

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT CONCERNING FREEDOM OF SPEECH AND FREEDOM OF
5 RELIGION; REVISING THE DEFINITIONS OF CAMPAIGN "CONTRIBUTION", CAMPAIGN "EXPENDITURE",
6 AND "POLITICAL COMMITTEE"; PROVIDING THAT THE COST OF A COMMUNICATION BY A RELIGIOUS
7 ORGANIZATION IN THE COURSE OF ITS RELIGIOUS ACTIVITIES IS NOT A CAMPAIGN CONTRIBUTION
8 OR EXPENDITURE; PROVIDING THAT CERTAIN PROVISIONS BE BROADLY CONSTRUED; EXPRESSING
9 LEGISLATIVE INTENT; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED
10 ELECTORS OF MONTANA; AMENDING SECTION 13-1-101, MCA; AND PROVIDING AN EFFECTIVE DATE."
11

12 WHEREAS, the 9th Circuit Court specifically held in Canyon Ferry Road Baptist Church v. Unsworth, 556
13 F.3d 1021 (9th Cir. 2009), that it is unconstitutional to require a church to become an incidental political committee
14 for de minimis expenditures in support of a ballot issue; and

15 WHEREAS, Judge Noonan stated: "What has happened here is that a small congregation has been put
16 to trouble and expense in order to exercise its right to speak on an issue seen by it to be of vital religious
17 significance. One lesson of history is that small incursions on freedom are to be resisted lest they grow greater";
18 and

19 WHEREAS, Judge Noonan noted the historic struggles concerning slavery and the civil rights movement
20 in which churches played a crucial role and actually led the way in challenging discrimination and in securing
21 fundamental freedoms, which requires that they be free to speak without unconstitutional restraint; and

22 WHEREAS, Article II, section 5, of the Montana Constitution and the First Amendment to the United
23 States Constitution prohibit the state and Congress from making a law that prohibits the free exercise of religion.
24

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

26 **Section 1.** Section 13-1-101, MCA, is amended to read:

27 **"13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following
28 definitions apply:
29

30 (1) "Active elector" means an elector whose name has not been placed on the inactive list due to failure



1 to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

2 (2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

3 (3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that
4 is ordinarily not given away free but is purchased.

5 (4) "Application for voter registration" means a voter registration form prescribed by the secretary of state
6 that is completed and signed by an elector, submitted to the election administrator, and contains voter registration
7 information subject to verification as provided by law.

8 (5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as an
9 optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.

10 (6) "Candidate" means:

11 (a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or
12 appointment as a candidate for public office as required by law;

13 (b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained
14 contributions, made expenditures, or given consent to an individual, organization, political party, or committee
15 to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination
16 or election to any office at any time, whether or not the office for which the individual will seek nomination or
17 election is known when the:

18 (i) solicitation is made;

19 (ii) contribution is received and retained; or

20 (iii) expenditure is made; or

21 (c) an officeholder who is the subject of a recall election.

22 (7) (a) "Contribution" means:

23 (i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value
24 to influence an election;

25 (ii) a transfer of funds between political committees;

26 (iii) the payment by a person other than a candidate or political committee of compensation for the
27 personal services of another person that are rendered to a candidate or political committee.

28 (b) "Contribution" does not mean:

29 (i) services provided without compensation by individuals volunteering a portion or all of their time on
30 behalf of a candidate or political committee or meals and lodging provided by individuals in their private

1 residences for a candidate or other individual;

2 (ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any
3 broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

4 (iii) the cost of any communication by a religious organization qualified under section 501(c)(3) of the
5 Internal Revenue Code made in the course of the organization's religious activity;

6 ~~(iii)~~(iv) the cost of any communication by any membership organization or corporation to its members or
7 stockholders or employees; or

8 ~~(iv)~~(v) filing fees paid by the candidate.

9 (8) "Election" means a general, regular, special, or primary election held pursuant to the requirements
10 of state law, regardless of the time or purpose.

11 (9) "Election administrator" means the county clerk and recorder or the individual designated by a county
12 governing body to be responsible for all election administration duties, except that with regard to school elections
13 not administered by the county, the term means the school district clerk.

14 (10) "Elector" means an individual qualified to vote under state law.

15 (11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift
16 of money or anything of value made for the purpose of influencing the results of an election.

17 (b) "Expenditure" does not mean:

18 (i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);

19 (ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or
20 personal necessities for the candidate and the candidate's family;

21 (iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any
22 broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

23 (iv) the cost of any communication by a religious organization qualified under section 501(c)(3) of the
24 Internal Revenue Code made in the course of the organization's religious activity; or

25 ~~(iv)~~(v) the cost of any communication by any membership organization or corporation to its members or
26 stockholders or employees.

27 (12) "Federal election" means a general or primary election in which an elector may vote for individuals
28 for the office of president of the United States or for the United States congress.

