

SYNOPSIS OF THE CASE¹

2025 MT 112, DA 23-0648: MONTANA ENVIRONMENTAL INFORMATION CENTER and EARTHWORKS, Plaintiffs and Appellants, v. OFFICE OF THE GOVERNOR FOR THE STATE OF MONTANA, Defendant and Appellee.

The Montana Supreme Court reversed a district court's decision that denied an award of attorney fees to Montana Environmental Information Center and Earthworks (MEIC) and recognized a presumption towards awarding attorney's fees when a plaintiff has prevailed in a right to know dispute.

MEIC successfully sued to obtain documents of state government under Article II, Section 9, of the Montana Constitution, after the Governor's Office refused to disclose requested documents related to the Department of Environmental Quality's dismissal of its "bad actor" enforcement action against Hecla Mining. The Governor's Office asserted a pending litigation exception as a shield from disclosure, which the District Court found to be "completely unmoored from the text, history, and purpose" of the constitutional right to know and the implementing public records statutes. The District Court issued a writ of mandamus compelling the Governor's Office to produce the information. Having succeeded on the merits of the litigation, MEIC requested attorney's fees under the relevant public records statutes. The District Court denied MEIC's motion, finding that the Governor's Office did not act out of bad faith, indolence, or unreasonable delay and that much of the information MEIC sought could have been obtained through discovery in separate ongoing litigation. MEIC appealed the denial of its motion for attorney's fees; the merits of the case were not ultimately appealed.

The Montana Supreme Court held that, in accordance with the constitutional presumption towards disclosure, plaintiffs who prevail in a right to know dispute are due a presumption towards an award of attorney's fees. The presumption is rebuttable, however, and a plaintiff should not recover fees in a successful right to know action if they were unreasonable in bringing or maintaining the litigation. A district court retains its historical discretion to weigh whatever factors it deems appropriate towards the ultimate question of whether the plaintiff reasonably believed that litigation was necessary to vindicate its constitutional interest.

Three justices concurred and wrote separately to address concerns that the Court's announcement of a framework to guide the exercise of the district courts' discretion was unprecedented. The concurrence noted that the Court had provided multiple such guiding frameworks over the years, including at least two instances involving a discretionary award of attorney fees provided by statute. The concurrence noted that a survey of cases in which this particular statute was applied revealed a considerable lack of consistency as to when

¹ This synopsis has been prepared for the convenience of the reader. It constitutes no part of the Opinion of the Court and may not be cited as precedent.

attorney fees were awarded, which had led both district court judges and several previous Supreme Court justices to lament the lack of guidance from this Court regarding the application of this statute. The concurrence noted that such guiding frameworks are not only common but essential to ensuring that parties' statutory rights to attorney fees were administered uniformly across district courts. The concurrence also addressed concerns that the outcome of this case was somehow personally or partisanly motivated by noting that historical outcomes of multiple cases involving the Governor's office and the State reflected no personal or partisan motivations in this Court's rulings.

Three justices dissented, pointing to decades of Montana Supreme Court decisions affording discretion to the district courts to apply their knowledge and familiarity with the case to decide whether to allow an award of attorney's fees. The District Court in this case did just that, considering the circumstances and balancing the benefit gained from litigating the public's right to know against the actions taken by the Governor's Office. A presumption in favor of awarding fees disregards the competing obligations a government agency has to make information available to the public *and* to protect individual privacy or confidentiality interests. In many cases, a court must resolve how to balance those interests. Because the record showed that the District Court used conscientious judgment in making its decision, the dissenting justices would have affirmed its ruling. One of the dissenting opinions discussed a concern that this case continued a recent troubling trend of the Court setting aside established authority to reach a case outcome.