion, Your
15 Honor, given the fact -- given the testimony given by Ms
16 Egan, that they are very careful before filing a
17 securities count to make sure that there is a security.
18 They didn't do that with Count VII, which we believe is
19 additional evidence that this Defendant was treated
20 differently. Because with other defendants, they do --
21 they are careful about making sure they have probable
22 cause that a security was involved before a security
23 charge is filed.
24 THE COURT: Okay. Well, I understand your
25 theory on that. You and I have a fair amount of

1 discussion to continue on this item. But some of the
2 people who have other business that we've referred to
3 have come into the courtroom. So, as we agreed, I'm
4 going to ask your patience and we're going to take a
5 break here while we handle that.
6 * * * * *
7 (Whereupon, a brief recess
8 was held.)
9 * * * * *
10 THE COURT: Let's convene again in State versus
11 Himes. We have Defendant and counsel present. Mr.
12 Monforton, you were attempting to get started on the
13 argument about selective prosecution. Please continue.
14 MR. MONFORTON: Thank you, Your Honor. The
15 issue that we had left off with was the issue of
16 pre-filing conferences, the fact that my client did not
17 receive one. One of the most telling pieces of evidence
18 about that particular aspect of our motion, Your Honor,
19 is the fact that Ms Egan gave inconsistent statements as
20 to why Mr. Himes did not receive a pre-filing conference
21 or come-clean letter. Initially, she told Mr. Flaherty
22 in an interview that she had attempted to call Mr.
23 Himes, left a voice mail, identified herself and asked
24 Mr. Himes to call her back. Several months later,
25 during the deposition that we attempted to take of her,

1 she admitted that she made no effort whatsoever to
2 contact Mr. Himes, either telephonically or by letter.
3 The Supreme Court has been very clear in the *Reeves*
4 case, starting -- the *Reeves* case 2000, which we've
5 cited in our brief, that that kind of dissembling is
6 evidence that can show discriminatory intent. And what
7 makes it particularly probative, Your Honor, is the fact
8 that this took -- Ms Egan's statements about why Mr.
9 Himes didn't get a pre-filing conference, her statements
10 differed after it became apparent that we were
11 interested and concerned about this whole selective
12 prosecution issue. That makes this type of evidence
13 highly probative. It colored -- It colors everything
14 that took place in this case.
15 The fact that -- The lens of discrimination colors
16 everything that took place in this case, Your Honor.
17 And it explains why Ms Egan would be unwilling to give
18 Mr. Himes a chance to explain himself when she gives
19 that opportunity to every other suspect. It's because
20 she didn't like him. And we've presented some pretty
21 substantial evidence as to why she wouldn't have liked
22 him. So, this evidence about the denial of a pre-filing
23 conference for Mr. Himes is highly probative, one of
24 many aspects of our evidence that is highly probative.
25 Another aspect of this case that is highly probative

1 is the fact that Mr. Himes did not take a dime from this
2 alleged fraudulent conspiracy. They've alleged over and
3 over in their Information and in their affidavits that
4 Mr. Himes had credit cards in his name paid off with the
5 alleged victim's funds. That is patently false, and we
6 have demonstrated that in our brief. And frankly, none
7 of us on the Defense side are accountants or even close
8 to being accountants. It took a few hours of going
9 through the statements to realize that there's not a
10 penny that went to Mr. Himes. Not a penny, Your Honor.
11 And yet, he sits here today charged with six felonies.
12 Over charging doesn't even begin to describe this
13 case. And it is additional evidence that this man was
14 treated differently than other suspects that this office
15 deals with. He was excluded from witness interviews.
16 We have evidence from Ms Cross Guns, who spent 11 years
17 as an attorney in this office, saying, "Of course when I
18 did interviews I would let the Defendant or the suspect
19 participate." And yet not with this man. They wouldn't
20 let this man sit in on any interviews because they don't
21 like him.
22 And again, the evidence is clear as to why they don't
23 like him. They didn't even try to respond in their
24 briefs as to why he -- why this man and only this man
25 was excluded from witness interviews, from a pre-filing

1 conference. Why this man is being charged with six
2 felonies, and he didn't steal a dime. Why they made
3 repeated false statements to this Court in their briefs,
4 in the affidavits they've submitted. This is additional
5 evidence that this man has been treated differently at
6 the charging stage. And this Court is very much at
7 liberty to infer what the intent was, what the motive
8 was for treating this man differently than every other
9 person, every other suspect that this office deals with.
10 And what we're asking for, Your Honor, is not that
11 burdensome. Looking at the cases dealing with selective
12 prosecution discovery, and they're primarily federal
13 cases, one of the themes that keeps coming up over and
14 over is that courts don't like to, generally, grant
15 these motions because it imposes enormous burdens on the
16 State to produce evidence that normally the State would
17 not have to produce. That's not the situation that we
18 have here, Your Honor. What we have asked for, they've
19 essentially agreed to except for the fact that they want
20 to redact all the names on the reject files, all the
21 names on the come-clean letters that we need to see, and
22 all the names on the --
23 THE COURT: What's a reject file that's
24 important to you?
25 MR. MONFORTON: Maybe that's a -- Maybe that's

