Docket No. 12-35809

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOUG LAIR, et al.

Appellees,

v.

JAMES MURRY, in his official capacity as Montana Commissioner of Political Practices, and STEVE BULLOCK, in his official capacity as Montana Attorney General,

Appellants.

On Appeal from the Final Order and Judgment of the United States District Court for the District of Montana
(Hon. Charles C. Lovell, Presiding)

District of Montana Case No. 6:12-cv-00012-CCL

EMERGENCY MOTION UNDER CIRCUIT RULE 27-3

APPELLANTS' MOTION FOR STAY PENDING APPEAL

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MOTION

Pursuant to Rule 8 (a)(2) of the Federal Rules of Appellate Procedure and Circuit Rules 27-3, Appellants James Murry, in his official capacity as Montana Commissioner of Political Practices, and Steve Bullock, in his official capacity as Montana Attorney General, submit this emergency motion for an immediate stay of the October 3, 2012 District Court Order and Judgment in this matter, to avoid irreparable harm that is currently occurring, pending appeal to this Court.

CIRCUIT RULE 27-3 CERTIFICATE

The undersigned counsel, Michael G. Black, certifies on behalf of movants, Defendant-Appellant James Murry in his official capacity as Commissioner of Political Practices of the State of Montana, and Defendant-Appellant Steve Bullock in his official capacity as Attorney General of the State of Montana, as follows:

(i) Telephone numbers, email addresses, and office addresses for all attorneys for the parties.

Appellants: James Murry, Montana Commissioner of Political Practices
Steve Bullock, Montana Attorney General, Leo Gallagher, Lewis & Clark County Attorney

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Appellees: Doug Lair, Steve Dogiakos, American Tradition Partnership, American Tradition Partnership PAC, Montana Right to Life Association PAC, Sweet Grass Council for Community Integrity, Lake County Republican Central Committee, Beaverhead County Republican Central Committee, Jake Oil LLC, JL Oil LLC, Champion Painting Inc., and John Milanovich

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(ii) Facts Showing the Existence and Nature of the Emergency

On October 3, 2012, the District Court issued a final Order ("Order" Ex. 1) and Judgment (Ex. 2) declaring Montana's political campaign contribution limits unconstitutional, effective immediately. Those contribution limits have been in place in Montana since 1995. The same limits, which have since been regularly increased by a statutory inflation adjustment, were upheld as constitutional by this Court in *Montana Right to Life, et al. v. Eddleman*, 343 F.3d 1085 (9th Cir. 2003).

The decision of the District Court comes one month in advance of Montana's statewide general elections, and after absentee voting has already begun.[1] Some candidates have been campaigning for nearly two years; all candidates have relied upon the longstanding rules to develop campaign strategies and allocate resources. The Court's Order drastically alters the status quo for reasons that are in conflict with *Eddleman* and the evidence presented to the District Court. Montana's contribution limits are constitutional and no evidence was presented that would support a determination that candidates are unable to mount effective campaigns in this state.

The District Court's Order and Judgment have created confusion for Montana officials charged with responsibility for enforcing Montana's campaign finance laws. They have created uncertainty for donors, candidates, and political parties. Irreparable harm is occurring. A stay is necessary to preserve the *status quo* during the remaining month of this election cycle and to allow for full appellate review.

[1] Ballots were sent to military and overseas voters 45 days before election day, which is November 6, 2012. *See* http://sos.mt.gov/Elections/Military_Overseas/index.asp. Absentee ballots were received by voters on or October 2, 2012, and are being mailed back. http://www/fvap.gov/resources/media/vagMT.pdf. Voting is underway.

(iii) When and How Counsel for the Other Parties were Notified and Whether they have been Served with the Motion

On October 4, 2012, undersigned counsel contacted counsel for the appellees, Ms. Anita Woudenberg, and Mr. James Brown by telephone and informed them of the Appellants' intention to file this emergency motion for stay pending appeal. The undersigned certifies that this motion will be served upon Appellees by email on October 4, 2012, following submittal to the 9th Circuit. Personal service will be accomplished on the Bloomquist Law Firm on October 5, 2012, and service by mail upon the Bopp firm on the same dates.

(iv) Whether All the Grounds Advanced In Support of the Relief Sought in the Motion were Submitted to the District Court

On October 3, 2012, appellants filed a motion for an immediate stay of the Order and Judgment of the district court pending appeal to the Ninth Circuit.[2] The request was based upon the following grounds: (1) appellants are likely to succeed on the merits on appeal, based upon clear authority from the Ninth Circuit in *Montana Right to Life, et al. v. Eddlema*n, 343 F.3d 1085 (9th Cir. 2003), *cert denied*, 125 S. Ct. 47 (2004); (2) irreparable injury will occur due to the suspension of the state's current contribution limits at the eleventh hour prior to general elections, and a permanent injunction impeding Montana's ability and right to regulate its own elections should not issue absent findings of fact and conclusions

[2] *See* Docket No. 159, attached as Ex. 3.

of law; (3) the balance of hardships favors the state defendants, given the timing of the Order and Judgment and the potential impacts to the on-going election cycle. By comparison, no harm will be suffered by the appellees if the election takes place according to regulatory framework that has been in place since 1995; and (4) granting the stay will be in the public interest because drastically altering the status quo in the month before an election is clearly not in the public interest. Maintaining a clear and established regulatory framework is in the public interest.

As of this writing, the District Court has made no decision on the defendants' motion to stay the Order and Judgment pending appeal. The District Court has ordered that Plaintiffs/Appellees respond to the motion on or before Monday, October 8, 2012. Therefore, all arguments advanced in this motion have been presented to the District Court, but it is unclear when the motion will be addressed. The District has thus far failed to afford the relief requested and urgent action is needed.

RELEVANT PROCEDURAL AND FACTUAL BACKGROUND

This case was filed on September 6, 2011, challenging various Montana election statutes. After cross-motions on summary judgment, the District Court permanently enjoined the vote reporting requirement Mont. Code Ann. § 13-35-225(3)(a), the political civil libel statute, § 13-37-131, and that part of § 13-35-227 which would have the effect of prohibiting corporate contributions to political

committees used solely for independent expenditures. The District Court upheld § 13-35-227 insofar as it prohibits a corporation from making direct or indirect contributions to candidates or political parties. Order and Permanent Injunction, May 16, 2012, at 25-26 (Doc. # 90) attached as Ex. 4.

The remaining issues concerning Montana's contribution limits were the subject of a bench trial, held September 12-14, 2012. These same contribution limits (with the exception of the aggregate political party limit) were the subject of a previous trial in Montana District Court, in the *Eddleman* case. Findings and Conclusions were entered by the trial court on September 19, 2000, upholding the constitutionality of Montana's limits. Tr. Ex. 11, attached as Ex. 5. These limits have been regularly adjusted for inflation. The evidence introduced by defendants during the most recent trial demonstrated that competiveness of Montana elections has not substantially changed since the *Eddleman* case, and candidates are able to amass resources to mount effective campaigns.[3] Plaintiffs' witnesses repeatedly acknowledged that candidates can mount effective--and victorious--campaigns under current contribution limits, even where the winning candidate was outspent. Even Plaintiffs' expert witness testified that Montana elections are competitive.

[3] The District Court ordered a transcript of the trial. Dist. Ct. Doc. Nos. 154-156. Appellants, however, do not have a copy of the transcript at this time. In referring to testimony and evidence introduced at trial, Appellants certify that they have a good-faith belief that they are accurately representing the record.

After trial, the District Courtheld that Montana's contribution limits "prevent candidates from amassing the resources necessary for effective campaign advocacy." Order, at 5, citing to *Randall v. Sorrell*, 548 U.S. 230 (2006). The Court permanently enjoined enforcement of the contribution limits in Mont. Code Ann. § 13-37-216. The enjoined limits include individual contributions to candidates, political party contributions to candidates, and individual political committee contributions to candidates. The Court did not enjoin the limits on aggregate political committee contributions that a candidate may accept. Order, at 4.

The District Court has made no decision on the defendants' motion to stay. The District Court has ordered the plaintiffs/appellees to respond to the state defendants' motion for stay. However, several more days or longer of continuing confusion regarding the impact of the District Court's Order and Judgment is not acceptable to the Appellants and is harmful to the public interest. Because urgent action is needed and the District Court has failed thus far to afford the relief requested, the state appellants respectfully submit this motion.

ARGUMENT

I. STANDARD FOR GRANTING A STAY PENDING APPEAL

A party seeking a stay pending appeal "must establish that he is likely to succeed on the merits, that he likely to suffer irreparable harm in the absence of relief, that the balance of equities tip in his favor, and that a stay is in the public

interest." *Townley v. Miller*, 2012 U.S. App. LEXIS 18916 (9th Cir. 2012); *Humane Society v. Gutierrez*, 558 F.3d 896 (9th Cir. 2009). These factors favor the appellants' request for a stay.

II. APPELLANTS ARE LIKELY TO SUCCEED ON THE MERITS

A. Plaintiffs Have Not Satisfied Their Heavy Burden to Overcome *Stare Decisis* and Invalidate Binding Authority.

Montana has a clearly recognized interest in preventing corruption and the appearance of corruption in its elections. Montana's current limits were established by voter initiative in 1994. *Eddleman*, 343 F.3d at 1088. Montana previously prevailed in *Eddleman*, and Plaintiffs have the heavy burden of demonstrating established precedent should be reversed. *Vasquez v. Hillery*, 474 U.S. 254, 266 (1986). All Ninth Circuit published opinions constitute binding authority which must be followed unless and until overruled by a body competent to do so. *Gonzalez v. Arizona*, 677 F.3d 383, 390 n.4 (9th Cir. 2012) (en banc). *Eddleman* is binding authority.

Plaintiffs "must show that limiting donations prevents candidates from amassing the resources necessary for effective advocacy, making a donee candidate's campaign to be not merely different but ineffective." *Eddleman*, 343 F.3d at 1095. In light of the previous trial and decisions in *Eddlemen*, Plaintiffs have the burden of demonstrating that the contribution limits, while

formerly adequate, no longer allow candidates to amass the resources necessary for effective campaign advocacy. *Randall v. Sorrell*, 548 U.S. 230, 248 (2006).

Here, Plaintiffs have only mustered evidence that campaigns would be different, but they have no evidence that campaigns are ineffective because of the campaign limits. Plaintiffs' expert witness testified that if Montana's contribution limits were hypothetically raised, then a certain number of donors would hypothetically increase their contributions. The expert gave no other opinion of the impact of the current contribution limits on campaigns and did not offer any opinion that candidates could not amass the resources to conduct an effective campaign. The expert has no personal knowledge of Montana electors or campaigns. A former candidate for Montana political office, John Milanovich, testified that he quit fundraising during his one active campaign long before election day, because of a death in his family. The witnesses representing local political party committees testified that they would like to give more money to their candidates of choice. They gave no evidence indicating Montana's contribution limits prevented effective campaigning. Indeed, all but one of their preferred candidates won their elections. Former candidate for Montana political office and current state legislator Mike Miller testified that he beat an incumbent even though he raised less money, and that he has since retained his seat.

Conversely, the witnesses of the state defendants testified that Montana's campaigns are healthy and competitive.

Plaintiffs have not satisfied their burden. Whether candidates could raise more money if contribution limits were removed is not the issue. The question is whether Montana's contribution limits remain constitutional. The evidence indicates that candidates can amass the resources necessary to mount effective and winning campaigns, and that Montana elections are competitive and healthy due in part to the established contribution limits.

B. Montana's Contribution Limits Are Constitutional.

1. Exacting Scrutiny Applies

There has been no case from the United States Supreme Court, or from the Ninth Circuit, that has altered the *Eddleman* Court's analysis concerning limitations on contributions. As the Ninth Circuit recently recognized in *Thalheimer*, the Supreme Court in *Citizens United* drew a distinction between limitations on *expenditures* versus limitations on *contributions*. In doing so, the *Citizens United* "Court made clear that it was not revisiting the long line of cases finding anti-corruption rationales sufficient to support [contribution] limitations." *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1124 (9th Cir. 2011). Beginning with *Buckley v. Valeo*, 424 U.S. 1 (1976), and in the "long line of cases" since, the Supreme Court has distinguished laws restricting campaign expenditures from laws

restricting campaign contributions. *Thalheimer*, 645 F.3d at 1124. The Court has determined that laws limiting campaign expenditures "impose significantly more severe restrictions on protected freedoms of political expression and association than do" laws limiting campaign contributions. *Id.* at 11-23.

For laws limiting campaign contributions, the Court has conducted a "relatively complaisant review under the First Amendment." *Federal Election Comm'n v. Beaumont*, 539 U.S. 146, 161 (2003). Such laws, the Court has concluded, are "merely 'marginal' speech restrictions," since contributions "lie closer to the edges than to the core of political expression." *Id.* Thus, "instead of requiring contribution regulations to be narrowly tailored to serve a compelling governmental interest," a law limiting contributions "passes muster if it satisfies the lesser demand of being 'closely drawn' to match a 'sufficiently important interest.'" *Id.* at 162. (*quoting Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 387-88 (2000) (some quotation marks omitted); *see also Buckley v. Valeo*, 424 U.S. at 25.

Moreover, "the anti-circumvention interest is part of the familiar anti-corruption rationale." *Thalheimer*, 645 F.3d at 1124 (citations omitted). For purposes of determining the constitutionality of contribution limits, there is no constitutionally determinative distinction between contributions by political parties and contributions by individuals or PACs. *See Federal Election Comm'n v.*

Colorado Republican Fed. Campaign Comm., 533 U.S. 431, 455-56 (2001) ("The Party's arguments for being treated differently from other political actors subject to limitation on political spending . . . do not pan out. . . ."). In the *Randall* plurality opinion, the Supreme Court suggested there may be circumstances under which political parties could be treated differently with respect to contribution limits. *Thalheimer*, 645 F.3d at 1127. However, political parties cannot be allowed to circumvent Montana's individual contribution limits.

2. Montana's Contribution Limits Are Closely Drawn to Prevent Corruption or the Appearance of Corruption, Including Circumvention of Contribution Limits.

The State of Montana has a valid recognized interest in avoiding corruption or the appearance of corruption in its elections, has demonstrated its campaign contribution limits are narrowly tailored, and the provisions of Mont. Code Ann. §§ 13-37-216(1), (3), and (5) are closely drawn to match a sufficiently important interest.

The aggregate limits on contributions by political party committees serve to prevent circumvention of Montana's individual contribution limits. There are no restrictions on individual contributions to any political party committee. Because there are no limits on such contributions by individuals, the limits on contributions to candidates by any political party committee (including the aggregate limit from all political party committees) serve to prevent circumvention of individual contribution

limits, and therefore prevent corruption or the appearance of corruption. This anti-circumvention interest is well recognized. *Federal Election Comm'n v. Beaumont*, 539 U.S. at 160; *Federal Election Comm'n v. Colorado Republican Fed. Campaign Comm'n*, 533 U.S. at 465. Montana clearly has an anti-circumvention interest in preventing misuse of its mandatory contribution limits.

