

L. Randall Bishop

John Heenan



Colette B. Davies

Gene R. Jarussi
of Counsel

November 27, 2017

VIA EMAIL AND U.S. MAIL
County Attorney Marty Lambert
1709 W. College, Suite 200
Bozeman, MT 59771
Marty.Lambert@gallatin.mt.gov

RE: *Potential Criminal Prosecution- Rep. Greg Gianforte*

Dear Mr. Lambert,

We have not had the privilege to meet. I am a fellow member of the bar who is currently running for Congress to unseat Rep. Greg Gianforte. Like many Montanans, I have followed the press about the recent revelation that Mr. Gianforte lied to law enforcement during the course of the investigation into an incident involving Mr. Gianforte and reporter Ben Jacobs.

Specifically, as reported, Mr. Gianforte got into a physical incident with Mr. Jacobs on May 24, 2017. Mr. Gianforte was interviewed by Sgt. Scott Secor and stated that Jacobs "started interrogating in a very intensive way," and that "I probably shouldn't do it but I reached out for his phone ... he grabbed my wrist, he spun and we ended up on the floor ... so he pulled me down on top of him." Mr. Gianforte's account of the incident was contradicted by multiple witnesses who confirmed that Mr. Gianforte's assault of Mr. Jacobs was unprovoked.

As reported by the Associated Press, you stated, "When the police are investigating a case, suspects of crimes will say misleading things, and apparently that's exactly what happened here on the part of both Mr. Gianforte and his campaign," and that "It is not a crime *per se* to lie to the cops" and that "The main thing here is he was charged with assaulting Ben Jacobs and pled guilty to that."

Mr. Gianforte was charged with and pled guilty to assault in violation of MCA 45-5-201. The underlying conduct which subjected Mr. Gianforte to criminal liability was his causing bodily injury to Mr. Jacobs.

Mr. Gianforte's separate conduct of lying to law enforcement in the course and scope of their investigation is a separate crime subject to separate charges and punishment.

Specifically, MCA 45-7-202 makes it a crime for a person to falsely swear or affirm the truth of a statement made when the person does not believe the statement to be true. MCA 45-7-205 makes it a crime for a person to give false information to any law enforcement officer. And MCA 45-7-302 makes it a crime to obstruct, impair or hinder the enforcement of the criminal law. In *State v. Maloney*, 2003 MT 288, the Supreme Court affirmed the conviction of a person who lied to law enforcement when she stated that her car had been stolen when in fact it was repossessed. Thus, statutory and Montana Supreme Court authority supports charges against Mr. Gianforte for providing a false statement or statements to law enforcement in the course and scope of their investigation.

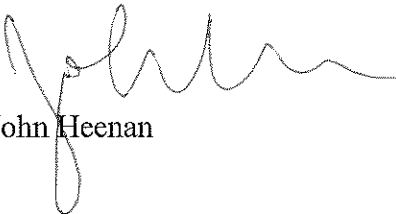
It concerns me that your office has known about Mr. Gianforte's additional criminal conduct for several months, yet no charges have been brought as yet. Fortunately, the statute of limitations for a crime under MCA 45-7-202, 45-7-205 or 45-7-302 has not passed. See MCA 45-1-205. Thus, charges against Mr. Gianforte can still be prosecuted on or before May 23, 2018.

As a concerned citizen who believes that no one should be above the law, I would urge your office to bring charges for what appears to be a separate, clear violation of Montana criminal law. To the extent your office is unable or unwilling to do because of time, budgetary constraints or otherwise, I would urge you to retain a special prosecutor. In this regard, I am willing to do so on behalf of the Gallatin County Attorney on a *pro bono* basis, e.g., for free. As you may know, I have extensive trial experience and have specific experience prosecuting violations on behalf of the State. See, e.g., *Comm'r of Political Practices v. Arthur "Art" Wittich*.

I am making this offer with the sincere hope that it will be accepted. I do intend, however, to make my concerns as expressed in this letter public as I know that I am not the only one concerned that our congressional representative will be allowed to get away with a crime.

Sincerely,

BISHOP AND HEENAN

A handwritten signature in cursive script, appearing to read "John Heenan". The signature is written in dark ink and is positioned above the printed name.

John Heenan