1 not the appropriate term. What we're looking for is we
2 want to see cases in which charges were not filed. We
3 want to be able to determine if any of those -- if in
4 any of those cases there were suspects that were in the
5 same -- were similarly situated to Mr. Himes, outspoken
6 Christian conservatives. For example, if they could
7 produce, let's say, ten cases in which suspects
8 similarly situated to Mr. Himes were not charged with,
9 and they had -- there were similar allegations to Mr.
10 Himes, that might be evidence to disprove that a
11 discriminatory motive was at issue in this case.
12 What we strongly suspect we will find is that, in
13 those cases in which suspects were not filed, that they
14 did not share the same kind of beliefs or at least
15 express those beliefs the way that Mr. Himes did, which
16 is an essential -- And that really goes to the second
17 prong of the *Armstrong* test, whether there's a
18 discriminatory effect, in essence, whether there are
19 similarly situated suspects that were not filed against.
20 That's an important showing that we have to make. We've
21 already made that to some degree with the four suspects
22 that we know about. We need to be able to probe that
23 issue further.
24 Your Honor, if I may inquire, does the Court have any
25 questions at this point?

1 THE COURT: I'll make sure that I inquire when I
2 do.
3 MR. MONFORTON: Okay, thank you, Your Honor. We
4 have evidence of direct -- direct testimony of
5 statements, grossly offensive statements, being made
6 repeatedly. Not just one or two errant comments, one or
7 two inappropriate jokes. If that's what this case was
8 about, we wouldn't be here. We have the person who has
9 charging authority in this office repeatedly making
10 vulgar comments, bigoted comments. I submit, Your
11 Honor, that if my client was African American and the
12 people in the auditor's office were using the N word as
13 often as they used epithets against conservative
14 Christians, they wouldn't be here. They wouldn't be
15 proceeding on this case because it would be so
16 embarrassing.
17 And I submit that the kinds of comments that were
18 made about devout Christians over and over and over
19 again are no less offensive and no less inappropriate
20 than a racially derogatory remark. Or even putting it
21 on the same -- Even if my client were Jewish instead of
22 conservative Christian, if there were repeated
23 references about Jews, about greedy Jews, or some of the
24 other nasty things that are said about Jews, again, I
25 don't think they'd be here. I don't think they'd be

1 proceeding on this case, because it would be so
2 embarrassing and so offensive and that would be so clear
3 to everyone. And I submit that this is no different.
4 THE COURT: Does that cover it then?
5 MR. MONFORTON: Your Honor, briefly, with regard
6 to discriminatory effect, I detail this in detail in our
7 brief. We have four suspects similarly situated to Mr.
8 Himes except not so similar insofar as they were accused
9 of taking far greater sums and yet no charges were
10 filed, no administrative charges, no civil filings, no
11 nothing. In fact, with regard to one of those suspects,
12 Bill Nooney, Ms Egan -- or the State, in their brief,
13 said, "Mr. Nooney is not an appropriate example for the
14 Defense to use because we're still investigating him."
15 We have direct testimony in the form of an affidavit
16 from one of Mr. Nooney's victims who was told by Ms Egan
17 a year and a half ago that the auditor's office was not
18 going to proceed on Mr. Nooney. One of many examples
19 of, to put it charitably, inconsistent statements with
20 regard to our motion, which is also evidence that can
21 and should be taken by this Court in terms of
22 determining whether ... whether our motion is valid or
23 not and whether it should be granted.
24 Again, what we are asking for is -- We're not asking
25 to tear the place apart. We're not asking to impose

1 undue burdens on the auditor's office. We're asking for
2 evidence that they have offered to us except we want
3 that evidence without ... without it being redacted, for
4 reasons that we've explained. It's not -- We're not
5 asking for the moon. We're simply asking to be able to
6 get to the truth of this. And we've indicated that we
7 are more than willing to stipulate to a protective
8 order. I'd be happy to draft one. I imagine the Court
9 has its own sense of what a protective order should look
10 like in a situation like this.
11 They've not made any kind of indication as to why a
12 protective order would not be appropriate in this
13 matter. The evidence would be highly probative for Mr.
14 Himes. There would be no prejudice to the State by the
15 Court granting our motion.
16 THE COURT: Does that cover it then?
17 MR. MONFORTON: One other point to emphasize,
18 Your Honor, is that I have been speaking quite a bit
19 about Ms Egan. There is testimony, again direct
20 testimony, that one of the prosecutors -- And I -- He
21 has a nice smirk on his face. He seems to think it's
22 funny. But he also --
23 THE COURT: Excuse me. One thing -- Let's make
24 one thing clear here. I'm going to ask you to address
25 the Court. I'm going to ask you to comment about the