Randall v. Sorrell supports the conclusion that Montana's limits are closely drawn to match its interest in avoiding corruption or the appearance of corruption. Assuming *Randall* applies here,[4] there is a two-step process for evaluating the validity of contribution limits: (1) the court must determine whether there are "danger signs" in a particular case that the limits are too low; (2) the record must be reviewed for appropriate tailoring. Applied to this case, there are no danger signs, and appropriate tailoring was established in *Eddleman.* Montana's contribution limits remain valid, just as held in *Eddleman*.

Plaintiffs have offered no evidence that the "danger signs" present in *Randall* are present here. Plaintiffs have not demonstrated that the contribution limits preclude candidates from running competitive campaigns or create serious associational or expressive problems as described in *Randall*. In fact, *Eddleman* established that it costs significantly less to campaign for political office in Montana than elsewhere, and Montana's contribution limits satisfy closely drawn

[4] As the the Ninth Circuit has recognized, the plurality opinion in *Randall* is persuasive but not controlling. *See Thalheimer*, 645 F.3d at 1127 n.5.

scrutiny. As demonstrated during the recent trial, the competitiveness of Montana elections is substantially unchanged since *Eddleman*. As long as limits are otherwise constitutional, "it is not the prerogative of the courts to fine-tune the dollar amounts of those limits." *Eddleman*, 343 F.3d at 1095 (citation omitted). The Ninth Circuit's analysis and holding in *Eddleman* remain good law.

This matter is also distinguishable from *Randall* as to the five specific factors, which "*[t]aken together*" must demonstrate that the contribution limits are not closely drawn. *Randall*, 548 U.S. at 253 (emphasis in original).

First, there is no evidence here that Montana contribution limits significantly restrict the amount of funding available for challengers to run effective campaigns, which was the first factor considered in *Randall*. As Plaintiffs' expert Clark Bensen admitted, he did no analysis of whether political parties "target" close campaigns in Montana, and his opinions were nothing more than statistical analysis entirely bereft of any consideration of other facts related to Montana campaigns. Unlike the elections in Vermont at issue in *Randall*, Montana's term limits established by article IV, section 8 of the Montana Constitution also provide additional opportunity for challengers to seek office. Furthermore, Mr. Bensen reviewed (but disregarded) Trial Exhibit D-24 from the *Eddleman* case, and completely disregarded the pivotal

impact of below-threshold donors[5] on the competitiveness of Montana campaigns. The failure to include below-threshold donors vastly underestimates the number of donors to campaigns. Defendants' evidence, particularly the testimony or Edwin Bender and Mary Baker, demonstrated that challengers can amass the resources necessary to mount effective campaigns, and contribution percentages have remained substantially the same since *Eddleman*.

Second, the Vermont political party contribution limit at issue in *Randall* was the same for political parties as it was for individuals and PACs; here, the political party contribution limits are significantly greater. Unlike Vermont, the aggregate limits for contributions by political parties in Montana are much higher than for individuals and PACs. Moreover, because PACs and political parties can provide personal services (including expenses) to assist a candidate, which are not considered contributions, the contribution limits in Montana are not diluted as was the case with Vermont.[6] *Randall*, 548 U.S. at 257-58.

Third, there are also significant differences regarding volunteering time in Montana as compared to Vermont. Under Montana law, an individual may volunteer his or her own time without it being considered a contribution under Mont. Code Ann.

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[5] Contributors who contribute less than $35 are not individually itemized on campaign finance reports filed with the Commissioner of Political Practices. Mont. Code Ann. § 13-37-229(2). Ex. D-24 was introduced at trial, and is attached as Ex. 6.

[6] Political parties and PACs have been providing such personal services dating back to at least 1987, long before *Eddleman* was decided. Tr. Ex. 51. attached as Ex. 7.

§ 13-1-101(7)(b)(i). Unlike Vermont, Defendants established that expenses incurred by individuals while volunteering for a candidate are not considered contributions under Montana law. No evidence to the contrary was presented.

Fourth, unlike Vermont, Montana's limits are adjusted for inflation, most recently in October 2011, based upon the Consumer Price Index (CPI). While the CPI considers pricing that may not precisely track campaign expenses, even Plaintiffs' expert testified that CPI-based adjustment for inflation is standard. It is not the role of the courts to "fine tune" the dollar amount where contribution limits do not prevent candidates from mounting effective campaigns. *Eddleman*, 645 F. 3d at 1095. Montana's limits are and have been adjusted for inflation.

Fifth, as the Ninth Circuit held in *Eddleman*, Montana's contribution limits are justified. As Edwin Bender testified, Montana remains an inexpensive place to campaign, and Montana elections have not substantially changed since *Eddleman*. Candidates can amass resources necessary to mount effective campaigns.

Taken together, even if the *Randall* factors are applied, the evidence establishes that Montana's contribution limits are constitutional. Plaintiffs have not demonstrated that the contribution limits preclude candidates from running competitive campaigns or create serious associational or expressive problems as described in *Randall*. The competitiveness of Montana elections is substantially unchanged since *Eddleman.* To the extent the plurality opinion *Randall* applies, the

factors present in *Randall* do not support the relief sought, and do not support any legal conclusion that Montana's contribution limits are unconstitutionally low.

Montana has a recognized interest in limiting contributions, and the limits are appropriately tailored. Montana's contribution limits yield competitive and robust campaigns, and are regularly adjusted for inflation. Candidates can obviously amass resources necessary for effective campaigns, and significant untapped donors are available to candidates who can attract support and are willing to work for support. The voices of political parties have not been reduced to a whisper, but remain loud and vibrant. Plaintiffs did not satisfy their heavy burden to overrule *Eddleman.*

3. Plaintiffs' "Underinclusiveness" Argument Fails.

Because their other arguments fall short, Plaintiffs have shifted to an underinclusiveness argument. Plaintiffs argued at trial that the ability of political committees to provide personal services to candidate campaigns, without having those services count as contributions, undermined Montana's anti-corruption interest in maintaining aggregate political party limits. While it may be conceded that monetary contributions and a political committee providing personal services both benefit a campaign, there are substantial differences. The decisions in *Eddleman* and *Randall* recognize these distinctions.

In *Eddleman*, the recognized danger of *quid pro quo* corruption was based upon the size of monetary contributions, and the court recognized Montana's

interest that candidates should have a broad and diverse base of monetary support. *Eddleman*, 343 F.3d at 1096-98. The fact that political committees can provide manpower to help raise money from individual donors and assist a candidate in conveying a message is simply not equivalent to donating money--and every witness testifying for Plaintiff admitted as much. In *Randall,* the Supreme Court plurality emphasized that other means of protecting associational rights (factors two and three)[7] should be considered in determining whether contribution limits are too low. Implicit in this analysis is the recognition that limits on contributions are not direct restrictions on speech, limits on contributions are subject to lesser scrutiny, and the Court has "no scalpel to probe"[8] the amount of the limit if it is otherwise constitutional.

Finally, there is no evidence that personal services, which have been provided to campaigns by political committees dating back at least as far as 1987,[9] have been used to circumvent contribution limits in a manner that corrupts or created an appearance of corruption. The Plaintiffs' underinclusiveness argument is entirely speculative. Montana's anti-corruption interest in its aggregate monetary contribution limits remains vital.

[7] 548 U.S. at 256-60.

[8] *Buckley*, 424 U.S. at 30.

[9] Tr. Ex. 51 attached at Ex. 7.

III. APPELLANTS WILL SUFFER IRREPARABLE HARM IF THE STAY DOES NOT ISSUE

The Appellants will suffer irreparable harm during this election cycle if the stay is not issued. The effect of the District Court decision is to create confusion by changing the rules of campaigning in the few weeks before Montana's elections. The District Court's decision provides no guidance to the Appellants, or to candidates, political committees, or individuals who may wish to express their political speech through contributions in the next month. Without a stay, the Commissioner of Political Practices lacks a clear framework to regulate the last critical month of the election cycle. Without a stay, confusion may prevent donors from making contributions or lead to massive and unregulated contributions. Voting has already begun. Irreparable harm to the integrity of Montana's political process is manifest and will result without a stay restoring the status quo ante.

IV. THE BALANCE OF HARDSHIPS TIPS IN THE APPELLANTS FAVOR

The balance of hardships clearly favors the appellants in this instance. A stay will restore the status quo ante, enabling the Commissioner's Office to continue to regulate the current election cycle relying on statutes and regulations that are well known to all, and which have governed Montana elections for nearly two decades. Without a stay, confusion during the last month of the election cycle will result, which will undermine the integrity of the Montana election process. By contrast, the plaintiffs/appellees will not be harmed. The framework has been in

place since 1995 and has functioned well in preserving Montana's citizen democracy and preventing corruption or the appearance of corruption.

V. GRANTING AN INJUNCTION WILL BE IN THE PUBLIC INTEREST

The public interest is best served by ensuring that Montana's longstanding regulatory framework remains in place in the last month before the general elections. Suspension of nearly all of Montana's contribution limits in the weeks before an election will cause confusion, and undermine the integrity of Montana's electoral process. Candidates, contributors, and the public need a clear framework through which to participate in the political process. The eleventh hour judicial elimination of Montana's correct contribution limits, which have been in place since 1995, harms the public's perception that Montana's elections are clean and fair. Montana's interest in maintaining its long-standing contribution limits and citizen initiative limiting campaign contributions should not be swept aside by the brief Order after voting has begun. *Cf.*, *Townley v. Miller*, *supra* at *11 (Reinhardt, concurring). The public interest here is in maintaining the status quo by granting appellants' motion to stay.

CONCLUSION

For the foregoing reasons, the District Court's Order and Judgment in this matter should be stayed until disposition of this appeal.

Respectfully submitted this 4th day of October, 2012

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Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that under penalty of perjury that on the 5th day of October, 2012, a true and correct copy of the foregoing will be personally served on:

Mr. John E. Bloomquist
Mr. James E. Brown
Doney, Crowley, Payne,
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44 West 6th Avenue
Helena, MT 59601

I hereby certify that under penalty of perjury that on the 5th day of October, 2012, a true and correct copy of the foregoing will be served by mail on:

Mr. James Bopp, Jr.
Ms. Anita Woudenberg
The Bopp Law Firm
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Terre Haute, IN 47807

/s/ Michael G. Black
MICHAEL G. BLACK
Assistant Attorney General
Attorney for Appellants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

DOUG LAIR, STEVE DOGIAKOS, AMERICAN TRADITION PARTNERSHIP, AMERICAN TRADITION PARTNERSHIP PAC, MONTANA RIGHT TO LIFE ASSOCIATION PAC, SWEET GRASS COUNCIL FOR COMMUNITY INTEGRITY, LAKE COUNTY REPUBLICAN CENTRAL COMMITTEE, BEAVERHEAD COUNTY REPUBLICAN CENTRAL COMMITTEE, JAKE OIL LLC, JL OIL LLC, CHAMPION PAINTING INC, and JOHN MILANOVICH,

Plaintiffs,

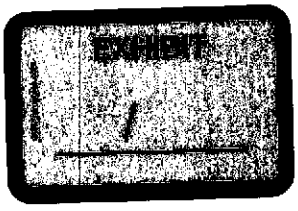
vs.

JAMES MURRY, in his official capacity as Commissioner of Political Practices; STEVE BULLOCK, in his official capacity as Attorney General of the State of Montana; and LEO GALLAGHER, in his official capacity as Lewis and Clark County Attorney;

Defendants.

CV 12-12-H-CCL

ORDER



The remainder of this case—the constitutionality of Montana's election limits set out in Montana Code Annotated § 13–37–216—came on regularly for trial before the undersigned sitting without a jury from September 12, 2012, to September 14, 2012. Plaintiffs were represented by James Bopp, Jr., and the defendants were represented by Michael Black and Andrew Huff.

Plaintiffs filed this case in the Billings Division for the District of Montana on September 6, 2011, claiming that several of Montana's campaign finance and election laws are unconstitutional under the First Amendment. The statutes that they challenged are:

> Montana Code Annotated § 13–35–225(3)(a), which requires authors of political election materials to disclose another candidate's voting record;
>
> Montana Code Annotated § 13–37–131, which makes it unlawful for a person to misrepresent a candidate's public voting record or any other matter relevant to the issues of the campaign with knowledge that the assertion is false or with a reckless disregard of whether it is false;
>
> Montana Code Annotated § 13–37–216(1), (5), which limits contributions that individuals and political committees may make to candidates;
>
> Montana Code Annotated § 13–37–216(3), (5), which imposes an aggregate contribution limit on all political parties; and
>
> Montana Code Annotated § 13–35–227, which prevents corporations from making either direct contributions to candidates or independent expenditures on behalf of a candidate.

Plaintiffs moved for a preliminary injunction on September 7, 2011, seeking to enjoin the defendants from enforcing each of these statutes. Before any action was taken on the motion, defendants moved to change venue. That motion was granted on January 31, 2012, and the case was transferred to the undersigned and the Helena Division of the Court.

On February 16, 2012, this Court held a hearing on the motion for a preliminary injunction and enjoined enforcement of Montana's vote-reporting requirement and political-civil libel statute. (*See* doc. 66); Mont. Code Ann. §§ 13–35–225(3)(a), 13–37–131. The Court denied the motion as to the remaining statutes. (*Id.*) Status conferences with the parties were held.

The Court issued its scheduling order on March 9, 2012. The parties agreed that all of the issues regarding the contribution limits in Montana Code Annotated § 13–37–216(1), (3), and (5) would be resolved through a bench trial and that all other matters would be adjudicated by summary judgment. The Court accepted the stipulation. (*See* doc. 73.)

The Court and the parties all agreed to place this matter on an expedited schedule so that it will be resolved prior to this year's election.

The parties filed cross-motions for summary judgment, and the Court held a hearing on May 12, 2012. The Court granted both motions in part and denied them

in part. (*See* doc. 90.) The Court *inter alia* permanently enjoined: (1) Montana's vote-reporting requirement, (2) political-civil libel statute, and (3) ban on corporate contributions to political committees that the committees use for independent expenditures. *See* Mont. Code Ann. §§ 13–35–225(3)(a), 13–37–131,13–35–227.

The Court held a bench trial from September 12, 2012, to September 14, 2012, in order to resolve the remainder of the case—i.e. plaintiffs' claims related to Montana's campaign contribution limits in Montana Code Annotated § 13–37–216.

Briefing by the parties was completed September 26, 2012. The transcript of testimony and record of proceedings was filed September 28, 2012 and October 1, 2012.

