

Amendments to House Bill No. 76
1st Reading Copy

Requested by Representative Janet Ellis

For the House State Administration Committee

Prepared by Sheri Scurr
January 14, 2015 (3:04pm)

1. Page 1, line 12.
Following: "electors"
Insert: "-- definition"
2. Page 1, line 14.
Following: the first "any"
Insert: "designated"
3. Page 1, line 15.
Following: "to the"
Insert: "designated"
4. Page 1, line 17.
Following: "day"
Insert: "or at or about a designated building in which voting in
the election is taking place"
5. Page 1, line 18.
Strike: "which"
Insert: "that"
6. Page 1, line 20.
Following: "any"
Insert: "designated"
7. Page 1.
Following: line 22
Insert: "(4) For the purposes of this section, "designated
building" means a public building designated by a county
election administrator for an elector to go to receive and
mark a ballot in an election."

- END -

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12/15/2011

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To: Janet Ellis, Representative for House District 81
Jonathan Motl, Commissioner of Political Practices
Date: January 13, 2015
From: Jaime MacNaughton,
General Counsel for the Office of the Commissioner of Political Practices
Re: Electioneering statute, Mont. Code Ann. § 13-35-211 (2014)

QUESTIONS PRESENTED

Question 1: What legal challenges have there been to distance regulation in electioneering statutes?

Question 2: Has there been any legal challenge to Montana's 100 foot electioneering free zone?

SHORT ANSWER

Question 1. The US Supreme Court has addressed the question of distance regulation of speech at polling places in *Burson v. Freeman*, 504 U.S. 191, 112 S.Ct. 1846 (1992)(plurality opinion). The Court upheld a Tennessee statute which prohibited campaign materials and soliciting votes within 100 feet of the entrance to a polling place. It survived a strict scrutiny review, finding "that this widespread and time-tested consensus demonstrates that *some* restricted zone is necessary in order to serve the States' compelling interests in preventing voter intimidation and election fraud.", *id.* at 206.

Question 2. There has been no direct legal challenge on Montana's 100 foot prohibition of electioneering at polling places. There is one Montana Attorney General Opinion on interpreting the statute dealing with the regulation of orderly signature gathering at a polling place, 39 A.G. Op 62 (1982).

HISTORY

Montana's current electioneering statute, Mont. Code Ann. § 13-35-211 was codified into the current code based on the 1947 laws of Montana (R.C.M. 23-47-119) in 1977 and 1979. In 2001 the legislature amended the distance in subsection (1) from 200 feet to 100 feet¹.

¹ The Legislature removed "is being held within" and "200 feet thereof" and substituted "100 feet of any entrance to the building in which the polling place is located".

RESEARCH

Question 1. A former candidate, campaign manager, and active participant in elections challenged a Tennessee statute which prohibited solicitation of votes and the display or distribution of campaign materials within 100 feet of the entrance of a polling place, *Burson v. Freeman*, 504 U.S. 191; 112 S. Ct. 1846; 119 L.Ed. 2d 5 (1992). Ms. Freeman claimed that the statutes impeded and limited her ability to communicate with voters, *id.* at 195. The US Supreme Court examined the law under First Amendment concerns, weighing the constitutional right to vote and the constitutional right to free speech. “Given the conflict between these two rights, we hold that requiring solicitors to stand 100 feet from the entrances to polling places does not constitute an unconstitutional compromise”, *id.* at 211.

A Florida electioneering statute was challenged in 2009, and found to be constitutional by the 11th Circuit Court of Appeals, *Citizens for Police Accountability Political Committee v. Browning*, 572 F.3d 1213 (2009). The Florida statute prohibited solicitation of votes or signatures “within 100 feet of the entrance to any polling place... or early voting site” and the Court specifically included in its analysis the restriction including early voting sites, *id.* at 1215, and fn 2 (emphasis added). The PAC was attempting to solicit signatures for a ballot issue that was not presently on the ballot, and had trouble connecting with as many voters as they wanted to, because “many voters were able to park, vote and leave without interacting with the signature gatherers”, *id.* The 11th Circuit upheld the statute as a constitutional restriction on the freedom of speech when considered in balance with the right to vote. That decision was appealed to the US Supreme Court, who denied certiorari on April 19, 2010, 130 S. Ct. 1241.

Question 2. There is a Montana Attorney General Opinion regarding the gathering of signatures at a polling place, 39 A.G. Op 62 (1982). The AG held “[o]rderly gathering of initiative petition signatures at a polling place that does not interfere with the election process or obstruct voter access to the polls may not be prohibited”. The Opinion specifically cites to a former version of Mont. Code Ann. § 13-35-211 as prohibiting electioneering regarding issues to be voted on at the election, and within an election administrator’s authority to regulate.

CONCLUSION

Montana’s 100 foot campaign free zone in which Montanans cast their ballots at polling places has not been challenged. If it were to be, it would likely be found constitutional and a proper balance of Montanans rights under both the Montana and the US Constitution. Further, the temporal extension of the campaign free zone to include the right of Montanans to cast their ballots “during days on which voting in an election is taking place” will likely be upheld as a constitutional restriction balancing the right to vote and the right to free speech.