1 case, not about opposing counsel.
2 MR. MONFORTON: Yes, Your Honor.
3 THE COURT: Please go ahead.
4 MR. MONFORTON: One of the prosecutors on this
5 case also made the kinds of deeply offensive remarks
6 that we've ... that we've discussed with Ms Egan. At
7 this time, Your Honor, I'm not going to belabor anything
8 more than what we have in the briefs. I'm happy to
9 entertain whatever questions this Court has.
10 THE COURT: All right, thank you. What we'll do
11 then is give the State a chance to respond, please.
12 MR. LASLOVICH: Your Honor, if I may just stay
13 at counsel table?
14 THE COURT: That will be just fine. You suit
15 yourself.
16 MR. LASLOVICH: Let me first say, Your Honor,
17 that there's great irony to the Defendant's arguments in
18 that the victim in this case, Mr. Serata, is just as
19 devout a Christian as the Defendant. So, if we're to
20 take the Defendant's ... the Defendant's word that our
21 office is, in fact, selectively prosecuting outspoken
22 conservative Christians or conservative Christians in
23 general, we would have told Mr. Serata when he came to
24 us, "We're not helping." The logic doesn't make sense
25 just at its core.

1 As we cite in our brief, Your Honor, there's broad
2 prosecutorial discretion. Montana Supreme Court has
3 stated that. The United States Supreme Court has stated
4 that. And this defense counsel repeatedly said or
5 talked about the offensive language made by some
6 employees of the auditor's office. I would agree that,
7 if, in fact, the language was used by my co-counsel and
8 by our investigator, it is offensive. But does that
9 rise to the standard of discriminatory intent and
10 discriminatory effect? It doesn't. There is nothing in
11 the record, Your Honor, that shows that Mr. Himes is
12 being prosecuted because of his outspoken conservative
13 Christian beliefs.
14 The testimony that defense counsel has cited to the
15 former employees of our office, yeah, I think Ms Egan
16 said a few things over the course of 11 years that I
17 worked there. Ms Cross Guns' testimony with regard to
18 my co-counsel was, "Yeah, Mr. O'Neil said a couple of
19 things to -- or maybe two or three times," is Ms Cross
20 Guns' testimony. Taking that at its face value, is it
21 offensive? Yes. Still doesn't meet the rigorous
22 standard ... the rigorous standard that the *Armstrong*
23 court articulated for discriminatory intent and
24 discriminatory purpose.
25 As we also said, Your Honor, in our brief with regard

1 to this ... this come-clean letter and pre-filing
2 conference argument, there is just a basic
3 misunderstanding of what our office does when we get a
4 complaint, as we did here from Mr. Serata. We handle
5 matters administratively. We handle matters criminally.
6 And then sometimes we refer matters to the federal
7 government. And so, the four cases that Mr. Monforton
8 is referencing in his briefing and talked about today,
9 in particular Rick Young and Daniel Two Feathers, we
10 worked jointly with the United States attorney's office
11 to bring those two to justice.
12 THE COURT: Well, let me see if I'm under-
13 standing the conclusion you draw from that. And
14 therefore, you argue that Defendant's view of Two
15 Feathers and Young were mistaken and, in fact, they were
16 pursued. Is that the premise?
17 MR. LASLOVICH: That is correct, Your Honor.
18 THE COURT: Okay. I understand. Please go
19 ahead.
20 MR. LASLOVICH: Defense counsel also stated,
21 Your Honor, in argument that every other suspect that
22 our office investigates gets this pre-filing conference;
23 and that is not supported anywhere in the record. Ms
24 Egan testified in her deposition it's a case-by-case
25 determination. And the reason it's a case-by-case

1 determination is because of those different levels,
2 administrative, criminal and possibly federal.
3 His argument about not taking a dime from Mr. Serata
4 is ultimately a question of fact and has no bearing,
5 Your Honor, on whether he is being selectively
6 prosecuted. And I was surprised to learn for the first
7 time defense counsel's argument about false affidavits
8 being filed. I don't know what false affidavits he's
9 referring to.
10 And I do want to hit on, Your Honor, then I'll sit
11 down, that the Defendant needs both prongs under
12 *Armstrong*, the discriminatory effect and the
13 discriminatory intent. And to establish discriminatory
14 intent, the decision that the prosecutors made must be
15 in bad faith. And I just have to say, too, Your Honor,
16 that ultimately it's the prosecutor's responsibility.
17 As the person who signed the motion for the Affidavit to
18 file the Amended Information, everything that was in
19 that motion was on me.
20 This is ... this is -- This argument that Ms Egan is
21 somehow the puppet master and is dictating and forcing
22 me to sign the pleadings is ridiculous. It's ultimately
23 Mr. O'Neil and myself who are responsible for the
24 prosecution of the case.
25 THE COURT: And you're suggesting to the Court

1 that you do exercise some professional discretion in
2 analysis.
3 MR. LASLOVICH: Absolutely, Your Honor. And
4 that goes to my next point. The factors that are
5 outlined under the discriminatory effect analysis, under
6 the *Venable* decision, there are so many different
7 factors that a prosecutor uses and, in fact, I think the
8 record shows and we said in the brief that we did use
9 prosecutorial discretion. Ms Egan had something in her
10 report that she felt the Defendant should be charged on,
11 and we didn't charge the Defendant for that particular
12 item.
13 So, of necessity, a prosecutor has to exercise
14 prosecutorial discretion and it's for good reason, Your
15 Honor. I don't know how -- what we're supposed to do.
16 Mr. Monforton has alluded that we've agreed to provide
17 this information but we want to redact the names and
18 addresses of these folks that we've previously
19 prosecuted, former employees. I don't know how we are
20 going to, if the Court does ultimately grant the motion,
21 practically, go back to some of the folks that we've
22 prosecuted, whether it's criminally or administratively
23 or referred to the federal government, and said -- and
24 ask them, "Are you a Christian? What's the extent of
25 your Christianity? Are you an outspoken Christian?"