Having reviewed and considered the entire record and the parties' arguments and evidence, the Court concludes that Montana's contribution limits in Montana Code Annotated § 13–37–216 are unconstitutional under the First Amendment.[1] *Randall v. Sorrell*, 548 U.S. 230 (2006). The contribution limits

[1] The plaintiffs do not challenge the constitutionality of Montana Code Annotated § 13–37–218, which imposes an aggregate contribution limit on political committees. The plaintiffs make no mention of that statute in their complaint, and they did not argue at the bench trial that the statute is unconstitutional. The Court, therefore, makes no determination as to the constitutionality of this statute, and this decision does not impact the defendants' ability to enforce Montana Code Annotated § 13–37–218.

prevent candidates from "amassing the resources necessary for effective campaign advocacy." *Id.* at 249 (citations and internal quotation marks omitted). The defendants are therefore permanently enjoined from enforcing these limits.

The Court will in due course issue complete and extensive findings of fact and conclusions of law that support this order. They will be filed separately, though, so that this order can be issued before voting begins in the upcoming election.

IT IS ORDERED that the contribution limits in Montana Code Annotated § 13–37–216 are declared unconstitutional. The defendants are permanently enjoined from enforcing those limits.

IT IS FURTHER ORDERED that the defendants' renewed motion for summary judgment is DENIED.

IT IS FURTHER ORDERED the Clerk of Court is directed to enter judgment in favor of the plaintiffs.

Dated this 3rd day of October 2012. 1:50 p.m.

CHARLES C. LOVELL
SENIOR UNITED STATES DISTRICT JUDGE

AO 450 (Rev. 11/11) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Montana

FILED

OCT 03 2012

PATRICK E. DUFFY, CLERK

By DEPUTY CLERK, HELENA

DOUG LAIR, et al.
Plaintiff

v.

JAMES MURRAY, in his official capacity, et al.
Defendant

Civil Action No. CV-12-12-H-CCL

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

☐ the plaintiff *(name)* _____ recover from the defendant *(name)* _____ the amount of _____ dollars ($ _____), which includes prejudgment interest at the rate of _____ %, plus post judgment interest at the rate of _____ % per annum, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* _____ recover costs from the plaintiff *(name)* _____.

☑ other: In accordance with the Order issued on October 3, 2012, (docket no. 157) the contribution limits in MCA Sec 13-37-216 are declared unconstitutional. The defendants are permanently enjoind from enforcing those limits. Judgment is entered in favor of Plaintiffs.

This action was *(check one)*:

☐ tried by a jury with Judge _____ presiding, and the jury has rendered a verdict.

☑ tried by Judge Lovell without a jury and the above decision was reached.

☐ decided by Judge _____ on a motion for

Date: October 3, 2012

SEAL UNITED STATES DISTRICT COURT DISTRICT OF MONTANA 1890

CLERK OF COURT

Darlene McMato

Signature of Clerk or Deputy Clerk

EXHIBIT 2

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COUNSEL FOR DEFENDANTS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

DOUG LAIR; STEVE DOGIAKOS; AMERICAN TRADITION PARTNERSHIP; AMERICAN TRADITION PARTNERSHIP PAC; MONTANA RIGHT TO LIFE ASSOCIATION PAC; SWEET GRASS COUNCIL FOR COMMUNITY INTEGRITY; LAKE COUNTY REPUBLICAN CENTRAL COMMITTEE; BEAVERHEAD COUNTY REPUBLICAN CENTRAL COMMITTEE; JAKE OIL LLC; JL OIL LLC; CHAMPION PAINTING INC.; and JOHN MILANOVICH, Plaintiffs, v. JAMES ("JIM") MURRY, in his official capacity as Commissioner of Political Practices; STEVE BULLOCK, in his official capacity as Attorney General of the State of Montana; and LEO GALLAGHER, in his official capacity as Lewis and Clark County Attorney, Defendants.	Cause No. 6:12-cv-00012-CCL **DEFENDANTS' MOTION FOR IMMEDIATE STAY OF ORDER AND JUDGMENT PENDING APPEAL**

COME NOW the Defendants and hereby move the Court pursuant to Fed.R.Civ.P. 62(c) to stay the Order (Doc. No. 157) and Judgment (Doc. No. 158) entered in this matter on October 3, 2012. A Notice of Appeal will be filed on October 4, 2012. The Court has power to decide a Rule 62 Motion to preserve the *status quo*. *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 79-80 (9th Cir. 1951). Based upon the record before the Court, Defendants have established that (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable injury if the injunction does not issue; (3) the balance of hardships tips in their favor; and (4) granting an injunction will be in the public interest. *Winter v. NRDC*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008). The *Winter* standard applies here. *Townley v. Miller*, 2012 U.S. App. LEXIS 18916 (9th Cir. 9/5/2012).

Montana is likely to succeed on the merits based upon clear authority from the Ninth Circuit. *Montana Right to Life Ass'n v. Eddleman*, 343 F.3d 1085 (9th Cir. 2003), *cert. denied*, 125 S. Ct. 47 (2004); *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1127, n. 5 (9th Cir. 2011). Montana has the right to regulate its elections, and no permanent injunction should issue absent findings of fact and conclusions of law. *Purcell v. Gonzalez*, 549 U.S. 1 (2006). The election has commenced because military ballots have been mailed, and the Order drastically alters the status quo. Montana candidates and voters are likely to suffer irreparable

injury if a stay does not issue, the balance of hardships tips in Defendants favor, and granting an immediate stay is in the public interest. An immediate stay is appropriate.

Counsel for Plaintiffs have been contacted pursuant to LR 7.1(c)(1), and Plaintiffs object to the relief sought by this Motion.

Respectfully submitted this 3rd day of October, 2012.

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By: */s/ Michael G. Black*
MICHAEL G. BLACK
Assistant Attorney General
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2012, I electronically filed the foregoing with the clerk of the court for the United States District Court for the District of Montana, by using the cm/ecf system.

Participants in the case who are registered cm/ecf users will be served by the cm/ecf system.

Dated: October 3, 2012

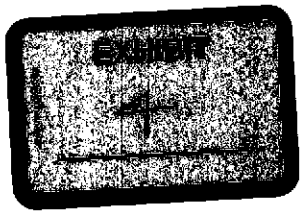
/s/ Michael G. Black
MICHAEL G. BLACK
Assistant Attorney General
Counsel for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

DOUG LAIR, STEVE DOGIAKOS, AMERICAN TRADITION PARTNERSHIP, AMERICAN TRADITION PARTNERSHIP PAC, MONTANA RIGHT TO LIFE ASSOCIATION PAC, SWEET GRASS COUNCIL FOR COMMUNITY INTEGRITY, LAKE COUNTY REPUBLICAN CENTRAL COMMITTEE, BEAVERHEAD COUNTY REPUBLICAN CENTRAL COMMITTEE, JAKE OIL LLC, JL OIL LLC, CHAMPION PAINTING INC, and JOHN MILANOVICH, Plaintiffs, vs. JAMES MURRY, in his official capacity as Commissioner of Political Practices; STEVE BULLOCK, in his official capacity as Attorney General of the State of Montana; and LEO GALLAGHER, in his official capacity as Lewis and Clark County Attorney; Defendants.	CV 12-12-H-CCL ORDER and PERMANENT INJUNCTION



The plaintiffs filed this lawsuit, challenging several of Montana's campaign finance and election laws. The plaintiffs also moved for a preliminary injunction, which the Court granted in part and denied in part. The parties then agreed that some of the plaintiffs' claims could be resolved by summary judgment and some would require further factual development and a bench trial. Both parties moved for summary judgment in light of this stipulation.

The Court held a hearing on the motions for summary judgment on May 12, 2012. Noel Johnson and John Bloomquist appeared for the plaintiffs. Michael Black and Andrew Huff appeared for the defendants. Having heard the arguments and examined the briefs, the Court grants the motions in part and denies them in part. In particular, the Court permanently enjoins Montana's vote-reporting requirement, political-civil libel statute, and ban on corporate contributions to political committees that the committees use for independent expenditures. The Court, however, concludes that Montana's ban on direct and indirect corporate contributions to candidates and political parties is constitutional.

This order and permanent injunction is the final judgment on these matters. The balance of the plaintiffs' claims shall be resolved by bench trial.

BACKGROUND

The plaintiffs are individuals, corporations, political committees,

associations, and political parties that have expressed a desire to take actions that would violate several of Montana's campaign finance and election laws:

- Montana Code Annotated § 13–35–225(3)(a), which requires authors of political election materials to disclose another candidate's voting record;
- Montana Code Annotated § 13–37–131, which makes it unlawful for a person to misrepresent a candidate's public voting record or any other matter relevant to the issues of the campaign with knowledge that the assertion is false or with a reckless disregard of whether it is false;
- Montana Code Annotated § 13–37–216(1), (5), which limits contributions that individuals and political committees may make to candidates;
- Montana Code Annotated § 13–37–216(3), (5), which imposes an aggregate contribution limit on all political parties; and
- Montana Code Annotated § 13–35–227, which prevents corporations from making contributions or expenditures in connection with a candidate or a political committee that supports or opposes a candidate or political party.

The plaintiffs argue that each of these statutory provisions violates the First Amendment of the United States Constitution.

As the Court previously concluded, the plaintiffs have standing to pursue their claims. (*See* doc. 66 at 6–7); *Wong v. Bush*, 542 F.3d 732, 736 (2008) (holding that, in the first amendment context, "'[I]t is sufficient for standing purposes that the plaintiff intends to engage in a course of conduct arguably

affected with a constitutional interest and there is a credible threat that the challenged provision will be invoked against the plaintiff.'" (quoting *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1154–55 (9th Cir. 2000)).

On February 24, 2012, the Court issued a preliminary inunction enjoining the enforcement of the vote-reporting requirement (Section 13–35–225(3)(a)) and the political civil libel statute (Section § 13–37–131). The Court, however, did not enjoin enforcement of the contribution limits in Section 13–37–216(1), (3), (5) or the ban on corporate contributions and expenditures in Section 13–37–227.

In a scheduling order issued after the preliminary injunction order, and by agreement of the parties, the Court ordered that it will hold a bench trial to adjudicate the plaintiffs' claims regarding the contribution limits in Section 13–37–216(1), (3), (5). That trial is scheduled for September 12, 2012. The Court and the parties agreed that all other matters can be adjudicated by summary judgment.

Both parties then moved for summary judgment, presenting four questions:

1. Is the vote-reporting requirement (Section 13–35–225(3)(a)) constitutional?

2. Is the political-civil libel statute (Section § 13–37–131) constitutional?

3. May governments ban direct or indirect corporate contributions

to candidates and political parties (Section 13–37–227)?

4. May governments prevent corporations from making contributions to political committees that use the contributions for independent expenditures in support of a candidate or political party (Section 13–37–227)?

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate only if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Here, there are no factual disputes precluding summary judgment. The only questions before the Court are questions of law, making summary judgment the appropriate vehicle for resolving these issues. *See IDK, Inc. v. Clark Co.*, 836 F.2d 1185, 1189 (9th Cir.1988).

ANALYSIS

The Court grants summary judgment in favor of the plaintiffs in three respects: The vote-reporting requirement, the political civil libel statute, and the prohibition of corporate contributions to political committees that the committees then use for independent expenditures are all unconstitutional under the First Amendment. The Court, however, grants summary judgment in favor of the defendants on one of the plaintiffs' claims: Governments may constitutionally

prohibit corporations from making direct or indirect contributions to candidates and political parties.

I. Section 13–35–225(3)(a): vote-reporting requirement

The plaintiffs move for summary judgment on their claim that the vote-reporting requirement in Section 13–35–225(3)(a) is unconstitutional under the First Amendment. They argue the statute is unconstitutionally vague, overbroad, and fails strict scrutiny review. The Court agrees that the statute is unconstitutionally vague and therefore grants the plaintiffs' motion as to this claim.

The vote-reporting requirement in Section 13–35–225(3)(a) provides:

> Printed election material described in subsection (1) that includes information about another candidate's voting record must include:
>
> (i) a reference to the particular vote or votes upon which the information is based;
>
> (ii) a disclosure of contrasting votes known to have been made by the candidate on the same issue if closely related in time; and
>
> (iii) a statement, signed as provided in subsection (3)(b), that to the best of the signer's knowledge, the statements made about the other candidate's voting record are accurate and true.

The Court concludes that the statute is unconstitutionally vague for the same reasons that it enjoined the statute in its preliminary injunction order. None of the

parties provided any reasons in their summary judgment briefing for why that initial conclusion should be disturbed. For the sake of convenience, the Court presents below its discussion from the preliminary injunction order.

A statute is unconstitutionally vague if it "fails to clearly mark the boundary between permissible and impermissible speech . . . ." *Buckley v. Valeo*, 424 U.S. 1, 41 (1976).

> Statutes that are insufficiently clear are void for three reasons: "(1) to avoid punishing people for behavior that they could not have known was illegal; (2) to avoid subjective enforcement of the laws based on 'arbitrary and discriminatory enforcement' by government officers; and (3) to avoid any chilling effect on the exercise of First Amendment freedoms."

Humanitarian Law Project v. U.S. Treas. Dept., 578 F.3d 1133, 1146 (9th Cir. 2009) (quoting *Foti v. City of Menlo Park*, 146 F.3d 629, 638 (9th Cir. 1998)). Stated differently, "A statute must be sufficiently clear so as to allow persons of 'ordinary intelligence a reasonable opportunity to know what is prohibited.'" *Foti*, 146 F.3d at 638 (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)); *see also Humanitarian Law Project*, 578 F.3d at 1146.

Here, the problematic portion of Section 13–35–225(3)(a) is subsection (ii).[1] Under that subsection, when printed election material includes information about a

[1] This is not to say that other subsections are inviolate under theories other than vagueness. As explained below, the Court need not address other subsections or other theories.

candidate's voting record, the material must also include "a disclosure of contrasting votes known to have been made by the candidate on the same issue if closely related in time." Mont. Code Ann. § 13–35–225(3)(a)(ii).

As the plaintiffs discuss, the phrase "closely related in time" is not defined anywhere in Montana's statutes or regulations, and a candidate could not possibly know to what "closely related in time" refers. The defendants argue that "closely related in time" simply refers to votes that occur in the same legislative session as the votes discussed in the printed election material. That is one possibility, but are there others?

