

1 HOUSE BILL NO. 217

2 INTRODUCED BY D. HOWARD

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CAMPAIGN FINANCE LAWS; REVISING
5 REPORTING REQUIREMENTS APPLICABLE TO CHURCHES IN ISSUE AND BALLOT ISSUE CAMPAIGNS
6 TO CONFORM WITH COURT DECISIONS PROTECTING THE FREE EXERCISE OF RELIGION AS
7 GUARANTEED BY THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE II,
8 SECTION 5, OF THE MONTANA CONSTITUTION; REVISING DEFINITIONS RELATED TO CONTRIBUTIONS
9 AND EXPENDITURES; PROHIBITING RULES THAT WOULD REQUIRE THE REPORTING OF INCIDENTAL
10 CONTRIBUTIONS OR EXPENDITURES IN ISSUE AND BALLOT ISSUE CAMPAIGNS; AMENDING SECTIONS
11 13-1-101 AND 13-37-226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
12

13 WHEREAS, Montana's campaign finance laws were specifically at issue in Canyon Ferry Road Baptist
14 Church v. Unsworth, 556 F.3d 1021 (9th Cir. 2009); and

15 WHEREAS, the 9th Circuit Court specifically held that it was unconstitutional to require a church or other
16 community group to become incidental political committees for de minimis expenditures in support of a ballot
17 issue; and

18 WHEREAS, the Court also found that Montana's low threshold for triggering incidental political committee
19 requirements violated First Amendment rights; and

20 WHEREAS, the Court held that ballot issue elections do not involve the same state interests in disclosure
21 as in candidate elections; and

22 WHEREAS, other federal courts have held that it is unconstitutional to apply complex finance laws to
23 community groups that do not have a major purpose to influence elections and who spend relatively small
24 amounts on a ballot issue campaign (Sampson v. Buescher, 625 F.3d 1247 (10th Cir. 2010)); and

25 WHEREAS, in a concurring opinion, 9th Circuit Court Judge Noonan stated that the disparity in Montana's
26 campaign finance laws between the treatment of the media and the treatment of churches is "great and gross";
27 and

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

1 and

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

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

7

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

9

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

11 **"13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following
12 definitions apply:

13 (1) "Active elector" means an elector whose name has not been placed on the inactive list due to failure
14 to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

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

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

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

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

23 (6) "Candidate" means:

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

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

- 1 (i) solicitation is made;
- 2 (ii) contribution is received and retained; or
- 3 (iii) expenditure is made; or
- 4 (c) an officeholder who is the subject of a recall election.
- 5 (7) (a) "Contribution" means:
- 6 (i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value
- 7 to influence an election;
- 8 (ii) a transfer of funds between political committees;
- 9 (iii) the payment by a person other than a candidate or political committee of compensation for the
- 10 personal services of another person that are rendered to a candidate or political committee.
- 11 (b) "Contribution" does not mean:
- 12 (i) services provided without compensation by individuals volunteering a portion or all of their time on
- 13 behalf of a candidate or political committee or meals and lodging provided by individuals in their private
- 14 residences for a candidate or other individual;
- 15 (ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any
- 16 broadcasting station, newspaper, magazine, or other periodical publication of general circulation;
- 17 (iii) the cost of any communication by a bona fide church relating to an issue or ballot issue that is made
- 18 in the normal course of exercising its freedom of religious expression;
- 19 ~~(iii)~~(iv) the cost of any communication by any membership organization or corporation to its members or
- 20 stockholders or employees; or
- 21 ~~(iv)~~(v) filing fees paid by the candidate.
- 22 (8) "Election" means a general, regular, special, or primary election held pursuant to the requirements
- 23 of state law, regardless of the time or purpose.
- 24 (9) "Election administrator" means the county clerk and recorder or the individual designated by a county
- 25 governing body to be responsible for all election administration duties, except that with regard to school elections
- 26 not administered by the county, the term means the school district clerk.
- 27 (10) "Elector" means an individual qualified to vote under state law.
- 28 (11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift
- 29 of money or anything of value made for the purpose of influencing the results of an election.
- 30 (b) "Expenditure" does not mean:

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

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

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

6 (iv) the cost of any communication by a bona fide church relating to an issue or ballot issue that is made
7 in the normal course of exercising its freedom of religious expression;

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

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

12 (13) "General election" or "regular election" means an election held for the election of public officers
13 throughout the state at times specified by law, including elections for officers of political subdivisions when the
14 time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues
15 required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the
16 legislature to the electors at a general election, "general election" means an election held at the time provided
17 in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted
18 as a constitutional initiative at a regular election, regular election means an election held at the time provided in
19 13-1-104(1).

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

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

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

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

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

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

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

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

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

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

11 (a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a
12 petition for nomination; or

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

14 (c) as an earmarked contribution.