1 Your Honor we ... we don't do it. We don't know it.
2 And our position is that the Defendant can easily go
3 into our website where we have former cases, see the
4 results, and reach out to those folks and ask them what
5 the extent of their religious beliefs are. Practically,
6 Your Honor, it simply doesn't make sense.
7 THE COURT: Are you reporting then that some, a
8 significant part of, or all of what Defendant wants to
9 obtain is available to him by way of reviewing public
10 records?
11 MR. LASLOVICH: Certainly with regard to, Your
12 Honor, the folks that we've prosecuted. Now, I suspect
13 that Mr. Monforton may say, "Well, what about folks who
14 weren't prosecuted, who were similarly situated?" That
15 would not be public information. But I go back to my
16 point that, okay, the folks who were not prosecuted, are
17 we going to go back to them and say, "Mr. Smith, are you
18 an outspoken conservative Christian?"
19 THE COURT: Well, let me follow up my interest
20 in the other avenue of it for a minute. Records about
21 persons who are not prosecuted are, your statement now,
22 not public records? That's what I heard.
23 MR. LASLOVICH: Yes.
24 THE COURT: Is that what you intended?
25 MR. LASLOVICH: Yes, the folks who are not

1 prosecuted, that they would not be on our website and
2 would not be public records to the extent it's
3 confidential criminal justice information, Your Honor.
4 THE COURT: Well, I would assume that the kind
5 of information that Defendant would be interested in
6 finding out would not necessarily be only that X or Y
7 was prosecuted and a certain result occurred. But
8 Defendant's also likely going to be interested in
9 information about those cases which would help any
10 critical viewer determine what happened and why it
11 happened. So, some of that material would be criminal
12 justice information; wouldn't it? That is,
13 investigative reports, etc.?
14 MR. LASLOVICH: Yes. So, if I understand the
15 Court correctly, those cases where there was a final
16 resolution, a final disposition where it was not closed
17 by no action from our office, you're saying that that
18 information that led to the filing of that case, that is
19 not necessarily on the -- on our website would be
20 information that would be public.
21 THE COURT: Well, we're still speaking a little
22 bit at cross purposes, I think. Obviously, Defendant
23 has an able spokesperson; so, he can speak for himself.
24 But I think what he would say is, "Merely finding out
25 what there is on the public website isn't going to help

1 me, the Defendant. What I need to find out is
2 investigative materials that were involved in those
3 cases, which you folks, insurance commissioner,
4 securities regulator, have posted so that I can analyze
5 why you folks did what you did. And in order to do
6 that, I'll have to have access to the things that Mr.
7 Laslovich has just now described as confidential
8 criminal justice information."
9 MR. LASLOVICH: Yes, Your Honor. The
10 information I was saying was confidential criminal
11 justice information are those situations where we did
12 not take an action.
13 THE COURT: How about investigative reports on
14 cases where you did take an action?
15 MR. LASLOVICH: Would be public, Your Honor.
16 THE COURT: Well, a matter of confidential
17 criminal justice information is always a little bit
18 mysterious.
19 MR. LASLOVICH: It is, Your Honor.
20 THE COURT: When this first came into enactment,
21 I recall then prosecutorial services chief, the
22 estimable Governor Marc Racicot describing to different
23 county attorneys that nobody knows what it is. It
24 neither creeps nor flies. That was his phrase. But it
25 seems to me, nonetheless, that -- my understanding is

1 that investigative reports are criminal justice
2 information. Yet you're nonetheless satisfied that
3 those things would be available in the public records.
4 MR. LASLOVICH: And I -- Let me clarify, Your
5 Honor. I would say it depends. We have given our
6 investigative reports to folks who have asked for them,
7 particularly defense counsel, any kind of defense
8 counsel, on a case that was ultimately prosecuted by us.
9 But for those investigative reports where we did not do
10 anything, we maintain their confidentiality.
11 THE COURT: All right. Well, I've taken us on a
12 bit of an unhelpful tangent. In any event, your client
13 says that investigative reports for cases which are
14 prosecuted would be available to the Defendant.
15 MR. LASLOVICH: Yes, Your Honor.
16 THE COURT: All right. Please go ahead.
17 MR. LASLOVICH: And I guess what I was -- To go
18 back to the analysis of discriminatory intent and
19 discriminatory effect, there has to be a credible
20 showing. And I use credible because that's what the
21 Court in *Armstrong* uses, the Defendant's able to show
22 discriminatory intent and discriminatory effect. So,
23 this question, this dialogue that we just had, Your
24 Honor, about the confidential criminal justice
25 information, we only reach that point if the Court finds

