

Testimony of Andrew I. Huff
Chief Legal Counsel, Governor's Office
House Bill 229, State Administration Committee Hearing
January 29, 2013

Madam Chair, members of the State Administration Committee:

My name is Andrew Huff, chief legal counsel for the Office of the Governor. I come before you today in opposition to House Bill 229, as currently drafted.

Since the 2010 decision of the United States Supreme Court in *Citizens' United*, the amount of money put into national and political campaigns has skyrocketed. *Citizens United* held that corporations could not be prohibited from making independent expenditures from their general treasury funds to influence political campaigns, based solely on their identity as corporations. By "independent expenditures" the Court meant money spent for political purposes that is entirely independent of a candidate's campaign. Under the Supreme Court's reasoning, there can be no coordination or linkage between independent expenditure groups and candidates themselves.

In reaching this decision, the Court left in place the longstanding federal prohibition on direct corporate and union contributions to federal candidates, and emphasized the importance of disclosure – those laws and rules which require entities that are making independent expenditures to disclose who they are, and the source of their funding. Disclosure promotes transparency and accountability, and assists the voters in assessing the messages of the many organizations which spring up during the campaign cycle.

The decision in *Citizens' United* has been held to apply to state regulation of political campaigns, and specifically to apply to Montana. At present, corporations can make unlimited independent expenditures to influence Montana elections. However, under Montana law, corporations continue to be prohibited from making direct contributions to candidates. Since its landmark decision in *Buckley v. Valeo*, the United States Supreme Court has upheld state and federal prohibitions on direct corporate contributions to candidates, because such contributions raise the immediate threat of *quid pro quo* corruption – money in exchange for political favors. The threat to the integrity of the democratic process justifies prohibitions on direct corporate contributions to candidates. The courts have also generally upheld state disclosure laws mandating that entities participating in the political process disclose who they are and the source of their funding, so that voters know who is truly speaking.

During this last election cycle, more money was spent in Montana than ever before. While many organizations fully complied with Montana reporting and disclosure requirements,

so-called "dark money" groups were active as well. These groups spend enormous amounts of money to determine the outcome of elections through supposedly independent expenditures, but refuse to say who is truly funding them. Without this vital information, it is nearly impossible for voters to judge their messages, and it is likewise difficult to determine if these groups are in compliance with Montana's laws concerning contribution limits and prohibitions, as well as disclosure and reporting requirements.

Governor Bullock is absolutely committed to maintaining the integrity of Montana's citizen democracy. The citizen's of Montana must ultimately be in charge of who gets elected in this state – not dark money groups or corporations with agendas of their own. Since the passage in 1912 of the Corrupt Practices Act, Montana has been served well by our citizen legislators.

House Bill 229, if passed, would dramatically change Montana's political landscape. This bill, as currently drafted, proposes to entirely repeal Montana's prohibition on direct corporate contributions to candidates, as well as the current limits on contributions from political committees, while keeping in place limits on the amount individual people can contribute to candidates. The effect of this bill is to ensure that the voice of individual Montana voters becomes completely swamped by the unlimited spending of corporations and other groups who could contribute millions directly to candidates without limitation, as well as make unlimited independent expenditures. In this new landscape, the small donations of individual Montanans would become completely irrelevant, and Montana candidates would turn their attention to the competition for corporate funding. The door-to-door, neighbor-to-neighbor political campaigns of Montana would become a relic of the past.

While it has been argued that unlimited contributions to candidates are necessary to counter the influence of the unlimited independent expenditures of dark money and other groups, there are other ways to mitigate the impacts of *Citizens' United* while maintaining Montana's citizen democracy. Montana's existing prohibition on corporate contributions must be maintained to prevent the appearance and reality of *quid pro quo* corruption. Disclosure laws must be strengthened and enforced so that dark money groups become a thing of the past. And the law must ensure that independent expenditure groups are truly independent of candidates -- not "independent" in name only. In this way, Montana voters will remain in charge of Montana politics. Thank you.