EXHIBIT 4
DATE 4-6-05
SB 319

State Bar of Montana Talking Points
S.B. 319 "Public Financing for Supreme Court Candidates"

- Senator Ellingson's bill is a well thought out response to the perceived impropriety associated with judicial candidates accepting private contributions from individuals and organizations whose cases may later be under the jurisdiction of those judges.

- The judicial branch is uniquely structured to be independent and separate from the legislative and executive branches. Judges are required to be impartial, neutral decision-makers who apply the facts of the case to the law, without looking to the prevailing popular trends, without fear or favor. Judges should not be elected because they favor a particular industry, philosophy or stand on crime. They cannot campaign on a platform nor should they be elected as representatives of a particular interest. Judges act only in the context of individual cases, the outcome of which cannot depend on the will of the public.

- Sen. Ellingson's testimony was compelling when he stated that impartiality and fairness are "the coin of the realm" for the judicial branch and cannot survive in the environment demonstrated by the Turnage/Trieweiller, Gray/Trieweiller, Nelson/Younkin races.

- When judges are required to campaign like political branch candidates, it contributes to the inappropriate politicization of the judiciary.

- When judges make decisions that favor contributors, they may be accused of favoritism. A 1999 national survey funded by the Hearst Corporation reported that 78% of Americans believe that elected judges are influenced by having to raise campaign funds. And 81% agree that politics influences court decisions. This bill would go a long way in addressing this inaccurate perception.

- This bill opens candidacy to those qualified candidates who are uncomfortable soliciting contributions and those who lack connections to wealthy contributors or have no personal resources to draw upon. Sen. Ellingson testified that Justices Gray and Trieweiller personally contributed the combined sum of $267,000 to their campaigns in 2000. At the end of October, 2004, Judge McLean raised $163,434 for his campaign against Brian Morris, who raised $149,277. Justice Nelson raised $252,466 in his race against Cindy Younkin, who raised $220,492. Justice Warner raised $27,382 for his uncontested race. [These are not final campaign amounts.]

- Other states with publicly financed Supreme Court races include Arizona, Massachusetts and North Carolina. Judges from those states laud public financing as returning the election process to "pure grass roots campaigning" because they are not focused on raising money and have the freedom to reject offers of campaign contributions.

Why Judicial Independence Matters

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Why Judicial Independence Matters

> "The law makes a promise---neutrality. If the promise gets broken, the law as we know it ceases to exist."
> - Supreme Court Justice Anthony M. Kennedy

First of all, what is "judicial independence"?

Judicial independence means that judges are free to decide cases fairly and impartially, relying only on the facts and the law. It means that judges are protected from political pressure, legislative pressure, special interest pressure, media pressure, public pressure, financial pressure, or even personal pressure.

Judicial independence goes back to the U.S. Constitution. Our country's founders, and each state's founders, worked to protect courts from undue pressure. They knew that it takes fair and impartial decisions to protect our rights—and uphold the rule of law.

More than 200 years later, judicial independence is still an important issue. Indeed, the threat to fair and impartial courts—and judicial independence—is growing.

- Special interests are spending millions to influence decisions and elect judges to serve their narrow interests, not the public interest.
- The cost of judicial campaigns is skyrocketing, forcing judges to raise money like politicians—and people believe that justice is for sale.
- Misleading and partisan attacks on judges' decisions are bringing politics into the courtroom.
- Americans say they don't have enough information to protect the courts that make important decisions about their lives.

No one expects judges to be perfect, or please everyone. That's why there are mechanisms to hold judges accountable. Rulings can be appealed up to the Supreme Court. Laws can be changed. Wrongdoing and ethical violations can be punished. In most states, judges must stand for re-election.

But most Americans agree with Tennessee Supreme Court Justice Adolpho A. Birch, Jr., who said: "Judicial independence is the judge's right to do the right thing or, believing it to be the right thing, to do the wrong thing."

For more on Why Judicial Independence Matters, try these discussions at some of our partners' websites:

ABA Standing Committee on Judicial Independence
http://www.abanet.org/judind/aboutus/home.html

American Judicature Society http://www.ajs.org/cji/whatisJI.html

Brennan Center for Justice
http://www.brennancenter.org/resources/resources_jiganda.html

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Glossary of Key Terms
Senator John McCain Supports Justice at Stake