1 that the Defendant has met his burden under the
2 discriminatory effect and discriminatory intent
3 analysis.
4 And the State respectfully submits that he falls far
5 short. It's simply not enough to come to this Court, to
6 make accusations based on offensive language that folks
7 in the auditor's office have used, none of which related
8 to the Defendant. He cannot point to anything in the
9 record, Your Honor, that shows -- including the two
10 folks, the former employees from our office -- that said
11 Ms Egan or Mr. O'Neil or myself or anybody else in the
12 auditor's office said, "We're going to prosecute the
13 Defendant because of his outspoken conservative
14 Christian beliefs or speech." There's nothing to
15 support that. And under the discriminatory intent
16 prong, that's what he needs to show, that he's being
17 prosecuted because of that, not in spite of it.
18 And going back, Your Honor, to the legitimate
19 prosecutorial factors, and I'll just end with this, just
20 as a matter of policy, the effect of this could be
21 chilling on prosecutors.
22 THE COURT: A line directly from the *Armstrong*
23 case.
24 MR. LASLOVICH: Pardon me?
25 THE COURT: That line is directly from the

1 *Armstrong* case.
2 MR. LASLOVICH: Well, I didn't -- Your memory is
3 better than mine. I didn't realize that, Your Honor. I
4 appreciate at that.
5 THE COURT: Well, at least that's my
6 recollection. Please go ahead.
7 MR. LASLOVICH: Well, if -- Well then, I agree
8 with it, because what it does is --
9 THE COURT: Well, good. Then the Supreme Court
10 got it right for a change.
11 MR. LASLOVICH: No, no, Your Honor. I am --
12 What I'm saying is that we have a case where the
13 Defendant has been charged with six felonies; and he
14 will make a compelling argument, I'm sure, at a trial to
15 a jury of his peers as to whether he's guilty or
16 innocent of those charges. Instead of focusing on that
17 and moving towards trial, we have this selective
18 prosecution brief that alleges some very serious things,
19 things that defense counsel said he's never seen in his
20 life prosecuting.
21 And it is going to become a fishing expedition and
22 questioning the judgment of prosecutors throughout the
23 state. And in fact, Your Honor, if I can say, it
24 already -- if the Defendant's intent was that, it's
25 worked at our office, where we are second guessing

1 ourselves, because we're going to get an allegation that
2 we don't like Christians. Or that we're pursuing
3 something for a purpose other than the legitimate
4 purpose of justice. That a Christian victim went to the
5 Defendant said, "I have some money. I want to invest
6 it." And he said, "Invest in the Lord."
7 All well and good and just. But when it wasn't
8 invested as was represented by the Defendant and his
9 Co-Defendant, and he sought help, then we're there to
10 help. That's our role, to help. Not one time during
11 the course of this case did we think that, because the
12 Defendant is a Christian or an outspoken conservative
13 one at that, that we need to pursue him.
14 And as I reference in our response, Your Honor, it
15 wasn't until, ironically, defense counsel raised this
16 with his brief, where we are going around our office,
17 and Miss Nyland is an example, Tari Nyland, our
18 employee, that he used as someone that we subject vulgar
19 rants against her Christianity. Where I, for the first
20 time, had to go to Ms Nyland and say, "Ms Nyland, are
21 you a Christian?" And of course, she saw what the
22 Defendant said and submitted an affidavit to this Court
23 saying, "I'm offended by what Defendant's attorneys
24 represent in that brief. I'm a Christian. And not one
25 time has someone in the office discriminated against me

1 because of my beliefs." We didn't know her beliefs,
2 Your Honor, until this issue was raised.
3 So, I submit, Your Honor, just from a legal
4 perspective, he has not met the demanding and rigorous
5 burden under *Armstrong*. And we respectfully ask that
6 the Court deny the motion.
7 THE COURT: All right, thank you. Defendant's
8 entitled to reply if you wish to do so, Mr. Monforton.
9 MR. MONFORTON: Thank you, Your Honor. And I'll
10 be short. Probably the most important point to bring up
11 is this: If we could have gotten what we needed from
12 the auditor's website, we wouldn't be here. Or let me
13 put it differently. We would have filed a selective
14 prosecution motion on the merits rather than seeking
15 discovery. The discovery we need is not on their
16 website. It is not a matter of public record. We need
17 to know what suspects were not filed against and why.
18 We cannot get that through a public records request, or
19 through the website, or any other source that ... that
20 we have access to without a court order. That is why we
21 are here.
22 Another aspect of evidence that we need is we need to
23 see the come-clean letters or other indicia or evidence
24 as to pre-filing conferences. They say that these are
25 given on a case-by-case basis. There's a couple

