

1 HOUSE BILL NO. 205

2 INTRODUCED BY B. WAGNER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CANDIDATES FOR THE PRESIDENTIAL
5 PREFERENCE PRIMARY OR A CONGRESSIONAL OFFICE TO FILE AN AFFIDAVIT AND CERTAIN
6 DOCUMENTATION WITH THE SECRETARY OF STATE; PROVIDING RULEMAKING AUTHORITY;
7 AMENDING SECTIONS 13-10-201, 13-10-204, 13-10-211, 13-10-404, AND 13-10-501, MCA; AND PROVIDING
8 AN IMMEDIATE EFFECTIVE DATE."

9

10 WHEREAS, citizenship requirements for members of Congress are established in Article I, sections 2
11 and 3, and the 17th Amendment of the United States Constitution; and

12 WHEREAS, natural born citizenship for the office of President of the United States of America is required
13 by Article II, section 1, of the United States Constitution; and

14 WHEREAS, the military sons and daughters of the people of Montana and all civil servants to the people
15 of Montana are required by oath to defend and uphold the Constitution of the United States and Montana against
16 enemies foreign and domestic; and

17 WHEREAS, it would seem only right and just to positively certify eligibility for presidential and
18 congressional office at the federal level; and

19 WHEREAS, it is apparent that the federal authority is negligent in the matter; therefore, the responsibility
20 falls upon the State; and

21 WHEREAS, this act would safeguard the people of Montana from unnecessary expense and litigation
22 and the possibility that federal election officials fail in their duty and would ensure that the State of Montana
23 remains true to the Constitution.

24

25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

26

27 **Section 1.** Section 13-10-201, MCA, is amended to read:

28 **"13-10-201. Declaration for nomination.** (1) Each candidate in the primary election, except nonpartisan
29 candidates filing under the provisions of Title 13, chapter 14, shall file a declaration for nomination with the
30 secretary of state or election administrator. A candidate may not file for more than one public office. Each

1 candidate for governor shall file a joint declaration for nomination with a candidate for lieutenant governor.

2 (2) A declaration for nomination must be filed in the office of:

3 (a) the secretary of state for placement of a name on the ballot for the presidential preference primary,
4 a congressional office, a state or district office to be voted for in more than one county, a member of the
5 legislature, or a judge of the district court;

6 (b) the election administrator for a county, municipal, precinct, or district office (other than a member of
7 the legislature or judge of the district court) to be voted for in only one county.

8 (3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an
9 indigent candidate, send with it the documents required by 13-10-203. Unless filed electronically with the
10 secretary of state, the declaration for nomination must be acknowledged by an officer empowered to acknowledge
11 signatures or by the officer of the office at which the filing is made.

12 (4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by
13 the elector's party. For a partisan election, an elector may not file a declaration for more than one party's
14 nomination.

15 (5) (a) The declaration for nomination must be in the form and contain the information prescribed by the
16 secretary of state.

17 (b) (i) A candidate for president, vice president, or a congressional office shall include as part of the
18 declaration for nomination a sworn affidavit in the form prescribed by rule by the secretary of state. The affidavit
19 must include a statement that the candidate complies with all birth, age, citizenship, and residency requirements
20 prescribed by the United States constitution for the office the candidate is seeking.

21 (ii) If the office sought is president or vice president, documentation incorporated in and made a part of
22 the affidavit must include:

23 (A) a certified copy of the candidate's birth certificate or other documentation that has equal effect of a
24 birth certificate under the laws of the jurisdiction in which the candidate was born that shows the candidate was
25 born within a state or territory of the United States and that the candidate will be at least 35 years of age prior to
26 the inauguration date for the term of office for which the person is a candidate; and

27 (B) documentary proof of the kind established by rule by the secretary of state that shows that the
28 candidate has complied with the durational citizenship and residency requirements for the office as prescribed
29 by the United States constitution.

30 (iii) If the office sought is a congressional office, documentation incorporated in and made a part of the

1 affidavit must include:

2 (A) a certified copy of the candidate's birth certificate or other documentation that has equal effect of
3 a birth certificate under the laws of the jurisdiction in which the candidate was born; or

4 (B) other proof prescribed by rule by the secretary of state that shows that the candidate will have met
5 the age requirements for the office prior to the inauguration date for the term of office for which the person is a
6 candidate.

7 ~~(b)~~(c) A person seeking nomination to the legislature shall provide the secretary of state with a street
8 address, legal description, or road designation to indicate the person's place of residence. If a candidate for the
9 legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state
10 on a form prescribed by the secretary of state.

11 ~~(e)~~(d) The secretary of state and election administrator shall furnish declaration for nomination forms to
12 individuals requesting them.

13 (6) (a) Except as provided in 13-10-211 and subsection (6)(b) of this section, a candidate's declaration
14 for nomination must be filed no sooner than 135 days before the election in which the office first appears on the
15 ballot and no later than 5 p.m., 75 days before the date of the primary election.

16 (b) For an election held pursuant to 13-1-104(1)(a) or 13-1-107(1), a candidate's declaration for
17 nomination must be filed no sooner than 145 days before the election in which the office first appears on the ballot
18 and no later than 5 p.m., 85 days before the date of the primary election.

