

1/23/17

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Attorneys for Marcus W. Nye

IN THE SENATE OF THE STATE OF IDAHO

IN THE MATTER OF:)
)
THE CONTEST OF THE ELECTION)
OF)
)
MARCUS W. NYE)
(a/k/a "MARK" NYE))
)
TO THE OFFICE OF STATE)
SENATOR, IN AND FOR)
LEGISLATIVE DISTRICT NO.)
TWENTY-NINE)
)

**VERIFIED MEMORANDUM OF COSTS
AND ATTORNEY FEES**

COMES NOW Incumbent, Senator Marcus ("Mark") W. Nye, by and through the undersigned counsel, and hereby files Incumbent's Verified Memorandum of Costs and Attorney Fees. Having defeated the Contest of Election brought by Mr. Katsilometes, Incumbent (hereinafter "Senator Nye") hereby respectfully requests the Idaho Senate to use its Constitutional authority to award Senator Nye his costs and attorney fees.

I. ANALYSIS

Idaho Constitution Article III, § 9, entitled "Powers of each house" states:

Each house when assembled shall choose its own officers; **judge of the election, qualifications and returns of its own members, determine its own rules of proceeding**, and sit upon its own adjournments; but neither house shall, without the concurrence of the other, adjourn for more than three days, nor to any other place than that in which it may be sitting.

(Emphasis added.) This Section of the Idaho Constitution makes absolutely clear that the Idaho Senate is the master of its own destiny when it comes to the elections and qualifications of its members and in deciding the rules to be used when making such determinations. This includes decisions about awarding costs and attorney fees. This designation of powers to the Senate is consistent with the principle of separation of powers.

The Senate should award Senator Nye his costs and attorney fees for being forced to defend this meritless Contest of Election. By requiring Mr. Katsilometes to pay Senator Nye's costs and attorney fees, it will require Mr. Katsilometes to face the consequences of the choice he made to pursue this unfounded claim. It will also send a message to those considering following Mr. Katsilometes' example that if they choose to do so, there will be a price to pay. This will discourage similarly meritless claims while still providing a process to be used in those situations that truly warrant it.

Taking this approach will also send a message to sitting legislators and those considering running for the Legislature, as well as campaign volunteers, that the Legislature will not tolerate meritless claims and will not lightly subject volunteers, candidates for office, and others involved in the election process to invasive quasi-legal proceedings.

The Senate has the inherent power to require Mr. Katsilometes to pay Senator Nye's attorney fees. For the reasons stated herein, the Senate should use that power in this case.

II. VERIFICATION OF COSTS

The undersigned (hereinafter "Mr. Ruchti") hereby verifies and confirms to the best of his knowledge and belief that the costs incurred in this case by Ruchti & Beck, PLLC as listed and described in the attached Statement dated 1/17/2017 are correct and were actually incurred on behalf of Senator Nye in the defense of this Contest of Election. The attached Statement is a record kept by Ruchti & Beck, PLLC in the regular and ordinary course of the law firm's business. Said costs total \$1,711.84.

III. VERIFICATION OF ATTORNEY FEES

Mr. Ruchti hereby offers the following statements in support of Senator Nye's claim for attorney fees earned by Ruchti & Beck, PLLC:

1. Mr. Ruchti was admitted to practice law in the State of Idaho in 2001. After a one-year judicial clerkship, the undersigned entered into private practice and has been a civil litigator since that time.
2. In December, 2009, Mr. Ruchti and his law partner opened up their law firm specializing in civil litigation. To defend this action, Senator Nye hired Mr. Ruchti.
3. The legal experience Mr. Ruchti has gained since 2001 has provided him with the skills, knowledge, and expertise to assist Senator Nye in defending this action.
4. Mr. Ruchti is providing legal services to Senator Nye at a reduced rate of \$200.00 per hour. His regular hourly rate is \$225.00 per hour. These attorney fee rates are reasonable and consistent with hourly rates charged by other attorneys in the Pocatello legal market with similar experience and skills and for the types of services required in this case.

5. Attorney fee hours billed through today's date are 90.3 hours, for a total of \$18,060.00. The attorney hours required in this case were reasonable under the circumstances. This work was performed from the end of November 2016 to the beginning of January 2017. In order to accomplish this work, Mr. Ruchti had to set aside other clients' pressing projects and had to work days which were intended to be used for time off with family during the holidays.