1 problems with that argument. Number one, it's directly
2 contradicted by their own current employee, Mr. Navarro,
3 who has testified that those go out on every occasion.
4 Ms Cross Guns has essentially said the same thing. We
5 need to ... we need to get to the bottom of that.
6 Why, first of all, do come-clean letters or other
7 efforts at pre-filing communications, are those made on
8 a case-by-case basis as they are claiming today? Or are
9 they made on virtually every case, as other auditor
10 witnesses have said. That's an important issue. Second
11 issue is, what happens with those come-clean letters?
12 What decisions are made? What are the bases of those
13 decisions? Those are all important questions that we
14 need to be able to analyze and to probe. And we simply
15 cannot do that without having access to records that are
16 not available to the public.
17 On Page 38 of Ms Egan's deposition, she references
18 referrals that she writes up as far as who should be
19 charged and why or whether they should be charged.
20 Those are documents that we need to see as well, Your
21 Honor. Those documents will also shed light as to how
22 charges get -- if they get ... if they get filed, why
23 they get filed. And it will also shed some light on
24 just how much influence Ms Egan has. We have direct
25 testimony --

1 THE COURT: Excuse me. I'm sorry to interrupt
2 you, but what difference does it make how much influence
3 Ms Egan has?
4 MR. MONFORTON: Because if she is a decision
5 maker and she's biased against a particular suspect
6 group, that has -- that ... that proves discriminatory
7 intent right there. Not only for decisions on who to
8 charge, but also declination authority. It is
9 undisputed that Ms Egan has the authority to decline to
10 proceed on cases, either civilly or criminally. Again,
11 our witnesses have said, have testified under oath to
12 that effect. And there's been no counter-evidence
13 presented by the auditor's office that she has absolute
14 declination authority. And that this --
15 THE COURT: Well, excuse me. Help me understand
16 that part of it. Let's assume all those things are as
17 you recited unrefuted. But we aren't concerned here
18 about not prosecuting. We're concerned here about -- at
19 least the Defendant's motion is unfair, improper
20 justification in the classification with discriminatory
21 intent to prosecute him. Now, I haven't heard anything
22 that indicates that Ms Egan is entitled to prosecute
23 anybody. These gentlemen sitting over here tell me that
24 they're the ones that make that decision. Now, that
25 seems to make some sense to me. What am I missing?

1 MR. MONFORTON: Okay, couple points, Your Honor.
2 If she has unfettered declination authority, and he has
3 as much right to be able to avail himself of that
4 declination authority as anyone else, that is very much
5 a claim of discriminatory intent that we can make. Not
6 only ... not only looking at who has authority to file
7 charges, but who in the office has authority to take a
8 case off its tracks and not allow it to proceed any
9 further, not allow it to even get to their desks. The
10 unrefuted evidence that we --
11 THE COURT: Well, but halt there for a minute.
12 You're talking about what Ms Egan can prevent, but
13 that's not the issue here. The issue is a prosecution
14 going forward. These gentlemen insist that they're the
15 ones that make that decision, not Ms Egan. Am I missing
16 something?
17 MR. MONFORTON: With all due respect, Your
18 Honor, an important aspect of this claim is the fact
19 that Mr. Himes did not get to get himself on the exit
20 ramp, so to speak, that many other suspects are able to
21 with the auditor's office. The auditor's office has,
22 for lack of a better term, an exit ramp. And Ms Egan is
23 the gatekeeper of that exit ramp.
24 THE COURT: And she prevented him from, using
25 your phrase, getting onto the exit ramp.

1 MR. MONFORTON: She didn't give him a chance to
2 even get on it.
3 THE COURT: How did she require that these
4 gentlemen prosecute him?
5 MR. MONFORTON: We have direct evidence from Ms
6 Cross Guns ... from Ms Cross Guns and Mr. Ludwig that
7 she decides who is to be prosecuted and who is not. I
8 understand they're here denying that. We have sworn
9 testimony from an -- one of them being an attorney in
10 that office, saying that she does have that authority.
11 And one of the important points to emphasize with this
12 motion, Your Honor, is that our burden is not to prove
13 anything. Our burden, under *Armstrong,* is to show some
14 evidence of discriminatory intent.
15 THE COURT: Isn't that a burden of proof?
16 MR. MONFORTON: Yes, Your Honor, and it is --
17 THE COURT: Okay. So, the statement that he
18 doesn't have to prove anything is, at best, inadvertent
19 or mistaken or inconsistent then; correct?
20 MR. MONFORTON: He doesn't have to prove
21 anything. He has to simply present evidence to the
22 Court. The Court, at this stage with this motion, is
23 not required to make findings of fact to determine
24 whether our witnesses are accurate or their witnesses
25 are accurate. Our only burden at this point is to

1 present the Court with some evidence of discriminatory
2 intent.
3 THE COURT: Well, how about this phrase then:
4 Doesn't the case law require him to make a, quote,
5 "credible showing", close quote?
6 MR. MONFORTON: Yes, Your Honor.
7 THE COURT: Okay. Pardon me if that is a
8 mistaken and improper use of the term proof.
9 MR. MONFORTON: I will --
10 THE COURT: Please go ahead.
11 MR. MONFORTON: I will acknowledge that
12 argument, Your Honor.
13 THE COURT: Well, it's not an argument. It's a
14 statement of the law; isn't it?
15 MR. MONFORTON: Yes, Your Honor. Yes, Your
16 Honor.
17 THE COURT: All right. Well, please go ahead.
18 MR. MONFORTON: Ms Cross Guns has presented --
19 We have presented credible testimony through Ms Cross
20 Guns' sworn statements that these gentlemen have
21 charging -- that Ms Egan has decision-making authority
22 over who gets charged and who does not. Mr. Ludwig has
23 given sworn testimony to that effect. These two
24 witnesses, having given sworn testimony, constitutes
25 credible evidence. I understand the prosecutors