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

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

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

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

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

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

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

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

3 (31) "Special election" means an election other than a statutorily scheduled primary or general election
4 held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled
5 election.

6 (32) "Statewide voter registration list" means the voter registration list established and maintained
7 pursuant to 13-2-107 and 13-2-108.

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

10 (34) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in
11 13-15-206.

12 (35) "Voted ballot" means a ballot that is:

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

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

18

19 **Section 2.** Section 13-37-226, MCA, is amended to read:

20 **"13-37-226. Time for filing reports -- rulemaking.** (1) Candidates for a state office filled by a statewide
21 vote of all the electors of Montana and political committees that are organized to support or oppose a particular
22 statewide candidate shall file reports electronically as follows:

23 (a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in
24 which funds are received or expended during the year or years prior to the election year that the candidate
25 expects to be on the ballot;

26 (b) on the 10th day of March, April, July, August, and September;

27 (c) on the 15th and 5th days preceding the date on which an election is held;

28 (d) within 24 hours after receiving a contribution of \$200 or more if received between the 10th day before
29 the election and the day of the election;

30 (e) not more than 20 days after the date of the election; and

1 (f) on the 10th day of March and September of each year following an election until the candidate or
2 political committee files a closing report as specified in 13-37-228(3).

3 (2) Political committees organized to support or oppose a particular statewide ballot issue shall file
4 reports:

5 (a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in
6 which the text of the proposed ballot issue is submitted for review and approval pursuant to 13-27-202 during the
7 year or years prior to the election year that an issue is or is expected to be on the ballot;

8 (b) on the 10th day of March and on the 10th day of each subsequent month through September in each
9 year that an election is to be held;

10 (c) on the 15th and 5th days preceding the date on which an election is held;

11 (d) within 24 hours after receiving a contribution of \$500 or more if received between the 10th day before
12 the election and the day of the election;

13 (e) within 20 days after the election; and

14 (f) on the 10th day of March and September of each year following an election until the political
15 committee files a closing report as specified in 13-37-228(3).

16 (3) Candidates for a state district office, including but not limited to candidates for the legislature, the
17 public service commission, or a district court judge, and political committees that are specifically organized to
18 support or oppose a particular state district candidate or issue shall file reports:

19 (a) on the 12th day preceding the date on which an election is held;

20 (b) within 48 hours after receiving a contribution of \$100 or more if received between the 17th day before
21 the election and the day of the election. The report under this subsection (3)(b) must be made by mail or by
22 electronic communication to the commissioner pursuant to 13-37-225.

23 (c) not more than 20 days after the date of the election; and

24 (d) whenever a candidate or political committee files a closing report as specified in 13-37-228(3).

25 (4) Candidates for any other public office and political committees that are specifically organized to
26 support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount
27 of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing
28 fee paid by the candidate, exceeds \$500, except as provided in 13-37-206.

29 (5) For the purposes of this subsection, a committee that is not specifically organized to support or
30 oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in

1 conjunction with an election is an independent committee. For the purpose of reporting, a political party committee
2 is an independent committee. An independent committee shall file:

3 (a) a report on the 12th day preceding the date of an election in which it participates by making an
4 expenditure;

5 (b) a report within 24 hours of making an expenditure or incurring a debt or obligation of \$500 or more
6 for election material described in 13-35-225(1) if made between the 17th day before the election and the day of
7 the election;

8 (c) a report not more than 20 days after the date of the election in which it participates by making an
9 expenditure; and

10 (d) a report on a date to be prescribed by the commissioner for a closing report at the close of each
11 calendar year.

12 (6) The commissioner may promulgate rules regarding the extent to which organizations that are
13 incidental political committees shall report their politically related activities in accordance with this chapter, except
14 that the commissioner may not promulgate rules to require reporting of contributions or expenditures that are
15 incidental to supporting or opposing a ballot measure or political committee that conflict with the exemptions in
16 13-1-101(7) and (11) or that are otherwise reported by another political committee.

17 (7) Except as provided in subsections (1)(d), (2)(d), (3)(b), and (5)(b), all reports required by this section
18 must be complete as of the fifth day before the date of filing as specified in 13-37-228(2) and this section."

19

20 NEW SECTION. Section 3. Certain exemptions to be broadly construed. Pursuant to the first
21 amendment to the United States constitution and to ensure the consistent application of the law, the
22 commissioner shall broadly construe the exemptions provided in 13-1-107(7)(b)(iii) and (11)(b)(iv).

23

24 NEW SECTION. Section 4. Codification instruction. [Section 3] is intended to be codified as an
25 integral part of Title 13, chapter 37, part 2, and the provisions of Title 13, chapter 37, part 2, apply to [section 3].

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27 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

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- END -