Could the phrase "closely related in time" also include the previous legislative session? Yes, possibly. A candidate's vote on a particular tax issue in 2009 could be construed as "closely related in time" to a vote on the same tax issue in 2011 (the following legislative session). But someone else might construe it differently to mean, as the defendants suggest, the same legislative session. And that is the point—the statute utterly "fails to clearly mark the boundary between permissible and impermissible speech." *Buckley*, 424 U.S. at 41. As such, it is unconstitutionally vague. *Id.*

Similarly, the phrase "the same issue" is unconstitutionally vague. Suppose, for example, that the Montana Legislature is addressing the question of campaign financing and that a state senator votes to raise the contribution limit for

individuals and political committees in gubernatorial races from $500 to $1,000. But suppose also that the same senator votes to lower that limit for political parties from $18,000 to $13,000. Do the two votes involve "the same issue" under Section 13–35–225(3)(a)(ii)? Maybe. Broadly defined, both votes concern campaign financing for gubernatorial races. But, narrowly defined, they are different—one concerns individuals and political committees and the other concerns political parties. The question of sameness, then is a question of scale. At one level the issues are the same, but, at another, they are not. As such, "persons of ordinary intelligence" do not have "a reasonable opportunity to know what is prohibited" by the phrase "the same issue." *See Foti*, 146 F.3d at 638. The phrase "the same issue" is therefore unconstitutionally vague. *Id.*

At the summary judgment hearing, the defendants conceded that the unconstitutional portions of Section 13–35–225(3)(a) cannot be severed. The Court agrees. For the reasons discussed in *Randall v. Sorrell*, 548 U.S. 230, 262 (2006), the Court does not sever the unconstitutional portion of the statute. Severing the provision would leave gaps in the statute and would require the Court to predict or foresee how the legislature might respond to the unconstitutional portions of the statute. *Id.* By not severing the provision, the legislature will be "free to rewrite [the statute] in light of the constitutional difficulties" that the Court has found. *Id.*

Since the Court grants summary judgment in favor of the plaintiffs on account of the statute's unconstitutional vagueness, the Court need not address the remaining bases upon which the statute might be unconstitutional. *See Camreta v. Greene*, 131 S. Ct. 2020, 2031 (2011) (observing that courts should "avoid reaching constitutional questions in advance of the necessity of deciding them." (citations and internal quotation marks omitted)).

II. Section 13–37–131: political civil libel

The plaintiffs also move for summary judgment on their claim that the political civil libel statute—Section 13–37–131—is unconstitutional under the First Amendment. The Court agrees that the statute is unconstitutionally vague and grants summary judgment in favor of the plaintiffs as to this claim.

The political civil libel statute makes it unlawful for a person to "misrepresent" a candidate's "public voting record or any other matter that is relevant to the issues of the campaign with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false."[2] Like the vote-

[2] Section 13–37–131 provides:

> (1) It is unlawful for a person to misrepresent a candidate's public voting record or any other matter that is relevant to the issues of the campaign with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.
>
> (2) It is unlawful for a person to misrepresent to a candidate another candidate's public voting record or any other matter that is relevant to

reporting requirement above, the Court concludes the statute is unconstitutionally vague for the same reasons discussed in its preliminary injunction order.

The problematic phrase is: "or any other matter relevant to the issues of the campaign."[3] There is simply no way for a person or an organization to know with certainty whether an issue is "relevant" to a candidate's campaign. The plaintiffs poignantly ask whether this statute is "restricted to statements about the candidates' prior and current government service? Or does it also include statements about such things as candidates' academic backgrounds? Their spouses? Their current or past employment? Their spending habits?"

The plaintiffs' questions are well taken. A person of "ordinary intelligence"

> the issues of the campaign with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.
>
> (3) For the purposes of this section, the public voting record of a candidate who was previously a member of the legislature includes a vote of that candidate recorded in committee minutes or in journals of the senate or the house of representatives. Failure of a person to verify a public voting record is evidence of the person's reckless disregard if the statement made by the person or the information provided to the candidate is false.
>
> (4) A person violating subsection (1) or (2) is liable in a civil action brought by the commissioner or county attorney pursuant to 13–37–124 for an amount up to $1,000. An action pursuant to this section is subject to the provisions of 13–37–129 and 13–37–130.

[3] Again, this is not to say that other portions of the statute are inviolate under theories other than vagueness. As explained below, the Court need not address other subsections or other theories.

would not have "a reasonable opportunity to know what is prohibited" under the statute. *Foti*, 146 F.3d at 638. The defendants counter that the statute is not vague because the speaker's speech determines the relevancy. In other words, if a person says something about a candidate, then that makes the speech "relevant to the issues of the campaign." Not so. If the defendants were correct, then the statute would be unconstitutionally overbroad. Suppose, for example, that Candidate A says that Candidate B has blue eyes when, in fact, she has brown eyes. Is that statement "relevant to the issues of the campaign"? Under the defendants' theory, yes. But, as we are often reminded during elections, not everything that is said during a campaign is truly "relevant to the issues of the campaign." Moreover, relevancy is in the eye of the beholder—what is relevant to one voter might not be relevant to another.

Since there is no way to know what constitutes a matter "relevant to the issues of the campaign," Section 13–37–131 "fails to clearly mark the boundary between permissible and impermissible speech . . . ." *Buckley*, 424 U.S. at 41. As such, it is unconstitutionally vague. *Id.*

The plaintiffs argue that, unlike the vague portion of the vote-reporting requirement, the vague portion of the political civil libel statute can be severed. The Court disagrees. Severing the unconstitutional portions of the statute would require the Court to pluck words from the statute that the State Legislature

apparently concluded were essential to the statute's meaning. Of some note, the statute does not contain a severability clause. *See Bd. of Natural Resources of St. of Wash. v. Brown*, 992 F.2d 937, 948 (9th Cir. 1993) (noting that the absence of a severability clause "'does suggest an intent to have all components operate together or not at all.'" (quoting *In re Reyes*, 910 F.2d 611, 613 (9th Cir. 1990)). For the reasons given in *Randall*, the Court does not sever the unconstitutional portion of the statute. Severing the provision would leave gaps in the statute and would require the Court to predict or foresee how the legislature might respond to the unconstitutional portions of the statute. *Id.* By not severing the provision, the legislature will be "free to rewrite [the statute] in light of the constitutional difficulties" that the Court has found. *Id.*

Since the Court grants summary judgment in favor of the plaintiffs on account of the statute's unconstitutional vagueness, the Court need not address the remaining bases upon which the statute might be unconstitutional. *See Camreta*, 131 S. Ct. at 2031 (observing that courts should "avoid reaching constitutional questions in advance of the necessity of deciding them." (citations and internal quotation marks omitted)).

III. Section 13–35–227: corporate contributions to political committees for independent expenditures

Montana Code Annotated § 13–35–227 prevents corporations from making

"expenditure[s] in connection with a candidate or a political committee that supports or opposes a candidate or a political party."[4] This includes money that a corporation gives to a political committee that the committee then uses for independent expenditures. The plaintiffs argue that this ban violates the First Amendment, and the Court agrees.

> Montana's Administrative Rules defines an "independent expenditure" as:
>
> an expenditure for communications expressly advocating the success or defeat of a candidate or ballot issue which is not made with the cooperation or prior consent of or in consultation with, or at the request or suggestion of, a candidate or political committee or an agent of a candidate or political committee.

Admin. R. Mont. 44.10.323(3); *see also Long Beach Area Chamber of Commerce*

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[4] Section 13–35–227 provides:

> (1) A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party.
>
> (2) A person, candidate, or political committee may not accept or receive a corporate contribution described in subsection (1).
>
> (3) This section does not prohibit the establishment or administration of a separate, segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee, or member of the corporation.
>
> (4) A person who violates this section is subject to the civil penalty provisions of 13-37-128.

v. City of Long Beach, 603 F.3d 684, 695 (9th Cir. 2010) ("'By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate.'" (quoting *Citizens United*, 130 S. Ct. at 910)).

Independent expenditures stand in contrast to "coordinated expenditures," which the Administrative Rules define as "expenditure[s] made in cooperation with, consultation with, at the request or suggestion of, or the prior consent of a candidate or political committee or an agent of a candidate or political committee." Admin. R. Mont. 44.10.323(4). Coordinated expenditures are functionally equivalent to contributions. *See id*; *FEC v. Colo. Republican Fed. Campaign Comm.* (*Colorado II*), 533 U.S. 431, 443 (2001) (citing *Buckley*, 424 U.S. at 46–47).

In *Citizens United*, the U.S. Supreme Court held, in sweeping language, that governments cannot ban corporate independent expenditures. Despite that decision, the Montana Supreme Court upheld Montana's ban on corporate independent expenditures in *Western Tradition Partnership, Inc. v. Attorney General of the State of Montana*, 271 P.3d 1 (Mont. 2011). American Tradition Partnership,[5] the lead plaintiff in that case, applied to the U.S. Supreme Court for a stay of the Montana Supreme Court's decision, pending its petition for a writ of

[5] Western Tradition Partnership changed its name to American Tradition Partnership after it filed its lawsuit in Montana but before it filed its petition for a writ of certiorari with the U.S. Supreme Court.

certiorari. *See Am. Tradition Partn., Inc.*, No. 11-1179. The U.S. Supreme Court granted the application, ordering the stay, and American Tradition Partnership filed its petition for a writ of certiorari on March 26, 2012. That petition remains pending as of the date of this order.

The question in this case is slightly different than the question presented in *Citizens United* and *Western Tradition Partnership* (as well as the certiorari petition in *American Tradition Partnership*). In those cases, the question was and is whether governments may prohibit corporations from making independent expenditures. Here, though, the question is whether governments may prevent corporations from giving money to political committees so that the committees can use that money for independent expenditures. As explained below, the questions are inextricably linked, but they are nonetheless distinct.

This Court initially concluded in its preliminary injunction order that the U.S. Supreme Court's stay in *American Tradition Partnership* makes the plaintiff's claim moot because the stay prevents the State of Montana from enforcing Section 13–35–227's ban on corporate independent expenditures. That statement is correct, to an extent. The stay does, indeed, prevent the State from enforcing Section 13–35–227's ban on corporate independent expenditures. But the stay does not reach the corporate remittance at issue here because the remittance is not an independent expenditure; rather, it must be construed as a

contribution.

When a corporation gives money to a political committee for the purpose of making an independent expenditure, the corporation must necessarily consult, cooperate, and coordinate with the committee when making that transfer. *See* Admin. R. Mont. 44.10.323(3), (4). Moreover, the transfer requires the political committee's "prior consent" because the political committee must accept the remittance in order to use it for independent expenditures. *Id.* Rather than an independent expenditure, then, the remittance is a coordinated expenditure and functionally equivalent to a contribution. *Id.*; *see also Thalheimer*, 645 F.3d at 1120–21 (observing that when a corporation gives money to a political committee for use as an independent expenditure, the corporation has made a contribution); *Long Beach*, 603 F.3d at 696–99 (same); *SpeechNow.org v. FEC*, 599 F.3d 686, 694–95 (D.C. Cir. 2010) (same).

Even though this type of corporate contribution is not an independent expenditure, its legality is fundamentally dependent on the legality of independent expenditures. *See Thalheimer*, 645 F.3d at 1117–21; *Long Beach*, 603 F.3d at 691–99. In both *Thalheimer* and *Long Beach*, the Ninth Circuit invalidated restrictions on contributions to political committees that the committees use for independent expenditures. It did so precisely and solely because the Supreme Court, in *Citizens United*, held that governments cannot restrict or ban corporate

independent expenditures. *Thalheimer*, 645 F.3d at 1119–21; *Long Beach*, 603 F.3d at 698–99; *see also Yamada v. Weaver*, 2012 WL 983559 at *14–*15 (D. Hawaii March 21, 2012) (applying *Thalheimer* and *Long Beach* and invalidating a statute that placed limitations on contributions to organizations that engage in only independent expenditures). The D.C. Circuit similarly held that, in light of *Citizens United*, "[I]ndependent expenditures do not corrupt or create the appearance of *quid pro quo* corruption," and, thus, "contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption." *SpeechNow.org*, 599 F.3d at 694–95.

In summary, since, under *Citizens United*, governments cannot restrict independent expenditures made by organizations, governments cannot ban corporate contributions to political committees that the committees then use for independent expenditures. Those contributions "can only lead to independent expenditures," which, under *Citizens United*, governments cannot restrict. *Yamada*, 2012 WL 983559 at *15.

Given the inextricable link between *Citizens United* and the question before this Court, the defendants argue that the Court should stay its resolution of this question, pending the U.S. Supreme Court's decision in *American Tradition Partnership*, where the U.S. Supreme Court could revisit *Citizens United*. Courts have the inherent power to stay proceedings pending a decision by the U.S.

Supreme Court in another case. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936). In doing so, courts must be mindful of four factors:

> (1) stays should not be indefinite in nature and should not be granted unless it appears likely the other proceeding will be concluded within a reasonable time;
>
> (2) courts more appropriately enter stay orders where a party seeks only damages, does not allege continuing harm, and does not seek injunctive or declaratory relief since a stay would result only in delay in monetary recovery;
>
> (3) stays may be appropriate if resolution of issues in the other proceeding would assist in resolving the proceeding sought to be stayed; and
>
> (4) stays may be appropriate for courts' docket efficiency and fairness to the parties pending resolution of independent proceedings that bear upon the case.

McCollough v. Minn. Laws. Mut. Ins. Co., 2010 WL 441533 at *4 (collecting Ninth Circuit cases).

The balance of these four factors weighs heavily against granting a stay. First, any stay would necessarily be indefinite because the Court cannot predict when the U.S. Supreme Court will resolve *American Tradition Partnership*. Second, this is not a claim for damages. The plaintiffs allege a continuing harm and seek injunctive relief. Third, a stay would not be fair to the plaintiffs because it would leave this question unresolved on the eve of the upcoming election.

The U.S. Supreme Court's decision in *American Tradition Partnership* might very well assist the Court in resolving the plaintiffs' claims here. Then

again, it might not. Regardless, the balance of factors weighs against granting a stay, particularly in light of the clear direction from *Thalheimer* and *Long Beach*. Under those cases, governments cannot prohibit a corporation from making a contribution to a political committee that the committee then uses for independent expenditures.

The Court therefore grants summary judgment in favor of the plaintiffs on this claim. Section 13–35–227(1) is unconstitutional to the extent that it prohibits corporations from making contributions to political committees that use those contributions for independent expenditures. As a corollary, Section 13–35–227(2) is also unconstitutional to the extent that it prevents political committees from receiving those contributions.

IV. Section 13–35–227: direct and indirect corporate contributions to candidates or political parties

Finally, the defendants move for summary judgment on the plaintiffs' claim that Section 13–35–227's ban on corporate contributions to candidates or political parties is unconstitutional. The Court grants summary judgment in favor of the defendants on this issue.

Montana's ban on corporate contributions to candidates and political parties dates back to the era of the "Copper Kings"—when the State's political economy was significantly driven by corporate power in mining and other industries. *See W. Tradition Partn.*, 271 P.3d at 230–35. As the Montana Supreme Court explained,

these corporate interests drove Montana politics. *Id.* W.A. Clark, for example, a product of the Butte mining boom, won his U.S. Senate seat through bribery. *Id.* at 231. And, in the interest of satisfying the Anaconda Company (a mining company), the Montana Legislature passed a law that allowed the Company to avoid having to litigate cases in front of Butte judges (who themselves had been bribed by the Company's opponent). *Id.* at 231. Other examples of corruption during that time period abound. *See e.g. id.* at 230–35.

The landscape, though, has undeniably changed markedly over the intervening decades.

Then, comparatively, corporations were few and large. Today, in Montana, they are many and smaller. They may include for example our doctor, lawyer, dentist, architect, engineer, accountant, other professionals, farms, ranches, agribusinesses, restaurants, plumbers, etc. Many family farms and businesses are incorporated, and the corporation is no stranger to main street Montana.