1 disagree. That is conflicting evidence. That does not
2 negate the evidence that we have presented.
3 And I should -- And to emphasize, it's not just Ms
4 Egan. It's one of the prosecutors who did sign the
5 documents in question. I believe Mr. O'Neil signed. I
6 don't know if -- I can't remember if he signed the
7 original Information or the Amended Information, but he
8 is ... he is one of the prosecutors. So, it isn't
9 strictly Ms Egan.
10 THE COURT: Well, if it's not Ms Egan, then why
11 are you spending all that time talking about Ms Egan?
12 MR. MONFORTON: Because Ms Cross Guns and Mr.
13 Ludwig told us under oath that she has decision-making
14 authority with regard to criminal charges. That's why
15 I'm --
16 THE COURT: All right. What connection are you
17 making here with Mr. O'Neil and the fact -- How is it
18 important that he signed an Information or an Amended
19 Information?
20 MR. MONFORTON: Mr. O'Neil is part of the
21 prosecution team. And again, according to our
22 witnesses, Mr. O'Neil has made a number of derogatory
23 statements about Christians.
24 THE COURT: All right. I thought that was the
25 premise, but I wanted to make certain of it.

1 MR. MONFORTON: Yes, Your Honor.
2 THE COURT: Do you have it covered on this
3 motion?
4 MR. MONFORTON: If I could have just a moment,
5 Your Honor.
6 THE COURT: Yes, sir.
7 MR. MONFORTON: Unless the Court has any --
8 there's any questions for me, I will submit at this
9 point.
10 THE COURT: All right, thank you.
11 MR. MONFORTON: Thank you, Your Honor.
12 THE COURT: Thank you, counsel, for your
13 arguments on this. The Court's prepared to rule. It's
14 not going to be required to take this matter under
15 advisement further on the Defendant's motion to compel
16 production of selective prosecution evidence. The test
17 here, first, is that there must be a credible showing of
18 an unjustifiable classification. And if there is such a
19 showing, there must be a showing that it was undertaken
20 with discriminatory intent.
21 The items upon which Defendant relies as recited by
22 Defendant are that he wasn't allowed a pre-filing
23 conference. The words, and this is a direct quote from
24 counsel, is that he was not given a pre-filing
25 conference because, quote, "Ms Egan didn't like him,"

1 close quote. There isn't anything there that draws a
2 connection between prosecution and Mr. Himes'
3 classification or description as an outspoken
4 conservative Christian.
5 Now, at this point it's worth stopping for just a
6 second. This Court is not interested in any person's
7 pejorative terms about any person's beliefs. There have
8 been times throughout history, and if you are a better
9 Bible scholar than I am, there are perfectly clear times
10 that Christians have been persecuted unto death.
11 There's no room for that. That's not to be allowed.
12 That's not what our country stands for. Religious
13 belief is as sanctified as race and some of these
14 latterly discovered important constitutional
15 considerations of gender preference and other sorts of
16 things. So, this Court is not at all going to
17 countenance a situation in which there is discrimination
18 upon some kind of religious basis. The Court simply is
19 not going to be party to any part of it.
20 Nonetheless, the test, as set out in that *Armstrong*
21 case upon which both parties rely, is just as I've
22 described. It is not sufficient to make an argument
23 that "it happened because." There must be, as Mr.
24 Monforton acknowledged, a credible showing. And that
25 credible showing must demonstrate two elements. The

1 fact that a pre-filing conference was not allowed
2 because Ms Egan didn't like Mr. Harris Himes provides no
3 connection to religious classification whatsoever.
4 The fact that Ms Egan has made inconsistent
5 statements, and I'm assuming that these are facts as
6 defense counsel has asserted them to be, may create some
7 interesting opportunities for cross-examination in the
8 event that she's called to the stand. But inconsistent
9 statements do not, in and of themselves, demonstrate any
10 kind of connection to unjustifiable classification. The
11 fact, again assuming the assertion made by Defendant in
12 this hearing that Defendant took not one dollar from any
13 credit cards, is a question of fact for the fact finder
14 to determine whether the elements of the charges pressed
15 against the Defendant have been proved. I see no
16 connection whatsoever of any sort in that situation
17 between prosecution and selective prosecution.
18 Defendant urgently argues that he was treated
19 differently. The principal factor upon which I've been
20 able to focus, based upon defense counsel's arguments,
21 is this matter of no pre-filing conference. The Court
22 would be required, first of all, to assume the accuracy
23 of that assertion in order to come to a conclusion that
24 the Defendant was treated differently. But even if he
25 was treated differently, that argument alone is not