29 (13) "General election" or "regular election" means an election held for the election of public officers
30 throughout the state at times specified by law, including elections for officers of political subdivisions when the

1 time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues
2 required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the
3 legislature to the electors at a general election, "general election" means an election held at the time provided
4 in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted
5 as a constitutional initiative at a regular election, regular election means an election held at the time provided in
6 13-1-104(1).

7 (14) "Inactive elector" means an individual who failed to respond to confirmation notices and whose name
8 was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

9 (15) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

10 (16) "Individual" means a human being.

11 (17) (a) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval
12 or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall
13 questions, school levy questions, bond issue questions, or a ballot question.

14 (b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the
15 proper official that the legal procedure necessary for its qualification and placement upon the ballot has been
16 completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the
17 secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

18 (18) "Legally registered elector" means an individual whose application for voter registration was
19 accepted, processed, and verified as provided by law.

20 (19) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing
21 ballots to all active electors.

22 (20) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee,
23 club, union, or other organization or group of individuals or a candidate as defined in subsection (6).

24 (21) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-307
25 for a mail ballot election conducted under Title 13, chapter 19.

26 (22) "Political committee" means a combination of two or more individuals or a person other than an
27 individual who makes a contribution or expenditure:

28 (a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a
29 petition for nomination; or

30 (b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

1 (c) as an earmarked contribution.

2 (23) "Political subdivision" means a county, consolidated municipal-county government, municipality,
3 special district, or any other unit of government, except school districts, having authority to hold an election for
4 officers or on a ballot issue.

5 (24) "Polling place election" means an election primarily conducted at polling places rather than by mail
6 under the provisions of Title 13, chapter 19.

7 (25) "Primary" or "primary election" means an election held throughout the state to nominate candidates
8 for public office at times specified by law, including nominations of candidates for offices of political subdivisions
9 when the time for nominations is set on the same date for all similar subdivisions in the state.

10 (26) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not been
11 verified as provided by law.

12 (27) "Provisionally registered elector" means an individual whose application for voter registration was
13 accepted but whose identity or eligibility has not yet been verified as provided by law.

14 (28) "Public office" means a state, county, municipal, school, or other district office that is filled by the
15 people at an election.

16 (29) "Random-sample audit" means an audit involving a manual count of ballots from designated races
17 and ballot issues in precincts selected through a random process as provided in 13-17-503.

18 (30) "Registrar" means the county election administrator and any regularly appointed deputy or assistant
19 election administrator.

20 (31) "School election" has the meaning provided in 20-20-101.

21 (32) "School election filing officer" means the filing officer with whom the declarations for nomination for
22 school district office were filed or with whom the school ballot issue was filed.

23 (33) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount duties
24 in school elections.

25 (34) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is
26 designed to:

27 (a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot
28 is being submitted by someone who is in fact a qualified elector and who has not already voted; and

29 (b) allow it to be used in the United States mail.

30 (35) "Special election" means an election other than a statutorily scheduled primary or general election

1 held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled
2 election.

3 (36) "Statewide voter registration list" means the voter registration list established and maintained
4 pursuant to 13-2-107 and 13-2-108.

5 (37) "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector
6 to transfer the elector's registration when the elector's residence address has changed within the county.

7 (38) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in
8 13-15-206.

9 (39) "Voted ballot" means a ballot that is:

- 10 (a) deposited in the ballot box at a polling place;
11 (b) received at the election administrator's office; or
12 (c) returned to a place of deposit.

13 (40) "Voting system" or "system" means any machine, device, technology, or equipment used to
14 automatically record, tabulate, or process the vote of an elector cast on a paper ballot."
15

16 **NEW SECTION. Section 2. Language to be broadly construed -- legislative intent.** (1) Pursuant to
17 the first amendment to the United States constitution and to ensure the consistent application of the law, the
18 commissioner shall broadly construe the language provided in 13-1-101(7)(b)(iii) and (11)(b)(iv).

19 (2) The intent of the legislature is that the cost of communications by religious organizations be treated
20 under 13-1-101(7)(b)(iii) and (11)(b)(iv) in the same manner as the cost of communications by a media
21 organization is treated under 13-1-101(7)(b)(ii) and (11)(b)(iii).
22

23 **NEW SECTION. Section 3. Codification instruction.** [Section 2] is intended to be codified as an
24 integral part of Title 13, chapter 37, part 2, and the provisions of Title 13, chapter 37, part 2, apply to [section 2].
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26 **NEW SECTION. Section 4. Effective date.** If approved by the electorate, [this act] is effective January
27 1, 2017.
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29 **NEW SECTION. Section 5. Submission to electorate.** [This act] shall be submitted to the qualified
30 electors of Montana at the general election to be held in November 2016 by printing on the ballot the full title of

