

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0648

MONTANA ENVIRONMENTAL
INFORMATION CENTER and
EARTHWORKS,

Appellants/Plaintiffs, vs.

OFFICE OF THE GOVERNOR,
Appellee/Defendant.

Appellee Office of the Governor's Notice of Supplemental Authority

On Appeal from the Montana First Judicial District, Lewis and Clark County, Cause
No. DDV-25-2022-209, the Honorable Christopher D. Abbott presiding.

<p>Appearances:</p> <p>Dale Schowengerdt Timothy Longfield LANDMARK LAW PLLC 7 West 6th Ave., Suite 518 Helena, MT 59601 Telephone: 406.457.5496 dale@landmarklawpllc.com</p> <p><i>Attorney for Defendant-Appellant Office of the Governor</i></p>	<p>David K.W. Wilson, Jr. Robert M. Farris-Olsen MORRISON, SHERWOOD, WILSON & DEOLA, PLLP 401 Last Chance Gulch Helena, MT 59601 rfolsen@mswdlaw.com</p> <p>Derf Johnson MONTANA ENVIRONMENTAL INFORMATION CENTER P.O. Box 1184 Helena, MT 59624 (405) 443-2520</p> <p><i>Attorneys for Plaintiffs-Appellees</i></p>
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Appellee Governor Gianforte submits this notice of supplemental authority pursuant to M. R. App. P. 12(6). On July 9, 2024, another court in the First Judicial District denied a request for attorney fees brought by successful writ of mandamus petitioners under § 27-26-402(1), MCA. *Wild Montana v. Gianforte*, Cause No. ADV-2023-411, *Order – Motion for Attorney Fees and Costs*, Dkt. 73 (Mont. 1st Jud. Dist. July 9, 2024) (“Order”). That decision was on appeal to this Court until yesterday. *See Wild Montana v. Gianforte*, DA 24-0153, *Motion for Dismissal of Cross Appeal By Stipulation*, (Feb. 13, 2025).

Two aspects of the decision bear directly on the issues in this appeal. First, the *Wild Montana* District Court concluded that section 27-26-402(1), MCA “authorizes but does not mandate recovery of fees to a successful writ of mandate applicant.” Order at 4; *see* Appellee’s Answer Br. at 23–30. Second, the District Court reasoned that attorney fees were not warranted because, among other things, *Wild Montana* “presented an issue of first impression in which Respondents [Governor Gianforte and Secretary of State Jacobsen] litigated in good faith.” Order at 4; *see* Appellee’s Answer Br. at 38–40. Another judge from the First Judicial District has thus reached conclusions consistent with the District Court’s rationale in the litigation below and with Governor Gianforte’s arguments in this appeal.

A copy of the *Wild Montana* attorney fees order is attached.

Dated: February 14, 2025

By: /s/ Timothy Longfield
*Attorney for Appellee Office of the
Governor*

CERTIFICATE OF SERVICE

I, Timothy Longfield, hereby certify that I have served true and accurate copies of the foregoing Notice - Supplemental Authority to the following on 02-14-2025:

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Electronically Signed By: Timothy Longfield
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