

Montana State Legislature

Exhibit Number: 1

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SENATE STATE ADMIN

EXHIBIT NO. 1

DATE 4.19.05

FILE NO. HB 805-806

UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA

Donald W. Molloy, Chief Judge
United States District Court

(406) 542-7286
Fax (406) 542-7284

TO: Paul Clark, Representative, HD-13
FROM: United States District Court
RE: MontPIRG v. Brown (CI-37 & CI-38)
DATE: March 28, 2005

NUMBER OF PAGES TRANSMITTED: 22 (INCLUDING COVER SHEET)

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P. 6, ①
P. 8, ②
P. 10, ③
P. 11, ④ + ⑤

P. 12, ⑥
P. 13, ⑦
P. 16, ⑧ *
P. 17, ⑨
P. 21, ⑩
ORDER

FILED
MISSOULA, MT

2005 MAR 28 PM 5 44

IN THE UNITED STATES DISTRICT COURT

PATRICK E. DUFFY

FOR THE DISTRICT OF MONTANA BY

DEPUTY CLERK

MISSOULA DIVISION

MONTANA PUBLIC INTEREST RESEARCH)	CV 03-183-M-DWM
GROUP; MONTANA WILDLIFE FEDERATION;)	
INITIATIVE AND REFERENDUM INSTITUTE;)	
VERNER BERTELSEN; RICHARD SARGENT;)	
TOM SHELLENBERG; and ROBERT)	
SHEPARD,)	

Plaintiffs,)

vs.)

ORDER

BRAD JOHNSON, ¹ in his official)
capacity as Secretary of State for)
the State of Montana; and MIKE)
McGRATH, in his official capacity as)
Attorney General for the State of)
Montana,)

Defendants.)

I. Introduction

Plaintiffs Montana Public Interest Research Group, Montana Wildlife Federation, Initiative and Referendum Institute, Verner Bertlesen, Richard Sargent, Tom Shellenberg, and Robert Shepard ("Plaintiffs") filed this action pursuant to 42 U.S.C. § 1983²

¹ Plaintiffs' Complaint named Bob Brown as a Defendant in his official capacity as Secretary of State for the State of Montana. Bob Brown has since been succeeded as Secretary of State by Brad Johnson. The Court therefore substitutes Brad Johnson for Bob Brown pursuant to Rule 21, Fed. R. Civ. P.

² Section 1983 provides that

for declaratory and injunctive relief against Montana Secretary of State Bob Brown and Montana Attorney General Mike McGrath ("Montana"), alleging that Montana's recently adopted ballot access rules for voter-initiated legislation violate the First and Fourteenth Amendments of the United States Constitution. Plaintiffs are groups and individuals who have historically been actively involved in initiative and referendum processes in Montana.

Plaintiffs claim Montana's requirement that a proposed initiative be supported by the signatures of at least five percent of the qualified voters in at least half of Montana's counties violates the First Amendment rights of petition circulators and violates the rights of individual voters to equal protection of the law as guaranteed by the Fourteenth Amendment. Plaintiffs also challenge a separate provision requiring supporters of a proposed initiative to disclose the identities of paid signature gatherers employed in support of the proposed initiative. The disclosure requirement, Plaintiffs argue, violates the First Amendment because it places an impermissible burden on free speech by chilling political activity protected by

Every person who, under color of any statute, ordinance, regulation, custom, or usage . . . subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured....

42 U.S.C. § 1983.

the Constitution.

Pending before the Court are the Plaintiffs' motion for summary judgment on all claims and Montana's motion to conduct discovery. Montana maintains that disputed issues of material fact prevent summary judgment and that the Court must hear evidence before rendering a decision in the case. Plaintiffs counter that the challenged ballot access process is unconstitutional on its face and therefore no discovery is needed.

 In my view, Montana's law challenged in the first four counts of the Complaint is unconstitutional. Whether the reporting requirements questioned in the fifth count chill initiative proponents from exercising their First Amendment rights is disputed factually, so it is not subject to summary disposition.

II. Factual Background

Montana, like many of her sister states, allows direct legislation through ballot initiatives. The citizens of Montana have constitutionally reserved to themselves the powers of initiative and referendum. Mont. Const. art. III, §§ 4, 5 & 14. ^{ARTICLE} The Montana statutes create a scheme for implementing those retained powers, including provisions regulating the collection of signatures, the qualification of initiative and referendum measures, and the submission of qualified measures to the voters for approval or rejection. Mont. Code Ann. §§ 13-27-201, et seq.

In 2002, Montana voters approved an amendment to the Montana

Constitution adding county distribution requirements to the initiative qualification process. Following those changes, which took effect in 2003, the relevant sections of the Montana Constitution read in part as follows:

Section 4. Initiative

(1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-half of the counties and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

Mont. Const. art. III § 4. 

Section 9. Amendment by Initiative

(1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of at least one-half of the counties.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

Mont. Const. art. XIV, § 9. 

The county distribution requirement is also reflected in the statutes implementing the constitutional provisions cited above.

