



AN ACT GENERALLY REVISING CAMPAIGN FINANCE LAWS; REVISING REPORTING REQUIREMENTS APPLICABLE TO RELIGIOUS ORGANIZATIONS IN ISSUE AND BALLOT ISSUE CAMPAIGNS TO CONFORM WITH COURT DECISIONS PROTECTING THE FREE EXERCISE OF RELIGION AS GUARANTEED BY THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE II, SECTION 5, OF THE MONTANA CONSTITUTION; REVISING DEFINITIONS RELATED TO CONTRIBUTIONS AND EXPENDITURES; AMENDING SECTION 13-1-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

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

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

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

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

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

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

and

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

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

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

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

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

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

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

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

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

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

(6) "Candidate" means:

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

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

election is known when the:

- (i) solicitation is made;
- (ii) contribution is received and retained; or
- (iii) expenditure is made; or
- (c) an officeholder who is the subject of a recall election.

(7) (a) "Contribution" means:

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

(ii) a transfer of funds between political committees;

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

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual;

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

(iii) the cost of any communication by a religious organization that qualifies under 26 U.S.C. 501(c)(3) when requiring the organization to comply with Title 13 would burden the organization's religious beliefs and practices;

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

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

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

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

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

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

(b) "Expenditure" does not mean:

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

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

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

(iv) the cost of any communication by a religious organization that qualifies under 26 U.S.C. 501(c)(3) when requiring the organization to comply with Title 13 would burden the organization's religious beliefs and practices;

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

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

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

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

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

(16) "Individual" means a human being.

(17) (a) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall

questions, school levy questions, bond issue questions, or a ballot question.

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

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

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

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

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

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

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

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

(c) as an earmarked contribution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2. Certain exemptions to be broadly construed. Pursuant to the first amendment to the United States constitution and to ensure the consistent application of the law, the commissioner shall broadly construe the exemptions provided in 13-1-101(7)(b)(iii) and (11)(b)(iv).

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title

13, chapter 37, part 2, and the provisions of Title 13, chapter 37, part 2, apply to [section 2].

Section 4. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
HB 0217, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2013.

President of the Senate

Signed this _____ day
of _____, 2013.

HOUSE BILL NO. 217

INTRODUCED BY HOWARD, BLASDEL, BRODEHL, DOANE, KARY, KNUDSEN, LENZ, O'HARA,
OSMUNDSON, REDFIELD, SALOMON, C. SMITH, J. SONJU

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