STATE ADMINISTRATION

Exhibit No. 3

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Senate Bill 289, Senate State Administration Committee SB 289

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Background

Campaign finance laws, both federal and state, fall into three main regulatory categories: (1) independent expenditure limitations; (2) disclosure requirements; and (3) contribution limits. Senate Bill 289 addresses disclosure requirements and updates Montana's law with regard to expenditure limitations.

Independent expenditures are those monies spent by groups other than candidates and ballot issue committees (theoretically, groups that are completely independent of candidates and ballot issue committees) to influence an election. Prior to 2010, federal and many state laws, including Montana's, prohibited corporate independent expenditures in elections. The U.S. Supreme Court in Citizens United held that prohibitions on the speech of corporations and unions violated the First Amendment, because such expenditures were by definition "independent" and therefore posed no risk of corruption to a candidate. In 2012, the U.S. Supreme Court reversed a decision of the Montana Supreme Court upholding Montana's prohibition on corporate independent expenditures in the wake of Citizens United. The result has been a massive influx of individual and corporate money into spending campaigns aimed at determining the outcome of elections.

However, in deciding Citizens United the Supreme Court also upheld in strong terms laws requiring the **disclosure** of information concerning groups who engage in political speech. The courts have generally held that citizens and governments have an informational interest and an anti-corruption interest in knowing who funds independent political speech, and that these interests outweigh countervailing arguments relying on the right to maintain anonymity. Despite the U.S. Supreme Court's stance on disclosure, state disclosure laws have since Citizens United been challenged throughout the country. Montana has thus far successfully defended its disclosure laws from several challenges. Groups challenging or evading disclosure laws (which generally require those who engage in political speech to register with the state and report contributions and expenditures) have argued that such laws are burdensome and too broad, capturing organization that merely engage in "issue advocacy," rather than political speech. There has been a dramatic rise in organizations that purposefully evade state disclosure laws by maintaining their communications are issue advocacy rather than political speech, despite the very clear political goals and nature of these organizations ("dark money" organizations). State and federal disclosure laws have generally been upheld since Citizens United, but there is a need to tighten outdated statutory language that has been exploited by dark money groups to engage in

massive, statewide political attack campaigns meant to determine the outcome of elections while arguing they are outside of state disclosure laws.

Main Aspects of Senate Bill 289

If Montana voters are to accurately judge and understand the political attack mailers and other communications that have become so common in our elections, they need to understand who is funding them. At present, information concerning the groups behind many of these communications is impossible to obtain because they argue they are issue advocacy groups and not subject to disclosure laws. The proposed campaign finance disclosure bill would:

- Require spending disclosure for any "electioneering communication" made within 60 days of when voting begins in an election. "Electioneering communication" is defined as any communication depicting a candidate or a ballot issue, with certain exceptions for the media, blogs, etc. This will foreclose the argument relied upon by dark money groups that they engage in "issue advocacy" and cannot be regulated as political groups. Under the bill, all groups who send out mailers and communications depicting a candidate or ballot issue will be required to register as a political committee and disclose their spending.
    - 13-1-101 (15)(a) – creates and defines a new category of regulated political activity – "electioneering communications."
    - 13-37-225 – requires that entities making electioneering communications register with the Commissioner and disclose information about their contributions received and expenditures made.
    - 13-37-229, NEW SECTION 14 – the level of disclosure is determined by what category of political committee the entity making the expenditures falls into.

- Require disclosure for all groups that make political expenditures or contributions, regardless of federal tax status or claims of "issue advocacy" status. This will foreclose the argument relied upon by dark money groups that their tax status as a (c)(4) or (c)(3) organizations puts them outside of state campaign finance disclosure laws. What matters is how organizations behave, not their federal tax status.
    - 13-1-101 (47) – precisely defines the term "support of oppose" to mean a communication using express words of advocacy in support of or opposition to a candidate or ballot issue, OR a communication that refers to or depicts a candidate or ballot issue in a manner that is susceptible of no reasonable interpretation other than as a call to support or oppose a candidate or ballot issue
    - NEW SECTION 16 – reports to be filed regardless of the tax status of the entity.

- Increase the frequency and length of time reporting is required during the election cycle. Currently, most political committees do not report on their election activities until just before the election. These statutes need to be updated so that information is made available to voters and the public earlier in the election cycle. With earlier reporting, voters will have the information they need to better judge the election mailers and other communications that have become so common in our elections.
    - 13-36-226

      NEW: statewide candidates and ballot issues, and political committees supporting or opposing statewide candidates or ballot issues through contributions or expenditures, will file reports:
        - Quarterly in the year or years prior to the election year in which the candidate or ballot issue will be voted on;
        - Monthly in the year of the election;
        - 15th day prior to the election;
        - w/i 2 business days of receiving a contribution of $200 or more if received between the 20th day of the election and the election;
        - 20 days after the election;
        - Closing report.

      OLD: only committees that were organized to specifically support or oppose a particular candidate or ballot issue were required to report under the old provision. The new provision applies to any committee, including incidental committees not specifically organized to participate in politics, that make expenditures or receive contributions to support or oppose a candidate or ballot issue. Under the old law, this broader set of committees did not report until the 12th day preceding the election.

      NEW: state district office candidates, including the legislature, the PSC, and district court judges, and political committees supporting or opposing state district office candidates or issues, will file reports:

      35th and 12th days preceding the election;
      w/i 2 business days of receiving a contribution of $100 or more if received between the 17th day before the election and the election;
      20 days after the election;
      Closing report.

      OLD: district candidates and committees supporting or opposing district candidates did not report until 12 days preceding the election.

      NEW: candidates for any other public office and political committees supporting or opposing candidates for other public office or local issues shall file reports

matching the cycle of the district candidates if the total amount of contributions received or funds expended exceeds $500.
OLD: other candidates and committees did not report until the 12th day preceding the election.

NEW: independent, incidental and political party committees not required to report under the provisions for statewide or district candidates and ballot issues, will file reports:

90th, 35th, and 12th days preceding the election;
w/i 2 business days of receiving a contribution of $500 or more if received between the 17th day before the election and the election;
w/i 2 business days of making an expenditure of $500 or more if made between the 17th day before the election and the election;
20 days after the election;
Closing report.

OLD: independent and political party committees did not report until 12 days prior to the election