Whether for liability protection, taxation benefits, or other reasons of convenience, the typical corporation in Montana today is more likely to be a small closely held family company than a large industrial corporation.

This transition focuses on the fact that the corporation itself is not the villain. Rather, the concern is any entity, amassing large aggregations of wealth combined with unscrupulous spending and corrupt control.

This realization raises the question of whether the typical small corporation—i.e. family or professional business, farm etc., for example—should be permitted to use their moneys to support or oppose candidates or political parties they believe support or threaten their well-being, as the case may be.

In Montana, corporations have the first amendment right to spend their money and participate in ballot elections. *See Mont. Chamber of Commerce v. Argenbright*, 226 F.3d 1049 (9th Cir. 2000). Not so as to contributions to candidates and political parties.

Because of controlling law supporting the constitutionality of this ban the question becomes one of policy for the Legislature rather than this Court.

The U.S. Supreme Court held in *FEC v. Beaumont*, 539 U.S. 146 (2003), that a state may generally ban direct corporate contributions. *See also Thalheimer*, 645 F.3d at 1124–25 (discussing *Beaumont*). Such bans, among other things, "'preven[t] corruption or the appearance of corruption.'" *Beaumont*, 539 U.S. at 154 (quoting *FEC v. Natl. Conservative Political Action Comm.*, 470 U.S. 480, 496–97 (1985)). Unlike bans on independent expenditures, "[B]ans on political contributions have been treated as merely 'marginal' speech restrictions subject to relatively complaisant review under the First Amendment, because contributions lie closer to the edges than to the core of political expression." *Id.* at 161 (quoting *Colorado II*, 533 U.S. at 440).

The Ninth Circuit has made clear that *Beaumont* is still good law in the wake of the U.S. Supreme Court's decision in *Citizens United*. *See Thalheimer*, 645 F.3d at 1124–25. Here, then, Section 13–35–227's ban on direct corporate contributions to candidates and political parties is constitutional under *Thalheimer* and *Beaumont*.

Direct contributions aside, a state may also prevent a corporation from making an indirect contribution to a candidate or political party through the use of a conduit—e.g., contributing money to a political committee that then contributes that money to a candidate or political party. *See Beaumont*, 539 U.S. at 160; *Buckley*, 424 U.S. at 23 n.24 (observing that "funds provided to a candidate or political party . . . either directly or indirectly through an intermediary constitute a contribution" to that candidate or political party). Allowing corporations to contribute money to political committees that, in turn, contribute the money directly to candidates or political parties would be an express circumvention of a state's ban on corporate contributions to candidates or political parties. Even after *Citizens United*, states may avail their anti-circumvention interest by restricting contributions. *See Thalheimer*, 645 F.3d at 1124–25, ("[T]here is nothing in the explicit holdings or broad reasoning of *Citizens United* that invalidates the anti-circumvention interest in the context of limitations on direct candidate contributions.").

In an analogous situation, the Southern District of California, on remand from the Ninth Circuit in *Thalheimer*, explained:

> [T]o prevent circumvention of contribution limits by individual donors, when a committee that otherwise makes independent expenditures *decides to make contributions directly to a candidate or a party,* the [government] may enforce the . . . contribution limit. *See* [*Emily's List v. FEC*, 581 F.3d 1, 11–12 (D.C. Cir. 2009)]. Stated another way: an independent expenditure committee that makes expenditures to support a candidate "does not suddenly forfeit its First Amendment rights when it decides also to make direct contributions to parties or candidates. Rather, it simply must ensure, to avoid circumvention of individual contribution limits by its donors, that its contributions to parties or candidates come from a hard-money account" subject to the source and amount limitations in [the statute]. *See id.*"

Thalheimer v. City of San Diego, 2012 WL 177414 at *12 (S.D. Cal. Jan. 2012).

The same reasoning applies here. While Montana may not ban corporate contributions to political committees that are used for independent expenditures, it may ban—and has banned through Section 13–35–227—corporate contributions to political committees that are used for direct contributions to candidates or political parties. As the Southern District of California explained, this distinction does not mean that corporations or political committees in Montana have forfeited their first amendment rights. Instead, they must simply ensure that independent expenditures and contributions are accounted for separately.

CONCLUSION

The Court grants summary judgment in favor of the plaintiffs on three of

their claims. Montana's vote-reporting requirement, the political civil libel statute, and the prohibition of corporate contributions to political committees that the committees then use for independent expenditures are all unconstitutional under the First Amendment. The Court, however, grants summary judgment in favor of the defendants on one of the plaintiffs' claims—Montana may constitutionally prohibit corporations from making direct or indirect contributions to candidates and political parties.

IT IS ORDERED that the plaintiffs' motion for partial summary judgment (doc. 75) and the defendants' motion for partial summary judgment (doc. 78) are GRANTED IN PART and DENIED IN PART.

The Court GRANTS the plaintiffs' motion for summary judgment in the following respects:

1. Montana Code Annotated § 13–35–225(3)(a) is unconstitutionally vague.

2. Montana Code Annotated § 13–37–131 is unconstitutionally vague.

3. Montana Code Annotated § 13–35–227 is unconstitutional to the extent that it prohibits a corporation from making a contribution to a political committee that the committee then uses for independent expenditures in support of or opposition to a candidate or a political party.

The defendants are PERMANENTLY ENJOINED from enforcing each of these three provisions. The plaintiffs' motion is DENIED in all other respects.

The Court GRANTS the defendants' motion for summary judgment in the following respect: Montana Code Annotated § 13–35–227 is constitutional to the extent that it prohibits a corporation from making direct or indirect contributions to candidates or political parties. The defendants' motion is DENIED in all other respects.

IT IS FURTHER ORDERED that the February 24, 2012 preliminary injunction (doc. 66) is DISSOLVED.

IT IS FURTHER ORDERED that this order and permanent injunction is the final judgment as to the issues addressed herein. Let this judgment enter. The balance of the plaintiffs' claims shall be resolved by bench trial.

Dated this 16 day of May 2012. 0830 AM.

CHARLES C. LOVELL
SENIOR UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

MONTANA RIGHT TO LIFE ASSOCIATION, MONTANA RIGHT TO LIFE POLITICAL ACTION COMMITTEE, JULIE DAFFIN, President of Montana Right to Life Association,	Cause No. CV 96-165-BLG-JDS
Plaintiffs,	
vs.	
ROBERT EDDLEMAN, in his official capacity as County Attorney for Stillwater County, Montana, and as a representative of the class of district attorneys in the State of Montana, and ED ARGENBRIGHT, in his official capacity as Commissioner of Political Practices for the State of Montana,	FINDINGS OF FACT AND CONCLUSIONS OF LAW
Defendants.	

This matter came to trial before the Court, sitting without a jury.

At issue is the constitutionality of Montana Code Annotated Section 13-37-216, which imposes limitations on the aggregate contributions for each election in a campaign by a political

committee or by an individual to a candidate, and Montana Code Annotated 13-27-218, which limits the amount of aggregate contributions candidates for state senate and state house may accept from all political committees. In-kind contributions are included in computing the limitations imposed by Mont. Code Ann. § 13-37-218.

Many of the detailed facts of this case are set forth in the consolidated final pretrial order and order on summary judgment. As a result, the Court finds it unnecessary to engage in a lengthy factual recitation.

Discussion

Plaintiffs challenge the following Montana Code Annotated Sections which read, in relevant part:

> **13-37-216. Limitations on contributions.**
>
> (1)(a) Aggregate contributions for each election in a campaign by a political committee or by an individual, other than the candidate, to a candidate are limited as follows:
>
> > (i) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed $400;
> >
> > (ii) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $200;
> >
> > (iii) for a candidate for any other public office, not to exceed $100.

* * *

(5) For purposes of this section, "election" means the general election or a primary election that involves two or more candidates for the same nomination. If there is not a contested primary, there is only one election to which the contribution limits apply. If there is a contested primary, then there are two elections to which the contribution limits apply.

13-37-218. *Limitations on receipts from political committees.*

A candidate for the state senate may receive no more than $1,000 in total combined monetary contributions from all political committees contributing to his campaign, and a candidate for the state house of representatives may receive no more than $600 in total combined monetary contributions from all political committees contributing to his campaign. The foregoing limitations shall be multiplied by the inflation factor as defined in 15-30-101(8) for the year in which general elections are held after 1984; the resulting figure shall be rounded off to the nearest $50 increment. The commissioner of political practices shall publish the revised limitations as a rule. In-kind contributions must be included in computing these limitation totals. The limitation provided in this section does not apply to contributions made by a political party eligible for a primary election under 13-10-601.

The current limits adjusted for inflation are $2,000 for state senate and $1,250 for state house.

Contribution limits may survive if the government demonstrates that the challenged regulations are closely drawn to match a sufficiently important interest. Buckley v. Valeo, 424 U.S. 1, 25, 30 (1976); Nixon v. Shrink Missouri PAC, 120 S.Ct. 897, 904 (2000). However, the dollar amount of the limit need not be fine tuned.

Id. The prevention of corruption and the appearance of corruption is a constitutionally sufficient justification for imposing contribution limits. Buckley, 424 U.S. at 25-26.

> To the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy is undermined . . . Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions . . . . Congress could legitimately conclude that the avoidance of the appearance of improper influence "is also critical . . . if confidence in the system of representative government is not to be eroded to a disastrous extent."

Buckley, 424 U.S. at 27, quoting Civil Service Commission v. Letter Carriers, 413 U.S. 548, 565 (1973).

In many respects this case is indistinguishable from Nixon v. Shrink Missouri Government PAC, 120 S.Ct. 897 (2000). Like their Missouri counterparts, citizens of Montana were of the opinion that large campaign contributions result in at least the appearance of improper influence in the political system. This conclusion is supported by the sound passage of the challenged statutes, citizen initiatives, which in 1994 were approved by Montana voters by a 61% to 39% margin. While a majority vote cannot defeat First Amendment protections, see Shrink, 120 S.Ct. at 908, it certainly confirms the belief of the majority of voters; that contribution limits were necessary to combat improper influence, or the appearance thereof,

resulting from large campaign contributions.

The perception held by a majority of Montana voters was further confirmed by the testimony of the chief election official for the State of Montana, Secretary of State Mike Cooney, Montana Representative and candidate for Secretary of State, Hal Harper, and attorney and campaign reform activist, Jonathan Motl, all who were of the opinion that poor voter turnout and lack of participation by citizens in government stems, in large part, from public perception that special interests (large contributors) control government. Representative Harper, with 30 years in the Montana legislature to his credit, testified that "in my time I've seen efforts put into hiring more lobbyists and funneling more money into campaigns when certain special interests know an issue is coming up, because it gets results." Accordingly, there exists more than just voter speculation that money results in improper influence or the appearance thereof.

The Shrink Court also noted that the closest the party attacking the contribution limits came to challenging the implications of Buckley's evidence was their invocation of academic studies said to indicate that large contributions to public officials or candidates do not actually result in changes in candidates' positions. This is precisely the tact taken by the plaintiffs in this case who presented the testimony of John Lott,

a senior research scholar in economics at Yale University. Dr. Lott's testimony can be summed up, in large part, as follows; people give money to candidates or elected officials who value the same things that the person giving the money does. However, this is not inconsistent with Buckley and it's progeny. Buckley "recognized a concern not confined to bribery of public officials, but extending to the broader threat from politicians too compliant with the wishes of large contributors." Shrink, 120 S.Ct. at 905. This broader threat specifically includes politicians who value the same things as their contributors.

In response, the defendants offered the testimony of Thomas Stratmann, an economist, who opined that when legislators receive increasing contributions over time they are more likely to vote in the interests of the giver. Dr. Stratmann also opined that special interest groups do not give that much to legislators who they know will clearly vote in their favor or legislators who are clearly opposed to them. Instead, Dr. Stratmann found that special interests tend to contribute most to those politicians who fall in between those two categories - legislators who are undecided.

Shrink reaffirmed what Buckley found over twenty years ago, "there is little reason to doubt that sometimes large contributions will work actual corruption of our political system, and no reason to question the existence of a corresponding suspicion among

voters." Shrink, 120 S.Ct. at 908. Plaintiffs offered no evidence that Montana voter suspicion or perception was to the contrary. In this case the prevention of corruption and appearance of corruption is a constitutionally sufficient justification for interfering with First Amendment associational and speech rights.

The evidence also leads the Court to conclude that the contribution limits imposed effect only "large" contributions by the standards of Montana elections. Jonathan Motl, the drafter of I-118, looked at the historical data of what individuals gave to candidates for public office in the State of Montana and chose a limit that he defines as the "largest contribution limit level for any of those offices." The limits arrived at by Motl, and approved by Montana voters, were in the upper 10% of contributions for particular offices. The data presented by the defendants, exhibit D-24, supports Motl's conclusions. These figures were not rebutted by the plaintiffs.

The PAC receipt limit was enacted in 1983 and includes an automatic adjustment for inflation. The current limits are $2,000 for state senate and $1,250 for state house. The average amount raised for a state house campaign in Montana in 1998 was $4,464.87. The average amount raised for a state senate campaign in Montana in 1998 was $6,869.04. Thus, in 1998 Mont. Code Ann. § 13-37-218 limited an average state house candidate to receiving 28% of her

contributions from political committees and an average state senate candidate to receiving 29% of her contributions from political committees.

The PAC receipt limits are designed to limit the impact of huge special interest contributions on a candidate and to encourage a broad and diverse base of support in order to prevent either actual corruption or the appearance thereof. Without a limitation on the amount a candidate could receive from political committees, the contribution limitations could be easily evaded by special interests contributing the maximum amount to a candidate through a multitude of committees. Moreover, even after a candidate in Montana has reached the PAC limit, she can still receive an unlimited amount of money from other individuals and from the candidates own sources. The Court finds that the PAC limits are essential in order to prevent undue influence, and the appearance thereof, of special interests on a candidate's campaign. The Court's conclusion is further supported by the fact that, based upon the average amounts raised for state senate and house campaigns, political committees were able to contribute almost 30% such campaigns. This Court considers one-third of a politician's campaign money to be a large percentage.

Two of plaintiffs witnesses, Montana State Legislators Larry Grinde and Ric Holden, testified that they had to work harder and

talk to more people in order to raise the same amount of campaign money. While this may be true, it is precisely the purpose behind contribution limitations; for candidates to acquire a broad and diverse base of support to eliminate undue influence, or the appearance thereof, from large contributors and special interests.

Both legislators also testified that contribution limits made it difficult for them to run "an effective campaign." However, outside of bald, conclusory allegations that their campaigns would have been more "effective" had they been able to raise more money, none of the witnesses offered any specifics as to why their campaigns were not effective. The Court also notes that while these candidates testified that they could not run effective campaigns, all who testified won the respective state legislative races in which they took part.

