

No. 12-35809

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

DOUG LAIR, *et al.*,

Plaintiffs – Appellees

v.

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

Defendants – Appellants

**On Appeal from the United States District Court
for the District of Montana**

SUPPLEMENTAL BRIEF IN OPPOSITION TO MOTION TO STAY

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On Wednesday, October 3, 2012, the district court below held that Montana’s individual contribution limits, PAC contribution limits, and aggregate political party contribution limits—all found at MCA Section 13-37-216—were unconstitutional and enjoined Appellants from enforcing the statute. (*Order*, Doc. 157, attached to Appellants’ Mot. Stay as Ex. 1.) That evening, Appellants (collectively “the Commission”) filed a motion to stay the injunction issued against them in the district court pursuant to Federal Rule of Civil Procedure 62. (Doc. 159, attached to Appellants’ Mot. Stay as Ex. 3.) On Thursday, October 4, 2012, the Commission filed its Notice of Appeal along with an Emergency Motion for Stay Pending Appeal under Federal Rule of Appellate Procedure 8 and Ninth Circuit Rule 27-3. On October 9, 2012, the district court denied the Commission’s stay request, providing a summary of its findings to support its decision and indicating that the complete findings would be filed soon. (Doc. 166.) This Court, concerned that the lack of district court findings constrained its ability to properly rule on the Commission’s stay request, imposed a temporary stay to allow the district court to file its findings. On the morning of October 10, 2012, the district court issued its findings of fact and conclusions of law. (Doc. 168.)

With everything needed before it to now consider whether the Commission

has demonstrated that they are entitled to a stay, Appellees respectfully request this Court to quickly resolve the Commission's emergency motion.

As both the thoughtful and thorough analysis of the district court and Appellees' response shows, the Commission cannot satisfy any of the four factors it must prove to justify staying the district court's injunction of Montana Code Section 13-37-216. *See Golden Gate Rest. Ass'n v. City & County of San Francisco*, 512 F.3d 1112, 1115 (9th Cir. 2008) (discussing the need for the moving party to prove all of the factors support a stay). And every day the stay remains in place is a day Appellees and other Montana contributors and candidates are irreparably harmed by the burdens and chill the limits place on their First Amendment speech and association rights. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976). *See also Sammartano v. First Judicial Dist. Court, in & for County of Carson City*, 303 F.3d 959, 973 (9th Cir. 2002). This Court should deny the Commission's Motion for Stay Pending Appeal.

Date: October 10, 2012

Respectfully submitted,

/s/ Anita Y. Woudenberg

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Certificate of Service

I hereby certify that the foregoing document was served electronically on October 10, 2012, upon the following counsel of record via the Ninth Circuit's electronic filing system:

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