19 (7) A declaration for nomination form may be sent by facsimile transmission if a facsimile facility is
20 available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the
21 election administrator or to the secretary of state."
22

23 **Section 2.** Section 13-10-204, MCA, is amended to read:

24 **"13-10-204. Write-in nominations.** (1) An individual nominated by having the individual's name written
25 in and counted as provided in 13-15-206(5) or otherwise placed on the primary ballot and desiring to accept the
26 nomination may not have the individual's name appear on the general election ballot unless the individual:

27 (a) received at least 5% of the total votes cast for the successful candidate for the same office at the last
28 general election;

29 (b) files with the secretary of state or election administrator, no later than 10 days after the official
30 canvass, a written declaration indicating acceptance of the nomination and, if the declaration is for nomination

1 for the presidential preference primary or for a congressional office, the affidavit and documentation required
2 pursuant to 13-10-201(5)(b); and

3 (c) complies with the provisions of 13-37-126.

4 (2) A write-in candidate who was exempt from filing a declaration of intent under 13-10-211 shall, at the
5 time of filing the declaration of acceptance;

6 (a) pay the filing fee specified in 13-10-202 or, if indigent, file the appropriate documents described in
7 13-10-203; and

8 (b) if the declaration is for nomination for the presidential preference primary or for a congressional office,
9 provide the affidavit and documentation required pursuant to 13-10-201(5)(b)."

10

11 **Section 3.** Section 13-10-211, MCA, is amended to read:

12 **"13-10-211. Declaration of intent for write-in candidates.** (1) Except as provided in subsection (7),
13 a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The
14 declaration of intent must be filed with the secretary of state or election administrator, depending on where a
15 declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district
16 clerk for a school district office. When a county election administrator is conducting the election for a school
17 district, the school district clerk or school district office that receives the declaration of intent shall notify the county
18 election administrator of the filing. Except as provided in subsections (2) and (3), the declaration must be filed
19 no later than 5 p.m. on the 10th day before the date established under 13-13-205 on which a ballot must be
20 available for absentee voting for the election and must contain:

21 (a) (i) the candidate's first and last names;

22 (ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the
23 candidate's last name;

24 (iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and

25 (iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

26 (b) the candidate's mailing address;

27 (c) a statement declaring the candidate's intention to be a write-in candidate;

28 (d) the title of the office sought;

29 (e) the date of the election;

30 (f) the date of the declaration; and

1 (g) the candidate's signature.

2 (2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than
3 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office
4 that the write-in candidate is seeking dies or is charged with a felony offense.

5 (3) A person seeking to become a write-in candidate in a mail ballot election or for a trustee position in
6 a school board election shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

7 (4) The secretary of state shall notify each election administrator of the names of write-in candidates who
8 have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk
9 shall notify the election judges in the county or district of the names of write-in candidates who have filed a
10 declaration of intent.

11 (5) A declaration of intent may be provided to the election administrator or secretary of state:

12 (a) by facsimile transmission if a facsimile facility is available for receipt;

13 (b) in person; or

14 (c) by mail.

15 (6) A declaration is not valid:

16 (a) until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election
17 administrator; and

18 (b) if the declaration is for nomination for the presidential preference primary or for a congressional office,
19 until the affidavit and documentation required pursuant to 13-10-201(5)(b) is provided.

20 (7) The requirements in subsection (1) do not apply if:

21 (a) an election is held;

22 (b) a person's name is written in on the ballot;

23 (c) the person is qualified for and seeks election to the office for which the person's name was written
24 in; and

25 (d) no other candidate has filed a declaration or petition for nomination or a declaration of intent."

26

27 **Section 4.** Section 13-10-404, MCA, is amended to read:

28 **"13-10-404. Placement of candidate on primary ballot -- methods of qualification.** Before an
29 individual intending to qualify as a presidential candidate may qualify for placement on the ballot, the individual
30 shall qualify by one or more of the following methods:

1 (1) The individual has been nominated on petitions with the verified signatures of at least 500 qualified
2 electors and has filed with the secretary of state the affidavit and documentation required pursuant to
3 13-10-201(5)(b). The secretary of state shall prescribe the form and content of the petition.

4 (2) The individual has submitted a declaration for nomination and the affidavit and documentation to the
5 secretary of state pursuant to 13-10-201, and the secretary of state has determined, by the time that declarations
6 for nomination are to be filed, that the individual is eligible to receive payments pursuant to the federal Presidential
7 Primary Matching Payment Account Act, 26 U.S.C. 9031, et seq."

8

9 **Section 5.** Section 13-10-501, MCA, is amended to read:

10 **"13-10-501. Petition for nomination by independent candidates or political parties not eligible to**
11 **participate in primary election.** (1) Except as provided in 13-10-504, nominations for public office by an
12 independent candidate or a political party that does not meet the requirements of 13-10-601 may be made by a
13 petition for nomination.

14 (2) The petition must contain the same information and the oath of the candidate required for a
15 declaration for nomination, including, if running for president, vice president, or a congressional office, the affidavit
16 and documentation required pursuant to 13-10-201(5)(b).

17 (3) If a petition is filed by a political party, it must contain the party name and, in five words or less, the
18 principle that the body represents.

19 (4) The form of the petition must be prescribed by the secretary of state, and the secretary of state shall
20 furnish sample copies to the election administrators and on request to any individual.

21 (5) Each sheet of a petition must contain signatures of electors residing in only one county."
22

23 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

24

- END -