To establish the unconstitutionality of the challenged limitations, the plaintiffs must show that the limitations are "so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless." Nixon v. Shrink Missouri Government PAC, 120 S.Ct. at 909. The plaintiffs have failed to so show. Here "there is no indication that the contribution limitations imposed would have any dramatically adverse effect on the funding of campaigns and political associations and thus no

showing that the limitations prevented the candidates and political committees from amassing the resources necessary for effective advocacy." Buckley, 424 U.S. at 21; Shrink, 120 S.Ct. at 908-909. The data, as demonstrated by exhibit D-24, mandates such a conclusion. Despite the complained of limitations, candidates in Montana continue amass the resources necessary for effective advocacy.

The Court finds that the challenged statutes are closely drawn to match the constitutionally sufficient interest in preventing campaign corruption and the appearance thereof. The limits are not "so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless."

Based on the foregoing, the Court finds that Mont. Code Ann. §§ 13-37-216 and 13-37-218 pass constitutional muster. Plaintiffs' cause of action as it relates to these two claims is dismissed with prejudice.

The Clerk of Court shall forthwith notify the parties of the making of this Order.

Dated this 19th day of September, 2000.

Jack D. Shanstrom
Chief, United States District Judge

MEMO

To: Sarah Bond
From: C.B. Pearson
Date: 10 October 1999

RE: 1992 and 1994 Legislative Races and the Impact of the Contribution Limit Enacted in I-118

This memo is in further support of my conclusion that the challenged limitations did not significantly impact the amount raised for political debate in Montana.

Data and Methodology

My analysis is based entirely on public data on file at the Office of the Commissioner of Political Practices. Contributions under $35.00 are not specifically reported. That is, the public data file only reports the total number of money collected from contributions under $35.00, and so it is not possible to know precisely how many contributors or contributions make up that total reported. Because I was studying the trends involving number of contributors as well as amount contributed in each contribution, I report my figures using a high figure and a low figure. The "high" assumes each of the under $35.00 contributions is $5.00. I call it the "high" assumption because this assumption results in a higher number of contributions/contributors. (The total amount under $35.00 contributed divided by 5). For example, the total number of contributors for the 1994 Senate races using the high number (assuming a $5 contribution) is 21,195. To provide a low boundary, I also use a "low" assumption, that each of those reported contributions is $34.99, the largest possible contribution not specifically required to be individually reported. For the same period the low number of contributors would be 6,205.

The number of contributions likely to occur in this category is closer to the $5.00 amount than to the $34.99 amount. I used both boundaries, though, to show the possible range of number of contributors/contributions. This is an analytically sound methodology, as the actual number is of contributors/contributions is mathematically certain to occur between those boundaries.

Conclusion

The campaign contribution limitations currently codified in 13-37-216 enacted in 1994 did not significantly impact the pattern of individual campaign contributions in Montana legislative races. The vast majority of contributions were not large, that is, were less than $100 per election. It must be remembered that while the individual limits went from $250 to $100 for House candidates, the time period for which the limitation is applicable changed from the entire election cycle to each election. So, in 1992, an individual could give a House candidate

EXHIBIT 12

EXHIBIT 6

EXHIBIT D-24

with a contested primary and general election a total of $250, and in 1995, after enactment of the limitations, that individual could give the same candidate $200 ($100 per contested election).

Individual Large Contributions

1992 Senate Individual Large Contributions

The challenged limitations would have barred only between 2% and 6.6% of contributions made in 1992, the second to last election year in which large contributions (contributions more than $100, or more than $200 for two contested races) were not restricted. The total number of contributors for the 1992 Montana Senate races using the high (assuming a $5 contribution) is 11,578. The total number of contributors using the low assumption ($34.99) is 3,532. Of these, there were 211 individual large contributors who gave $27,816.30 over the $100 limit to 33 Senate candidates in 1992 while there were 23 large individual contributors who gave $2,302.25 over the $200 limit to seven candidates who had contested primaries and general elections. The combined total given which would have been barred, that is, $30,118.55 is equal to only 9% of the total of $335,431 raised by 1992 Senate candidates.

1992 House Individual Large Contributions

The challenged limitations would have prohibited only between 1.7% and 6% of the contributions actually made to the 1992 House candidates, before the challenged restrictions were enacted. In 1992 there were 35,376 total contributors for 1992 Montana House races using the high (assuming a $5 contribution) assumption, and 9,785 contributors using the low ($34.99 per contribution) assumption. Of those, only 560 contributors gave $62,367.38 over the $100 limit to 114 candidates in 1992 while only 27 individual large contributors gave $1,395.28 over the $200 limit to 22 candidates who had contested primaries and general elections. Thus, only 1.7% of those making a contribution gave more than $100 or more than $200 for two contested races (using the high assumption for the under 35 contributions). Using the low number (assuming $34.99) only 6% of those making a contribution gave more than $100 or $200. The $63,771.66 total given over the current limits is only 8.1% of the total $783,807 raised by 1992 House candidates.

1994 Senate Individual Large Contributions

Only between 2.7% and 9% of the contributions made in 1994 to Senate candidates would have been barred by the limitations enacted in 1994 and effective first for the 1996 elections. The total number of contributors for the 1994 Montana Senate races, using the high assumption is 21,195, and using the low assumption, the total number of contributors is 6,205. Of these, there were 481 contributors who gave $77,513.04 over the $100 limit to 38 Senate candidates in 1994 while there were 86 individual large contributors who gave $12,375 over the $200 limit to 14 candidates. Thus, only 2.7% of those making a contribution gave more than $100 or more than $200 for two contested elections. Using the low number (assuming $34.99) only 9% of those making a contribution gave more than $100 or more than $200. The combined total of $89,888.04 is equal to 14% of the overall amount of $641,603 raised by 1994 Senate candidates.

1994 House Individual Large Contributions

The challenged restrictions would have prohibited only between 2.2% and 7.7% of the contributions actually made to 1994 Montana House candidates prior to enactment of the restrictions. The total number of contributors for the 1992 using the high assumption is 40,905, and using the low assumption the total number of contributors/contributions is 11,453. Of those, 770 contributors gave $85,528.25 over the $100 limit to 116 candidates, while 111 individual large contributors gave $5,492.63 over the $200 limit to 30 candidates. Thus, using the high assumption for number of contributors, only 2.2% of those making a contribution gave more than $100 or $200. Using the low number (assuming $34.99) only 7.7% of those making a contribution gave more than $100 or $200. The $91,020.88 is equal to 8.9% of the total $1,025,923 raised by 1994 House candidates.

Large PAC Contributions

1992 Senate PAC Contributions

The challenged contribution limitation as applied to political committees would have prohibited only between 1% and 3.4% from PACs of all contributions actually made in 1992 to Montana Senate candidates. Using the high assumption, there were 11,578 contributions, and using the low assumption, there were 3,532 contributions. Of these, large 101 PAC contributions totaling $17,604 (over the $100 limit) were given to 28 Senate candidates in 1992 while 18 PAC s gave large contributions over $200 equal to $2,500 for six contested primary and general Senate races. The total number of all contributors for the 1992 Montana Senate races using the high (assuming a $5 contribution) is 11,578 which means only 1% of the total number of contributions were from PACs who gave more than $100 or $200. Using the low number (assuming $34.99) 3,532 only 3.4% of those making a contribution gave more than $100 or $200. The $20,104 is equal to 6% of the total $335,431 raised by 1992 Senate candidates.

1992 House PAC Contributions

Only between 1.1% and 3.9% of political committee contributions as a percentage of all contributions actually made to 1992 House candidates would have been prohibited by the 1994 amendments. There were 35,376 contributors/contributions using the high figure, and 9,785 using the low assumption. Of these, 368 PAC large contributions gave $42,206.61 over the $100 limit to 103 house candidates in 1992 while 10 PAC s gave large contributions over $200 equal to $900 for house candidates. The total number of all contributors for the 1992 using the high (assuming a $5 contribution) is 35,376 means only 1.1% of contributions from PACs gave more than $100 or $200 of the total number of contributions given. Using the low number (assuming $34.99) 9,785 only 3.9% of those making a contribution gave more than $100 or $200. The $43,106.61 is equal to 5.5% of the total $783,807 raised by 1992 house candidates.

1994 Senate PAC Contributions

Only between 1.1 % and 3.6% of political committee contributions as a percentage of all contributions actually made to 1994 Montana Senate candidates would have been prohibited by the 1994 amendments. There were 209 PAC large contributions giving $41,742 over the $100 limit to 34 Senate candidates in 1994 while 16 PAC s gave large contributions over $200 equal to $6,750 for 14 candidates who had contested primary and general senate races. The total number of all contributors for the 1994 using the high (assuming a $5 contribution) is 21,195 means only 1.1% of contributions from PACs gave more than $100 or $200 of the total number of contributions given. Using the low number (assuming $34.99) 6,205 only 3.6% of those making a contribution gave more than $100 or $200. The $48,492 is equal to 7.6% of the total $641,603 raised by 1994 Senate candidates.

1994 House PAC Contributions

The challenged contribution limitation as applied to political committees would have prohibited only between 1.2% and 4.1% of all contributions actually made in 1994 to House candidates. There were 425 PAC large contributions giving $33,955.57 over the $100 limit to 79 Montana House candidates in 1994 while 47 PAC s gave large contributions over $200 equal to $4,188.96 for House candidates. The total number of all contributors for the 1994 using the high (assuming a $5 contribution) is 40,905 means only 1.2% of contributions from PACs gave more than $100 or $200 of the total number of contributions given. Using the low number (assuming $34.99) 11,453 only 4.1% of those making a contribution gave more than $100 or $200. The $38,144.53 is equal to 3.7% of the total $1,025,923 raised by 1994 house candidates.

MEMO

To: Sarah Bond
From: C.B. Pearson
Date: 10 October 1999
RE: 1992 Governor's Race and the Impact of the Contribution Limit Enacted in I-118

This memo is in further support of my conclusion that the challenged limitations did not significantly impact the amount raised for political debate in Montana.

Data and Methodology

My analysis is based entirely on public data on file at the Office of the Commissioner of Political Practices. Contributions under $35.00 are not specifically reported. That is, the public data file only reports the total number of money collected from contributions under $35.00, and so it is not possible to know precisely how many contributors or contributions make up that total reported. Because I was studying the trends involving number of contributors as well as amount contributed in each contribution, I report my figures using a high figure and a low figure. The "high" assumes each of the under $35.00 contributions is $5.00. I call it the "high" assumption because this assumption results in a higher number of contributions/contributors. (The total amount under $35.00 contributed divided by 5). The total number of contributors for the 1992 Governor's race using the high number (assuming a $5 contribution) is 36,397. To provide a low boundary, I also use a "low" assumption, that each of those reported contributions is $34.99, the largest possible contribution not specifically required to be individually reported. For the same period the low number of contributors would be 13,970.

The number of contributions likely to occur in this category is closer to the $5.00 amount than to the $34.99 amount. I used both boundaries, though, to show the possible range of number of contributors/contributions. This is an analytically sound methodology, as the actual number is of contributors/contributions is mathematically certain to occur between those boundaries.

Conclusion

The campaign contribution limitations currently codified in 13-37-216 enacted in 1994 did not significantly impact the pattern of individual campaign contributions in the Montana Governor's race. The vast majority of contributions were not large, that is, were less than $400 per election. In 1992, an individual could give a Governor candidate with a contested primary and general election a total of $1,500, and in 1995, after enactment of the limitations, that individual could give the same candidate $800 ($400 per contested election). PACs could give $8,000 per election prior to 1994 and $400 per contested election ($800 total), after 1994.

Large Individual Contributions

1992 Governor's Race Large Individual Contributions

The challenged limitations for the governor's race would have only barred between 2% and 5.4% of the contributions made in 1992. There were 252 large individual contributors who gave $121,643.58 over the $400 limit to 11 campaigns in 1992 who had contested primaries while there were 498 large individual contributors who gave $209,857.09 over $800 limit to the two campaigns that had both a contested primary and a contested general election. Large individual contributions to the 1992 Governor races of more than $400 or $800 accounted for only 2% of all those making a contribution using the high number of contributors (assuming a $5 contribution) of 36,697. Using the low number (assuming $34.99.) 13,970 means only 5.4% of those making a contribution gave more than $400 or $800. The combined total of $331,500.67 is equal to 11.3% of the total $2,937,337 raised by 1992 Governor candidates.

Large PAC Contributions

1992 Governor's Race PAC Contributions

The challenged contribution limitation as applied to political committees (PACs) would have prohibited between .2% and .6% of contributions from PACs as a percentage of all contributions made to the 1992 Montana governor's race. There were 22 large PAC contributions giving $51,260 over the $400 limit to 11 campaigns in 1992 while there were 57 large PAC contributions of $144,930 over $800 for the two campaigns that had a contested primary and general election. The total number of contributors for the 1992 Governor's race using the high (assuming $5 contribution) is 36,697 meaning only .2% of PACs contributions as a percentage of all contributions were more than $400 or $800. Using the low number (assuming $34.99) 13,970 only .6% of those making a contribution gave more than $400 or $800. The $196,190 is equal to 6.7% of the total $2,937,337 raised by 1992 Governor candidates.

MEMO

To: Sarah Bond
From: C.B. Pearson
Date: 10 October 1999
RE: 1992 Supreme Court Race and the Impact of the Contribution Limit Enacted in I-118

This memo is in further support of my conclusion that the challenged limitations did not significantly impact the amount raised for political debate in Montana.

Data and Methodology

My analysis is based entirely on public data on file at the Office of the Commissioner of Political Practices. Contributions under $35.00 are not specifically reported. That is, the public data file only reports the total number of money collected from contributions under $35.00, and so it is not possible to know precisely how many contributors or contributions make up that total reported. Because I was studying the trends involving number of contributors as well as amount contributed in each contribution, I report my figures using a high figure and a low figure. The "high" assumes each of the under $35.00 contributions is $5.00. I call it the "high" assumption because this assumption results in a higher number of contributions/contributors. (The total amount under $35.00 contributed divided by 5). The total number of contributors for the 1992 Supreme Court race using the high number (assuming a $5 contribution) is 6,687. To provide a low boundary, I also use a "low" assumption, that each of those reported contributions is $34.99, the largest possible contribution not specifically required to be individually reported. For the same period the low number of contributors would be 2,375.

The number of contributions likely to occur in this category is closer to the $5.00 amount than to the $34.99 amount. I used both boundaries, though, to show the possible range of number of contributors/contributions. This is an analytically sound methodology, as the actual number is of contributors/contributions is mathematically certain to occur between those boundaries.

Conclusion

As noted in my expert report, the campaign contribution limitations currently codified in 13-37-216 enacted in 1994 did not significantly impact the pattern of individual campaign contributions in the Montana Supreme Court race. The vast majority of contributions were not large, that is, were less than $200 per election. In 1992, an individual could give a Supreme Court candidate with a contested primary and general election a total of $750, and in 1995, after enactment of the limitations, that individual could give the same candidate $400 ($200 per contested election). A

PAC could give a Supreme Court candidate $2,000 for the election in 1992 but up to $400 after 1994 ($200 per contested election).

