

COMMISSIONER OF
POLITICAL PRACTICES

STATE ADMINISTRATIVE

Exhibit No. 5

Date 2-18-15

Bill No. SB 289



STATE OF MONTANA

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COMMISSIONER
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February 18, 2015

Honorable Dee Brown
Chairperson
Senate State Administration
Committee

Roger Webb- Vice Chair
Sue Malek - M. Vice Chair

Members

Robyn Driscoll
Jedediah Hinkle
Doug Kary
Lea Whitford

Re: Senate Bill 289
Hearing Date: Wednesday, February
18, 2015 at 3:00 PM
Sponsor: Senator Ankney

Dear Chairperson Brown and members of the Committee:

The Office of the Commissioner of Political Practices supports Senate Bill 289 and respectfully offers the following information to the members of the Senate State Administration Committee.

First, SB 289 makes changes to existing law but does so with language that does not raise process or compatibility concerns. The COPP has thoroughly vetted each part of SB 289 and informs this Committee that the language changes and language additions made by SB 289 are worded and placed such that they are compatible with and consistent with the remaining language of Title 13. While the COPP will need to propose and adopt administrative regulations to administer SB 289, this regulatory work comes at an opportune time since the COPP was already planning a complete administrative regulation overhaul during the summer and fall of 2015.

Second, SB 289 offers the following necessary substantive improvements to Montana's campaign practice law:

1. SB 289 defines electioneering communication and then requires reporting and disclosure of electioneering communication expenses, thereby addressing the major dark money concern of recent elections.
2. SB 289 adds a reporting period for state district candidates and affords the COPP discretion to require electronic reporting by candidates, both needed reforms that will enhance transparency and timeliness of disclosure.
3. SB 289 clarifies Montana law by specifically stating that political parties may provide certain in-kind personal services (candidate support through field staff paid by the political party) to Montana candidates for public office without the value of those in-kind services counted toward the aggregate contribution limits applied to a political party by §13-37-216(3)MCA. The reasons for this clarification are several and are explained at length in that certain COPP Advisory Opinion dated May 19, 2014 and accessible on the COPP website as COPP-AO-2014-009. That Advisory Opinion is based on Montana tradition and encouraged by U. S. Supreme Court Decisions based on associational rights of political parties. *See Randall v. Sorrell*, 548 U.S. 230 (2006). SB 289 follows the path of the Advisory Opinion in exempting political party paid staff from contribution limits but still requiring reporting and disclosure of the value.
4. SB 289 offers statutory definitions of terms (including coordination and *de minimis*) that are currently only defined in sufficiency Decisions or regulation.

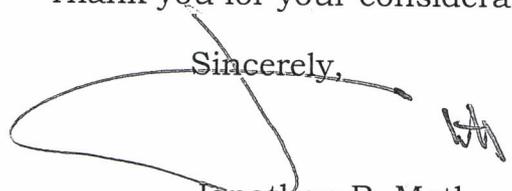
Montana candidates for public office, the press, the public and the COPP are at a particular reassessment point as to Montana's campaign practices. Montana's 100 year old ban on corporate independent expenditures is gone (stricken by the US Supreme Court in late 2012) and the 2014 elections demonstrated that third party independent expenditures in Montana's candidate races will be made by political parties, PACs and incidental committees. Montana's campaign practice future, including 2016 elections, is likely going to include increasing amounts of campaign expenditures by third party entities that are not connected with candidates and therefore fall outside of Montana's candidate campaign culture.

SB 289 enhances the ability of Montanans to deal with these increasing third party expenditures by providing the transparency that is essential to an open and fair political culture. Yes, a third party may spend against a candidate, but the additional reporting period and the increased transparency set by SB 289 means that the timing, amount and nature of the expenditure

will be timely known to the opposing candidate, the press and the public. This information will promote political discussion, rather than just serve as political attack, and this serves fair elections.

Thank you for your consideration of SB 289.

Sincerely,

A handwritten signature in black ink, appearing to read 'JM', is written to the right of the word 'Sincerely,'. A large, loopy scribble in black ink is written over the signature and extends to the left, partially overlapping the text 'Jonathan R. Motl'.

Jonathan R. Motl
Commissioner of Political Practices