The following is a listing of tasks Mr. Ruchti accomplished to defend the Contest of Election:

- a. Received, analyzed, and organized a massive amount of emails, pleadings, subpoena documents, and other documentation;
- b. Participated in numerous email exchanges and telephone conversations with Contestant's attorney;
- c. Appeared at the location noticed for the December 9, 2016 depositions/subpoenas (the building at said location was locked, and nobody ever appeared);
- d. Drafted and filed notice of appearance and answer in response to Contestant's verified complaint;
- e. Attended election recount at Bannock County Courthouse on December 15, 2016 paid for by Contestant;
- f. Organized, reviewed, and analyzed a massive amount of documents responsive to the 12 subpoenas served by Contestant upon various donors to Senator Nye, campaign staff members, and Senator Nye's bank;
- g. Prepared for and attended Aaron Thompson's (Senator Nye's campaign treasurer) deposition on December 23, 2017 scheduled by Contestant;
- h. Prepared for and attended Kathy Bair's (assistant to Senator Nye's campaign treasurer) deposition on December 23, 2017 scheduled by Contestant;
- i. Prepared for and attended Senator Nye's deposition on December 28, 2017 scheduled by Contestant;
- j. Prepared for and attended Idaho Lorax's deposition on December 28, 2017 scheduled by Contestant;
- k. Drafted, filed, and telephonically argued Senator Nye's Motion for Protective Order regarding Contestant's request to videotape depositions and other issues;
- l. Obtained and reviewed legislative and procedural history from 1981 contest of election proceeding in preparation for drafting Senator Nye's opening brief;
- m. Reviewed file and identified documents to submit to Senate as the Record;
- n. Reviewed deposition testimony and Record to identify key facts and documents in support of Senator Nye's opening brief;


- o. Analyzed statutes, legal arguments and other evidence in preparation for drafting Senator Nye's opening brief;
- p. Drafted Senator Nye's opening brief;
- q. Reviewed and analyzed Contestant's opening briefs and Contestant's affidavit with various documents;
- r. Drafted Senator Nye's responsive brief;
- s. Reviewed and analyzed Contestant's responsive brief;
- t. Reviewed, prepared for, and telephonically argued against Contestant's Motion to Strike;
- u. Traveled from Pocatello to Boise and back for the Senate hearing;
- v. Prepared for Senate hearing presentation; and
- w. Participated in numerous meetings with client to discuss case.

CONCLUSION

For the reasons stated above, Senator Nye respectfully requests that the Senate award Senator Nye his costs in the amount of \$1,711.84 and his attorney fees in the amount of \$18,060.00 for a **total award of \$19,771.84.**

DATED this 18th day of January, 2017.

RUCHTI & BECK LAW OFFICES



JAMES D. RUCHTI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of January, 2017, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

J. Kahle Becker
 Attorney at Law
 223 N. Sixth Street, #325
 Boise, ID 83702

- U.S. Mail/Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile: 208-906-8663
- Email:
Kahle@KahleBeckerLaw.com



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Statement

Date
1/17/2017

RUCHTI & BECK, PLLC
 ATTORNEYS AND COUNSELORS AT LAW

To:
Mark Nye 173 S. 15th Ave Pocatello, ID 83201

				Due Date	Amount Due
				2/16/2017	\$1,711.84
Date	Description	Qty	Rate	Amount	Balance
12/19/2016	1854-001 Contest of the Election- Legislative Services Office fee for copies	1.00	37.20	37.20	37.20
12/23/2016	Deposition Transcript - Aaron Thompson	1.00	237.30	237.30	274.50
12/23/2016	Deposition Transcript - Kathy Bair	1.00	78.53	78.53	353.03
12/31/2016	Copy Charge	2,376.00	0.15	356.40	709.43
12/31/2016	Scan Charge	861.00	0.05	43.05	752.48
12/31/2016	Color Copy Charge	19.00	0.50	9.50	761.98
12/31/2016	Postage	1.00	0.47	0.47	762.45
01/04/2017	Deposition Transcript - Idaho Lorax	1.00	106.40	106.40	868.85
01/04/2017	Deposition Transcript - Marcus Nye	1.00	186.99	186.99	1,055.84
01/13/2017	Posters	1.00	280.31	280.31	1,336.15
01/16/2017	Lodging in Boise to attend hearing	1.00	123.17	123.17	1,459.32
01/16/2017	Mileage to and from Boise to attend hearing	1.00	252.52	252.52	1,711.84
				Amount Due	
					\$1,711.84

A finance charge computed by a periodic rate of 1% per month, which is an annual percentage rate of 12%, is charged upon the balance due at the end of the monthly billing period. No finance charge will be assessed on charges that are paid in full within 30 days of the first billing. However, finance charges when assessed will be calculated beginning on the first day following the due date.