Large Individual Contributions

1992 Supreme Court Race Large Individual Contributions

Only between 5.6% and 16% of the contributions made in 1992 would have been barred. There were 380 large individual contributors who gave $121,718.51 over the $200 limit to two candidates in 1992. The total number of contributors for the 1992 Supreme Court race using the high (assuming $5 contribution) is 6,687, meaning only 5.6% of those making a contribution gave more than $200. Using the low number (assuming $34.99) 2,375 only 16% of those making a contribution gave more than $200. The $121,718.51 is equal to 32% of the total $378,419 raised by 1992 Supreme Court candidates.

Large PAC Contributions

1992 Supreme Court PAC Contributions

The challenged contribution limitation on political committees (PACs) would have prohibited between .3% and .8% of PAC contributions as a percentage of all contributions made to the 1992 Montana Supreme Court race. There were 21 large PAC contributions giving $15,900 over the $200 limit to two candidates in 1992. The total number of contributors for the 1992 Supreme Court race using the high (assuming $5 contribution) is 6,687 means only .3% of those making a contribution gave more than $200. Using the low number (assuming $34.99) 2,375 only .8% of those making a contribution gave more than $200. The $15,900 is equal to 4% of the total $378,419 raised by 1992 Supreme Court candidates.

1992 Legislative Campaign Contribution

	1992 (Senate)	1992 (House)	1992 (Legislative)	Percentage
Personal Contribution	$ 45,873.00	$ 65,111.00	$ 110,984.00	10%
Small Individual Under $35	$ 43,832.00	$ 129,294.00	$ 173,126.00	15%
<$35 # High (Assume $5)	*8,767*	*25,859*	*34,625*	
<$35 # Low (Assume $34.99)	*1,253*	*3,695*	*4,948*	
Loans	$ 2,079.00	$ 7,384.00	$ 9,463.00	1%
Interest	$ 255.00	$ 1,027.00	$ 1,282.00	0%
Fundraisers Amount	$ 3,107.00	$ 19,995.00	$ 23,102.00	2%
Fundraisers # High (Assume $5)	*621*	*3,999*	*4,620*	
Fundraisers # Low (Assume $34.99)	*89*	*571*	*660*	
Party Amount	$ 13,414.00	$ 35,277.00	$ 48,691.00	4%
Party #	*62*	*205*	*267*	
PACs Amount	$ 55,880.00	$ 137,236.00	$ 193,116.00	17%
PACs #	*361*	*1,159*	*1,520*	
Large Individual over $35 Amount	$ 162,477.00	$ 360,060.00	$ 522,537.00	47%
>$35 #	*1,731*	*4,019*	*5,750*	
Campaign Contribution Total	$ 335,431.00	$ 783,807.00	$ 1,119,238.00	97%
Campaign # High	*11,578*	*35,376.00*	*46,954*	
Campaign # Low	*3,532*	*9,785*	*13,316*	
Carry-over Funds	$ 8,514.51	$ 28,089.44	$ 36,603.95	3%
Number of Candidates	54	204	258	
Average Campaign Amount	$ 6,211.69	$ 3,842.19	$ 10,053.88	
Average Number Contributions - High	*214*	*173*	*388*	
Average Number Contributions - Low	*65*	*48*	*113*	
Number of Incumbents	20	81	101	
Incumbents Raised	$ 122,227.00	$ 357,095.00	$ 479,322.00	
Average	$ 6,111.35	$ 4,408.58	$ 10,519.93	
Number of Challengers	19	66	85	
Challengers Raised	$ 111,373.00	$ 233,857.00	$ 345,230.00	
Average	$ 5,861.74	$ 3,543.29	$ 9,405.02	
Number of Contested Primaries	14	56	70	

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1994 Legislative Campaign Contributions

	1994 (Senate)	1994 (House)	1994 (Legislative)	Percentage
Personal Contribution	$ 69,631.00	$ 94,057.00	$ 163,688.00	10%
Small Individual Under $35	$ 77,592.00	$ 150,225.00	$ 227,817.00	14%
<$35 # High (Assume $5)	*15,518*	*30,045*	*45,563*	
<$35 # Low (Assume $34.99)	*2,218*	*4,293*	*6,511*	
Loans	$ 11,332.00	$ 39,896.00	$ 51,228.00	3%
Interest	$ 244.00	$ 555.00	$ 799.00	0%
Fundraisers Amount	$ 9,851.00	$ 21,583.00	$ 31,434.00	2%
Fundraisers # High (Assume $5)	*1,970*	*4,317*	*6,287*	
Fundraisers # Low (Assume $34.99)	*282*	*617*	*898*	
Party Amount	$ 37,513.00	$ 49,234.00	$ 86,747.00	5%
Party #	*110*	*260*	*370*	
PACs Amount	$ 88,971.00	$ 158,432.00	$ 247,403.00	15%
PACs #	*458*	*1,184*	*1,642*	
Large Individual over $35 Amount	$ 336,074.00	$ 473,949.00	$ 810,023.00	49%
>$35 #	*3,093*	*4,944*	*8,037*	
Campaign Contribution Total	$ 641,603.00	$ 1,025,923.00	$ 1,667,526.00	97%
Campaign # High	*21,195*	*40,905*	*62,099*	
Campaign #Low	*6,205*	*11,453*	*17,658*	
Carry-over Funds	$ 9,054.27	$ 34,781.02	$ 43,835.29	3%
Number of Candidates	69	222	291	
Average Campaign Amount	$ 9,298.59	$ 4,621.27		
Average Number Contributions - High	*307*	*184*		
Average Number Contributions - Low	*90*	*52*		
Number of Incumbents	14	65	79	
Incumbents Raised	$ 177,295.00	$ 374,708.00	$ 552,003.00	
Average	$ 12,663.93	$ 5,764.74		
Number of Challengers	14	59	73	
Challengers Raised	$ 141,619.00	$ 224,720.00	$ 366,339.00	
Average	$ 10,115.64	$ 3,808.81		
Number of Contested Primaries	33	76	109	

1996 Legislative Campaign Contributions

	1996 (Senate)	1996 (House)	1996 (Legislative)	Percentage
Personal Contribution	$ 49,916.00	$ 52,820.00	$ 102,736.00	9%
Small Individual Under $35	$ 40,892.00	$ 138,250.00	$ 179,142.00	16%
<$35 # High (Assume $5)	8,178.3	27,650.1	35,828.4	
<$35 # Low (Assume $34.99)	1,168.7	3,951.1	5,119.8	
Loans	$ 27,062.00	$ 29,325.00	$ 56,387.00	5%
Interest	$ 116.00	$ 313.00	$ 429.00	0%
Fundraisers Amount	$ 12,697.00	$ 17,250.00	$ 29,947.00	3%
Fundraisers # High (Assume $5)	2,539.3	3,450.0	5,989.3	
Fundraisers # Low (Assume $34.99)	362.9	493.0	855.9	
Party Amount	$ 13,427.00	$ 35,805.00	$ 49,232.00	4%
Party #	60.00	179.00	239.0	
PACs Amount	$ 41,170.00	$ 106,839.00	$ 148,009.00	13%
PACs #	494.0	1,309.0	1,803.0	
Large Individual over $35 Amount	$ 186,989.00	$ 372,257.00	$ 559,246.00	50%
>$35 #	2,367.0	4,946.0	7,313.0	
Campaign Contribution Total	$ 372,936.00	$ 753,182.00	$ 1,126,118.00	100%
Campaign # High	13,675.6	37,849.1	51,324.7	
Campaign #Low	4,489.5	10,993.1	15,482.6	
Number of Candidates	55	210	265	
Average Campaign Amount	$ 6,780.65	$ 3,586.58		
Average Number Contributions - High	249	179		
Average Number Contributions - Low	82	52		
Number of Incumbents	19	92	111	
Incumbents Raised	$ 143,371.00	$ 378,988.00	$ 522,359.00	
Average	$ 7,545.84	$ 4,119.43		
Number of Challengers	19	91	110	
Challengers Rasised	$ 110,560.00	$ 293,082.00	$ 403,642.00	
Average	$ 5,818.95	$ 3,220.68		
Number of Contested Primaries	13	50		

1998 Legislative Campaign Contributions

	1998 (Senate)	1998 (House)	1998 (Legislative)	Percentage
Personal Contribution	$ 19,873.00	$ 62,669.00	$ 82,542.00	7%
Small Individual Under $35	$ 49,459.00	$ 161,209.00	$ 210,668.00	17%
<$35 # High (Assume $5)	9,892	32,242	42,134	
<$35 # Low (Assume $34.99)	1,404	4,607	8,011	
Loans	$ 19,623.00	$ 71,253.00	$ 90,876.00	7%
Interest	$ 100.00	$ 1,011.00	$ 1,111.00	0%
Fundraisers Amount	$ 3,747.00	$ 14,393.00	$ 18,140.00	1%
Fundraisers # High (Assume $5)	749	2,879	3,628	
Fundraisers # Low (Assume $34.99)	107	411	518	
Party Amount	$ 10,439.00	$ 34,178.00	$ 44,617.00	4%
Party #	54.0	204.0	258.0	
PACs Amount	$ 41,070.00	$ 107,761.00	$ 148,831.00	12%
PACs #	486	1,258	1,724	
Large Individual over $35 Amount	$ 184,984.00	$ 434,858.00	$ 619,842.00	51%
>$35 #	2,433	5,674	8,107	
Campaign Contribution Total	$ 329,714.00	$ 892,974.00	$ 1,222,688.00	100%
Campaign # High	13,621	42,368	55,990	
Campaign #Low	4,501	12,267	16,767	
Number of Candidates	48	200	248	
Average Campaign Amount	$ 6,869.04	$ 4,464.87		
Average Number Contributions - High	284	212		
Average Number Contributions - Low	94	61		
Number of Incumbents	19	76	95	
Incumbents Raised	$ 120,615.00	$ 290,300.00	$ 410,915.00	
Average	$ 6,348.16	$ 3,819.74		
Number of Challengers	14	66	80	
Challengers Rasised	$ 87,957.00	$ 317,020.00	$ 404,977.00	
Average	$ 6,282.64	$ 4,803.33		
Number of Contested Primaries	16	50	66	

1992 and 1996 Contributions for Governor's Race

	1992	1996
Personal Contribution	$ 102,812.00	$ 16,950.00
Small Individual Under $35	$ 104,916.00	$ 51,711.00
<$35 # High (Assume $5)	*20,983*	*10,342*
<$35 # Low (Assume $34.99)	*2,998*	*1,478*
Loans	$ 31,095.00	$ 1,880.00
Interest	$ 6,783.00	$ 3,877.00
Fundraisers Amount	$ 25,915.00	$ 7,015.00
Fundraisers # High (Assume $5)	*5,183*	*1,403*
Fundraisers # Low (Assume $34.99)	*741*	*201*
Party Amount	$ 43,662.00	$ 9,318.00
Party #	*71*	*57*
PACs Amount	$ 282,703.00	$ 27,657.00
PACs #	*145*	*59*
Large Individual over $35 Amount	$ 2,330,572.00	$ 799,400.00
>$35 #	*10,004*	*4,571*
Campaign Contribution Total	$ 2,937,337.00	$ 920,123.00
Campaign # High	*36,397*	*16,435.20*
Campaign #Low	*13,970*	*6,368*
Number of Candidates	13	4
Average Campaign Amount	$ 225,949.00	$ 230,030.75
Average Number Contributions - High	*2,800*	*4,109*
Average Number Contributions - Low	*1,075*	*1,592*

1992 and 1996 Contributions for Supreme Court

	1992	1996
Personal Contribution	$ 133.00	$ 2,500.00
Small Individual Under $35	$ 24,027.00	$ 17,126.00
<$35 # High (Assume $5)	*4,805*	*3,425*
<$35 # Low (Assume $34.99)	*686*	*489*
Loans	$ 17,950.00	$ 82,200.00
Interest	$ 108.00	$ 1,782.00
Fundraisers Amount	$ 1,133.00	$ 461.00
Fundraisers # High (Assume $5)	*226*	*92*
Fundraisers # Low (Assume $34.99)	*32*	*13*
PACs Amount	$ 21,522.00	$ 5,055.00
PACs #	*28*	*29*
Large Individual over $35 Amount	$ 312,426.00	$ 214,331.00
>$35 #	*1,627*	*1,753*
Campaign Contribution Total	$ 378,419.00	$ 323,454.00
Campaign # High	*6,687*	*5,300*
Campaign #Low	*2,375*	*2,265*
Number of Candidates	2	2
Average Campaign Amount	$ 189,209.50	$ 161,727.00
Average Number Contributions - High	*3,344*	*2,650*
Average Number Contributions - Low	*1,188*	*1,143*

Montana Senate Campaign Contributions

	1992 (Senate)	1994 (Senate)	1996 (Senate)	1998 (Senate)
Personal Contribution	$ 45,873.00	$ 69,631.00	$ 49,916.00	$ 19,873.00
Small Individual Under $35	$ 43,832.00	$ 77,592.00	$ 40,892.00	$ 49,459.00
<$35 # High (Assume $5)	*8,767*	*15,518*	8,178.3	9,891.8
<$35 # Low (Assume $34.99)	*1,253*	*2,218*	1,168.7	1,403.5
Loans	$ 2,079.00	$ 11,332.00	$ 27,062.00	$ 19,623.00
Interest	$ 255.00	$ 244.00	$ 116.00	$ 100.00
Fundraisers Amount	$ 3,107.00	$ 9,851.00	$ 12,697.00	$ 3,747.00
Fundraisers # High (Assume $5)	*621*	*1,970*	2,539.3	749.4
Fundraisers # Low (Assume $34.99)	*89*	*282*	362.9	107.1
Party Amount	$ 13,414.00	$ 37,513.00	$ 13,427.00	$ 10,439.00
Party #	*62*	*110*	60.00	54.00
PACs Amount	$ 55,880.00	$ 88,971.00	$ 41,170.00	$ 41,070.00
PACs #	*361*	*458*	494.0	466.0
Large Individual over $35 Amount	$ 162,477.00	$ 336,074.00	$ 186,989.00	$ 184,984.00
>$35 #	*1,731*	*3,093*	2,367.0	2,433.0
Campaign Contribution Total	$ 335,431.00	$ 641,603.00	$ 372,936.00	$ 329,714.00
Campaign # High	*11,578*	*21,195*	13,675.6	13,621.2
Campaign # Low	*3,532*	*6,205*	4,489.5	4,500.6
Carry-over Funds	$ 8,514.51	$ 9,054.27		
Number of Candidates	54	69	55	48
Average Campaign Amount	$ 6,211.69	$ 9,298.59	$ 6,780.65	$ 6,869.04
Average Number Contributions - High	*214*	*307*	249	284
Average Number Contributions - Low	*65*	*90*	82	94
Number of Incumbents	20	14	19	19
Incumbents Raised	$ 122,227.00	$ 177,285.00	$ 143,371.00	$ 120,615.00
Average	$ 6,111.35	$ 12,663.93	$ 7,545.84	$ 6,348.16
Number of Challengers	19	14	19	14
Challengers Raised	$ 111,373.00	$ 141,619.00	$ 110,560.00	$ 87,957.00
Average	$ 5,861.74	$ 10,115.64	$ 5,818.95	$ 6,282.64
Number of Contested Primaries	14	33	13	16