1 sufficient. It must be demonstrated that he was treated
2 differently because of an unjustifiable classification.
3 I repeat once again, this Court is not interested at
4 all in considering any kind of debasement or demeaning
5 of any person's beliefs. And I would suppose that you,
6 Mr. Laslovich, and you, Mr. O'Neil, have already had
7 some discussions in your office about the complications
8 which ensue when people who are bigots, if there are
9 any, run off their mouths unnecessarily and improperly
10 and how much they complicate the task that prosecutors
11 might have in this kind of case. But I have not, Mr.
12 Monforton, encountered any connection between a few
13 miscellaneous bigots -- And I'm going to assume that
14 they exist and all the things you referred to, and I
15 appreciate the fact that you have not given voice to the
16 particulars, that all of those things have occurred.
17 There simply is no connection between those statements
18 and these two gentlemen's determination to prosecute.
19 And I need to tell you directly, Mr. Monforton, an
20 argument that Ms Egan, some person who is not the
21 prosecutor, has been able to make a determination about
22 which cases are going to go forward and which are not
23 going to go forward simply is not persuasive. Even if
24 Defendant's belief that he has shown or can show that
25 persons who are not outspoken conservative Christians

1 were not prosecuted existed, that still fails. It does
2 not show the necessary connection that those persons
3 were not prosecuted because they were outspoken
4 conservative Christians.
5 I recognize that Defendant is deeply suspicious of
6 that. I recognize that he has grave concerns about it.
7 But the *Armstrong* case is clear. He must first make a
8 credible showing. A suspicion in that regard is no
9 showing at all. In all the argumentation presented
10 today, there is nothing to which counsel has been able
11 to point to to demonstrate that, I'm going to make this
12 continued assumption, that the bigots in the auditor's
13 office -- and I frankly don't know if they exist, but
14 let's assume for a minute that there are bigots in the
15 auditor's office -- there is nothing in this record
16 which demonstrates that those persons's ire and narrow-
17 minded view has been directed to Mr. Himes or in
18 connection with his case.
19 Undoubtedly, the reason for a somewhat different rule
20 of discovery in this circumstance is because of those
21 things which the Court noted in the *Armstrong* case. It
22 may be possible that this issue of a come-clean
23 conference or letter or interview may possibly have some
24 impact on somebody's credibility if somebody testifies.
25 However, at this juncture, it's not even possible to

1 ascertain if that's in any fashion relevant. What I'm
2 describing here is that the Court makes no ruling about
3 the utility of such assertions or evidence at trial
4 except to point out that it is so attenuated at this
5 juncture the Court is not even certain that it's going
6 to be relevant.
7 I also acknowledge that the rules for discovery,
8 generally speaking, provide for exactly what it is that
9 Mr. Himes would like to undertake here, and that is a
10 fishing expedition. However, in this case, where his
11 issue is directed toward selective prosecution, there is
12 no open-handed, open-ended fishing expedition allowed.
13 The Supreme Court has made that perfectly clear in the
14 *Armstrong* case. I repeat again, there must first be a
15 credible showing with a connection between a prosecution
16 decision and some unjustifiable classification. None
17 has been shown.
18 If that had been shown, there must be shown that that
19 was undertaken with a discriminatory intent. There's no
20 showing here in that regard. The Supreme Court
21 undoubtedly concluded, stated it concluded that the
22 reason for the ruling in this type of case is because of
23 the inherent callosal burden that might be imposed upon
24 public prosecutors in the event the open-ended,
25 unqualified fishing expedition otherwise allowed would

1 be authorized; and because of the chilling item that Mr.
2 Laslovich referred to in the event it ruled out. The
3 Court is unable to find sufficient persuasion in
4 Defendant's motion to compel production of selective
5 prosecution evidence, and therefore it is denied.
6 Now, let's move to Mr. Himes' Motion to Dismiss
7 Counts II and III. Would you like to be heard on that,
8 Mr. Monforton?
9 MR. MONFORTON: Thank you, Your Honor. Your
10 Honor, with regard to that motion, there are several
11 bases upon which this Court should grant our Motion to
12 Dismiss Counts II and III, the securities counts of the
13 Amended Information. First and foremost, the State's
14 answer brief is untimely. Under the rules, they were
15 supposed to file their Answer -- They filed their answer
16 several days after what Rule 2(b) requires.
17 THE COURT: Is that first and foremost, or is
18 that a make way to the merits?
19 MR. MONFORTON: That's just a fairly simple
20 argument that doesn't take a lot of time.
21 THE COURT: All right. I understand the
22 argument. Please go ahead.
23 MR. MONFORTON: Thank you, Your Honor. As to
24 the second reason, there is an exception to the
25 securities counts to these allegations. There is an

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Petition for Writ of Supervisory Control to be mailed to:

Jesse Laslovich
Brett O'Neil
Special Deputy Ravalli County Attorneys
Special Assistant Montana Attorneys General
Office of the Commissioner of Securities & Ins.
Montana State Auditor
840 Helena Ave.
Helena, Montana 59601

The Honorable Loren Tucker
District Court Judge
2 S. Pacific #6
Dillon, Montana 59725

DATED: Apr 4, 2013

Matthew G. Monforton