Montana Code Annotated § 13-27-204 provides, in pertinent part:

Petition for initiative

(1) The following is substantially the form for a petition calling for a vote to enact a law by initiative:

PETITION TO PLACE INITIATIVE NO. _____ ON THE ELECTION BALLOT

(a) If 5% of the voters in each of one-half of the counties sign this petition and the total number of voters signing this petition is _____, this measure will appear on the next general election ballot. If a majority of voters vote for this measure at that election, it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following measure on the _____, 20____, general election ballot:

(Title of measure written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

Montana Code Annotated § 13-27-207 provides, in pertinent part:

Petition for initiative for constitutional amendment

(1) The following is substantially the form for a petition for an initiative to amend the constitution:

PETITION TO PLACE CONSTITUTIONAL AMENDMENT NO. _____ ON THE ELECTION BALLOT

(a) If 10% of the voters in each of one-half of the counties sign this petition and the total number of voters signing the petition is _____, this constitutional amendment will appear on the next general election ballot. If a majority of voters vote for this amendment at that election, it will become part of the constitution.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following constitutional amendment on the _____, 20____, general election ballot:

(Title of the proposed constitutional amendment written pursuant to 13-27-312) (Statement of implication written pursuant to 13-27-312)

Montana's population is unevenly distributed throughout its counties. While the space and density of our state has well-recognized benefits to those who live in "the last best place," its geographic distribution favors residents of sparsely populated areas over residents of the more urban or densely populated areas of the state when it comes to qualifying initiatives for the ballot. According to 2000 census figures, nearly 56 percent of Montana's population is concentrated in six of the state's 56 counties. Under the new county distribution requirement, far fewer signatures are needed to qualify an initiative in a less populous county than are necessary in more populous counties.



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Plaintiffs' Counts One, Two, Three and Four are challenges to the constitutional validity of Mont. Const. ^① art. III § 4, ^② Mont. Const. art. XIV, § 9, ^③ § 13-27-204, Mont. Code Ann., and § ^④ 13-27-207, Mont. Code Ann., respectively (collectively referred to hereinafter as "the county distribution requirement").

"County Distribution REQUIREMENT"

There is also an issue here with Montana's reporting requirements. Montana statutes contain the following provisions about reporting contributions and expenditures by candidates and political committees:

Required reports - time and manner of reporting -
 exceptions - penalty.

(1) Except as provided in this section, a person who employs a paid signature gatherer shall file with the commissioner reports containing those matters required by Title 13, chapter 37, part 2, for a political committee organized to support or oppose a ballot issue or for an independent committee that receives

contributions and makes expenditures in connection with a ballot issue, as applicable. If a person who employs a paid signature gatherer is required by Title 13, chapter 37, part 2, to file a report pursuant to those provisions, the person need not file a duplicate report pursuant to this section, but shall report the matter required by subsection (2) as part of that report. As used in this section, "a person who employs a paid signature gatherer" means a political party, political committee, or other person seeking to place a ballot issue before the electors and does not mean an individual who is part of the same signature gathering company, partnership, or other business organization that directly hires, supervises, and pays an individual who is a signature gatherer.

(2) The reports required by subsection (1) must include the amount paid to a paid signature gatherer.

§ 13-27-112, Mont. Code Ann.

Reports of contributions and expenditures required.

(1) Except as provided in 13-37-206, each candidate and political committee shall file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee. All reports required by this chapter shall be filed with the commissioner and with the election administrator of the county in which a candidate is a resident or the political committee has its headquarters. However, where residency within a district, county, city, or town is not a prerequisite for being a candidate, copies of all reports shall be filed with the election administrator of the county in which the election is to be held or, if the election is to be held in more than one county, with the election administrator in the county that the commissioner specifies.

§ 13-37-225, Mont. Code Ann.

Disclosure of expenditures made.

Each report required by this chapter shall disclose the following information, except that a candidate shall only be required to report the information specified in this section if the transactions involved were undertaken for the purpose of influencing an election:

(1) the full name and mailing address (occupation and the principal place of business, if any) of each person

to whom expenditures have been made by the committee or candidate during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person;

(2) the full name and mailing addresses (occupation and the principal place of business, if any) of each person to whom an expenditure for personal services, salaries, and reimbursed expenses have been made, including the amount, date, and purpose of that expenditure and the total amount of expenditures made to each person;

2

§ 13-37-230, Mont. Code Ann.

Count Five of the Complaint alleges that these statutory measures (§§ 13-27-112, 13-37-225, & 13-37-230, Mont. Code Ann. hereinafter collectively referred to as "the disclosure requirement") combine to empower Montana to compel the public identification of paid signature gatherers, requiring paid signature gatherers to sacrifice the immunity enjoyed by volunteer petitioners. Such measures, according to the Plaintiffs, inhibit and chill the First Amendment activities of plaintiffs and other petition gatherers.

Disclosure Requirement
for paid signature gatherers

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III. Analysis

A. Summary Judgment Standards

A party moving for summary judgment must demonstrate "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A party is entitled to summary judgment where the documentary evidence produced by the parties permits only one conclusion. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251 (1986). On a motion for summary judgment, this Court must