Montana House Campaign Contributions

	1992 (House)	1994 (House)	1996 (House)	1998 (House)
Personal Contribution	$ 65,111.00	$ 94,057.00	$ 52,820.00	$ 62,669.00
Small Individual Under $35	$ 129,294.00	$ 150,225.00	$ 138,250.00	$ 161,209.00
<$35 # High (Assume $5)	25,859	*30,045*	27,650.1	32,241.8
<$35 # Low (Assume $34.99)	3,695	*4,293*	3,951.1	4,607.3
Loans	$ 7,384.00	$ 39,896.00	$ 29,325.00	$ 71,253.00
Interest	$ 1,027.00	$ 555.00	$ 313.00	$ 1,011.00
Fundraisers Amount	$ 19,995.00	$ 21,583.00	$ 17,250.00	$ 14,393.00
Fundraisers # High (Assume $5)	3,999	*4,317*	3,450.0	2,878.6
Fundraisers # Low (Assume $34.99)	571	*617*	493.0	411.3
Party Amount	$ 35,277.00	$ 49,234.00	$ 35,805.00	$ 34,178.00
Party #	205	*260*	179.00	204.00
PACs Amount	$ 137,236.00	$ 158,432.00	$ 106,839.00	$ 107,761.00
PACs #	1,159	*1,184*	1,309.0	1,258.0
Large Individual over $35 Amount	$ 360,060.00	$ 473,949.00	$ 372,257.00	$ 434,858.00
>$35 #	4,019	*4,944*	4,946.0	5,674.0
Campaign Contribution Total	$ 783,807.00	$ 1,025,923.00	$ 753,182.00	$ 892,974.00
Campaign # High	35,376.00	*40,905*	37,849.1	42,368.4
Campaign #Low	9,785	*11,453*	10,993.1	12,266.6
Carry-over Funds	$ 28,089.44	$ 34,781.02		
Number of Candidates	204	222	210	200
Average Campaign Amount	$ 3,842.19	$ 4,621.27	$ 3,586.58	$ 4,464.87
Average Number Contributions - High	173	*184*	179	212
Average Number Contributions - Low	48	*52*	52	61
Number of Incumbents	81	65	92	76
Incumbents Raised	$ 357,095.00	$ 374,708.00	$ 378,988.00	$ 290,300.00
Average	$ 4,408.58	$ 5,764.74	$ 4,119.43	$ 3,819.74
Number of Challengers	66	59	91	66
Challengers Raised	$ 233,857.00	$ 224,720.00	$ 293,082.00	$ 317,020.00
Average	$ 3,543.29	$ 3,808.81	$ 3,220.68	$ 4,803.33
Number of Contested Primaries	56	76	50	50

Montana House Campaign Contributions

	1992 (House)	1994 (House)	1996 (House)	1998 (House)
Personal Contribution	$ 68,111.00	$ 84,857.00	$ 52,620.00	$ 62,668.00
Small Individual Under $35	$ 129,294.00	$ 150,225.00	$ 138,258.00	$ 161,200.00
<$35 # High (Assume $5)	25,859	30,045	27,650.1	32,241.8
<$35 # Low (Assume $34.99)	3,695	4,293	3,951.1	4,607.3
Loans	$ 7,384.00	$ 39,696.00	$ 29,325.00	$ 71,253.00
Interest	$ 1,027.00	$ 585.00	$ 313.00	$ 1,611.00
Fundraisers Amount	$ 19,998.00	$ 21,583.00	$ 17,250.00	$ 14,393.00
Fundraisers # High (Assume $5)	3,999	4,317	3,450.0	2,878.6
Fundraisers # Low (Assume $34.99)	571	617	493.0	411.3
Party Amount	$ 35,277.00	$ 49,234.00	$ 35,665.00	$ 34,178.00
Party #	205	269	178.00	204.00
PACs Amount	$ 137,236.00	$ 188,432.00	$ 186,838.00	$ 187,761.00
PACs #	1,169	1,184	1,308.0	1,268.0
Large Individual over $35 Amount	$ 380,060.00	$ 473,949.00	$ 372,257.00	$ 434,858.00
>$35 #	4,619	4,644	4,845.0	5,074.8
Campaign Contribution Total	$ 783,887.00	$ 1,026,023.00	$ 783,182.00	$ 882,874.00
Campaign # High	36,376.00	40,805	37,648.1	42,268.4
Campaign # Low	8,785	11,453	10,993.1	12,268.6
Carry-over Funds	$ 28,089.44	$ 34,781.02		
Number of Candidates	204	222	210	200
Average Campaign Amount	$ 3,842.19	$ 4,621.27	$ 3,586.56	$ 4,464.87
Average Number Contributions - High	173	184	179	212
Average Number Contributions - Low	48	52	52	61
Number of Incumbents	81	85	92	76
Incumbents Raised	$ 357,095.00	$ 374,709.00	$ 378,868.00	$ 280,300.00
Average	$ 4,408.58	$ 5,764.74	$ 4,119.43	$ 3,819.74
Number of Challengers	66	69	81	66
Challengers Raised	$ 233,857.00	$ 224,720.00	$ 293,082.00	$ 317,020.00
Average	$ 3,543.29	$ 3,808.81	$ 3,220.68	$ 4,803.33
Number of Contested Primaries	66	76	60	60

Montana Senate Campaign Contributions

	1992 (Senate)	1994 (Senate)	[redacted]	1996 (Senate)	[redacted]	1998 (Senate)	[redacted]	[redacted]
Personal Contribution	$ 45,873.00	$ 69,631.00		$ 49,916.00		$ 19,573.00		
Small Individual Under $35	$ 43,832.00	$ 77,592.00		$ 40,692.00		$ 49,459.00		
<$35 # High (Assume $5)	8,767	15,518		8,178.3		8,891.5		
<$35 # Low (Assume $34.99)	1,253	2,218		1,168.7		1,403.5		
Loans	$ 2,079.00	$ 11,332.00		$ 27,062.00		$ 19,623.00		
Interest	$ 255.00	$ 244.00		$ 116.00		$ 100.00		
Fundraisers Amount	$ 3,107.00	$ 9,851.00		$ 12,687.00		$ 3,747.00		
Fundraisers # High (Assume $5)	621	1,970		2,537		749		
Fundraisers # Low (Assume $34.99)	89	282		363		107		
Party Amount	$ 13,414.00	$ 37,813.00		$ 13,427.00		$ 10,438.00		
Party #	82	116		80		64		
PACs Amount	$ 55,888.00	$ 88,871.00		$ 41,170.00		$ 41,878.00		
PACs #	361	468		494		466		
Large Individual over $35 Amount	$ 162,477.00	$ 336,674.00		$ 186,969.00		$ 184,994.00		
>$35 #	1,731	3,083		2,367		2,433		
Campaign Contribution Total	$ 336,431.00	$ 641,663.00		$ 372,836.00		$ 329,714.00		
Campaign # High	11,578	21,195		13,676		13,621		
Campaign # Low	3,532	6,295		4,499		4,501		
Carry-over Funds	$ 8,514.51	$ 9,064.27						
Number of Candidates	54	69		55		46		
Average Campaign Amount	$ 6,211.69	$ 9,298.59		$ 6,780.65		$ 6,669.04		
Average Number Contributions - High	214	307		249		284		
Average Number Contributions - Low	65	89		82		91		
Number of Incumbents	20	14		19		19		
Incumbents Raised	$ 122,227.00	$ 177,295.00		$ 143,371.00		$ 120,815.00		
Average	$ 6,111.35	$ 12,663.93		$ 7,545.84		$ 6,348.16		
Number of Challengers	19	14		19		14		
Challengers Raised	$ 111,373.00	$ 141,619.00		$ 110,560.00		$ 87,967.00		
Average	$ 5,861.74	$ 10,116.64		$ 5,818.95		$ 6,282.64		
Number of Contested Primaries	14	33		13		16		

B

Montana Legislative Campaign Finance Data Summary Totals

	1992 (Senate)	1992 (House)	1992 (Legislative)
Personal Amount	$ 46,873.00	$ 65,111.00	$ 110,984.00
Under $35 Individual	$ 43,832.00	$ 129,294.00	$ 173,126.00
<$35 # High	4,707	25,660	34,645
<$35 # Low	4,253	3,405	4,640
Loans	$ 2,078.00	$ 7,384.00	$ 9,463.00
Interest	$ 255.00	$ 1,027.00	$ 1,282.00
Fundraisers Amount	$ 3,167.00	$ 19,995.00	$ 23,102.00
Fundraisers # High	621	3,999	4,620
Fundraisers # Low	89	576	666
Party Amount	$ 13,414.00	$ 36,277.00	$ 49,691.00
Party #	62	225	287
PACs Amount	$ 55,880.00	$ 137,236.00	$ 193,116.00
PACs #	361	1,169	1,530
Over $35 Individuals	$ 162,477.00	$ 360,860.00	$ 522,337.00
>$35 #	1,731	4,818	6,759
Campaign Total	$ 335,431.00	$ 783,807.00	$ 1,119,238.00
Campaign # High	11,573	28,336	40,854
Campaign # Low	3,532	8,788	12,340

	1994 (Senate)	1994 (House)	1994 (Legislative)
Personal Amount	$ 68,831.00	$ 94,057.00	$ 163,888.00
Under $35 Individual	$ 77,592.00	$ 150,225.00	$ 227,817.00
<$35 # High	16,510	30,045	46,561
<$35 # Low	2,210	4,282	6,501
Loans	$ 11,332.00	$ 39,888.00	$ 51,220.00
Interest	$ 244.00	$ 556.00	$ 790.00
Fundraisers Amount	$ 9,851.00	$ 21,583.00	$ 31,434.00
Fundraisers # High	1,070	4,317	5,387
Fundraisers # Low	302	487	804
Party Amount	$ 37,513.00	$ 49,234.00	$ 86,747.00
Party #	110	269	370
PACs Amount	$ 88,971.00	$ 158,432.00	$ 247,403.00
PACs #	458	1,184	2,642
Over $35 Individuals	$ 336,874.00	$ 473,949.00	$ 810,823.00
>$35 #	3,083	4,944	8,037
Campaign Total	$ 641,583.00	$ 1,028,923.00	$ 1,667,526.00
Campaign # High	21,446	40,506	62,000
Campaign # Low	8,306	26,453	32,000

	1996 (Senate)	1996 (House)	1996 (Legislative)
Personal Amount	$ 46,016.00	$ 53,820.00	$ 102,738.00
Under $35 Individual	$ 40,892.00	$ 138,250.00	$ 179,142.00
<$35 # High	8,170	27,660	35,820
<$35 # Low	1,105	3,054	4,130
Loans	$ 27,062.00	$ 38,335.00	$ 66,367.00
Interest	$ 116.00	$ 313.00	$ 429.00
Fundraisers Amount	$ 12,607.00	$ 17,280.00	$ 29,947.00
Fundraisers # High	2,520	2,400	4,880
Fundraisers # Low	343	463	606
Party Amount	$ 13,427.00	$ 36,806.00	$ 49,232.00
Party #	60	170	230
PACs Amount	$ 41,170.00	$ 106,838.00	$ 148,008.00
PACs #	404	1,309	1,803
Over $35 Individuals	$ 186,888.00	$ 372,267.00	$ 558,248.00
>$35 #	2,367	4,946	7,313
Campaign Total	$ 372,836.00	$ 753,102.00	$ 1,128,118.00
Campaign # High	13,478	32,040	54,355
Campaign # Low	4,400	14,983	46,483

	1998 (Senate)	1998 (House)	1998 (Legislative)
Personal Amount	$ 19,873.00	$ 62,969.00	$ 82,842.00
Under $35 Individual	$ 49,458.00	$ 161,209.00	$ 210,668.00
<$35 # High	9,882	32,747	42,134
<$35 # Low	1,404	4,687	6,016
Loans	$ 19,623.00	$ 71,253.00	$ 90,876.00
Interest	$ 100.00	$ 1,011.00	$ 1,111.00
Fundraisers Amount	$ 3,747.00	$ 14,393.00	$ 18,140.00
Fundraisers # High	748	2,479	3,024
Fundraisers # Low	165	411	546
Party Amount	$ 10,439.00	$ 34,178.00	$ 44,617.00
Party #	54	204	258
PACs Amount	$ 41,070.00	$ 107,761.00	$ 148,831.00
PACs #	468	1,258	1,724
Over $35 Individuals	$ 184,884.00	$ 434,868.00	$ 619,942.00
>$35 #	2,433	6,074	8,507
Campaign Total	$ 329,714.00	$ 892,874.00	$ 1,222,588.00
Campaign # High	13,621	42,288	56,000
Campaign # Low	4,504	12,367	16,767

COMMISSIONER OF POLITICAL PRACTICES

STATE OF MONTANA

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COMMISSIONER
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P.O. BOX 202401
HELENA, MONTANA 59620-2401

February 29, 1996

Linda Stoll-Anderson, Executive Director
MontCEL PO Box 468
Helena, MT 59624

I received your letter explaining MontCEL's position of the issues which we discussed last week. I have also researched this agency's past historical interpretation of "contribution". After a thorough review of the Commissioner's files, I have discovered that this identical issue has been addressed on at least two separate occasions by at least two different commissioners. Although the paper trail is incomplete, it appears that this issue was discussed in 1987. In fact, a large meeting was held to evaluate different perspectives. At that point, the Commissioner decided to maintain the current interpretation. That interpretation is not crystal clear, but numerous references indicate that the position was to treat the provision as an "exception."

In the interest of maintaining a consistent approach, similar to previous commissioners, this agency has taken the official position that personal services performed by PAC's for candidates are exempt from aggregate contribution limits. These personal services need only be reported as expenditures. Of course, expenditures are not subject to any limitations.

We agree that I-118 did not change the definition of "contribution." The concern of this agency is simply to interpret the existing definition in a lawful manner which reflects the statutory intent. Because "in-kind" contributions did not count toward the limits in the past, the interpretation of this provision did not have the importance that it does now. Still, because of the apparent tradition, the Commissioner has decided that it would be in the best interest of all involved parties to maintain the status quo.

Your clarification and analysis of the activity which MontCEL is involved in, assisted this agency in assessing the reporting requirements and designation of contributions, expenditures and the exception of personal services. However, please be reminded that reporting requirements still exist, even though "in-kind" contributions for personal

EXHIBIT 7

EXHIBIT 51

services for candidates by PAC's are exempt from aggregate contribution limits.

Thank you for your willingness to cooperate and work together to come to a conclusion which is satisfactory for everyone.

If you have any questions, please feel free to call.

Sincerely,

Kimberly B. Chladek

Kimberly B. Chladek
Agency Legal Counsel

cc: Russell Hill
Samantha Sanchez
John Morrison

KC/lw