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SENATE BILL NO. 42

2

INTRODUCED BY D. EMRICH

3

BY REQUEST OF THE SENATE SELECT COMMITTEE ON JUDICIAL OVERSIGHT AND REFORM

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING JUDICIAL ELECTION LAWS;  
6 PROVIDING FOR THE PARTISAN NOMINATION AND ELECTION OF SUPREME COURT JUSTICES,  
7 DISTRICT COURT JUDGES, JUSTICES OF THE PEACE, AND MUNICIPAL COURT JUDGES; ALLOWING  
8 JUDICIAL CANDIDATES TO ACCEPT ENDORSEMENTS FROM POLITICAL PARTIES; ALLOWING  
9 POLITICAL PARTIES TO CONTRIBUTE TO JUDICIAL CANDIDATES; AMENDING SECTIONS 3-2-101, 3-5-  
10 201, 3-10-201, 3-10-206, 13-14-111, 13-14-118, AND 13-37-211, MCA; REPEALING SECTIONS 13-14-211,  
11 13-14-212, 13-14-213, AND 13-35-231, MCA; AND PROVIDING AN APPLICABILITY DATE."

12

13 WHEREAS, Montana justices, judges, and justices of the peace currently are nominated and elected  
14 without political party designation; and

15 WHEREAS, ~~the Montana Legislature has received numerous comments from constituents stating that~~  
16 ~~constituents have insufficient information to vote in judicial elections in an informed manner in 2023, the~~  
17 ~~Montana League of Women Voters commissioned a poll administered by the HELPS Lab at Montana State~~  
18 ~~University-Bozeman, which revealed overwhelming public opposition to partisan judicial elections;~~ and

19 WHEREAS, ~~among the factors contributing to this lack of information are the absence of party labels on~~  
20 ~~election material, the absence of party labels on ballots, and the relative lack of information about judicial~~  
21 ~~candidates that is distributed by party organizations of the survey respondents, 50% voted for President Trump~~  
22 ~~in the 2020 election, 34% voted for President Biden, and 16% percent voted other;~~ and

23 WHEREAS, ~~the fact that judicial candidates are barred from party primaries further reduces the public~~  
24 ~~scrutiny they receive the survey said that 89% disagree with the notion that Montana Supreme Court justices~~  
25 ~~should make decisions based on political party considerations;~~ and

26 WHEREAS, ~~an additional effect of the lack of party designation is the excessive influence on judicial~~  
27 ~~elections of wealthy special interest groups the survey said that 71% oppose the idea that justices should run~~  
28 ~~under party labels, including 61% of Republican respondents;~~ and

1            WHEREAS, ~~other states have had long and successful experience with partisan judicial elections the~~  
2 ~~survey said that 64% agree that the Montana Supreme Court should have the authority to balance the power of~~  
3 ~~the Legislative and Executive Branches, with support across party lines: 83% of Democrats, 62% of~~  
4 ~~Independents, and 60% of Republicans; and~~

5            WHEREAS, ~~the survey said that 90% of Montanans agree that having three separate branches of~~  
6 ~~government is the best way to protect Montanan's constitutional rights and freedoms; and~~

7            WHEREAS, ~~the survey said that only 7% of Montanans polled said, if asked, they would vote against~~  
8 ~~adopting Montana's current constitution.~~

9

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

11

12            **Section 1.** Section 3-2-101, MCA, is amended to read:

13            **"3-2-101. Number, nomination, election, and term of office.** (1) The supreme court consists of a  
14 chief justice and six associate justices who are elected by the qualified electors of the state at large at the  
15 general state elections next preceding the expiration of the terms of office of their predecessors, respectively,  
16 and hold their offices for the term of 8 years from and after the first Monday of January next succeeding their  
17 election.

18            (2) A supreme court justice, including the chief justice, must be nominated and elected on a  
19 partisan ballot in the same manner as provided for partisan candidates in Title 13, except that an incumbent  
20 justice who is the only candidate for the office must be placed on the general ballot as provided in Article VII,  
21 section 8, of the Montana constitution and [section 4].

22            (3) Each vacancy for justice of the supreme court is a separate and independent office for election  
23 purposes. The chief justice of the supreme court shall assign an individual number to each justice position and  
24 certify these numbers to the office of the secretary of state."

25

26            **Section 2.** Section 3-5-201, MCA, is amended to read:

27            **"3-5-201. Election Nomination, election, and oath of office.** (1) The judges of the district court,  
28 except judges pro tempore, must be elected by the qualified voters of the district.

1                   (2) (a) A district court judge must be nominated and elected on a partisan ballot in the same  
2 manner as provided for partisan candidates in Title 13, except that an incumbent judge who is the only  
3 candidate for the office must be placed on the general ballot as provided in Article VII, section 8, of the Montana  
4 constitution and [section 4].

5                   (b) Each vacancy for district court office is a separate and independent office for election  
6 purposes.

7                   (c) The clerk of district court in a multijudge district shall certify the department numbers assigned  
8 pursuant to 3-5-403 to the office of the secretary of state for election purposes.

9                   (2)(3) Except as provided in subsection (1), each judge of a the district court shall, as soon as the  
10 judge has taken and subscribed the official oath, file the official oath in the office of the secretary of state."

11

12                   **Section 3.** Section 3-10-201, MCA, is amended to read:

13                   **"3-10-201. Election. Nomination and election.** (1) Except as provided in 3-10-206, each justice of  
14 the peace must be elected by the qualified electors of the county at the general state election immediately  
15 preceding the expiration of the term of office of the justice of the peace's predecessor.

16                   (2) A justice of the peace must be nominated and elected on the nonpartisan judicial ballot in the  
17 same manner as judges of the district court.

18                   (3) Each judicial office must be a separate and independent office for election purposes, each  
19 office must be numbered by the county commissioners, and each candidate for justice of the peace shall  
20 specify the number of the office for which the candidate seeks to be elected. A candidate may not file for more  
21 than one office.

22                   (4) Section 13-35-231, prohibiting political party contributions to judicial officers, applies to justices  
23 of the peace."

24

25                   **NEW SECTION. Section 4. Form of ballot on retention for judicial officers.** (1) If an incumbent  
26 judge is the only candidate for a judicial office, the name of the incumbent judge must be placed on the official  
27 ballot for general election as follows:

28                   Shall (insert title of officer) (insert name of the incumbent officer) of the (insert title of the court)

1 of the state of Montana be retained in office for another term?

2 (2) Following the question, provision must be made, subject to rules adopted pursuant to 13-12-  
3 202, for a voter to indicate a "yes" or a "no" vote. The form must include the incumbent's political party  
4 designation and may not include a write-in space for the office.

5

6 **Section 5.** Section 3-10-206, MCA, is amended to read:

7 **"3-10-206. Vacancies.** Subject to the residency requirements provided in 3-10-204 and the election  
8 requirements provided in 3-10-201(2) through (4) and (3), a vacancy in the office of a justice of the peace must  
9 be filled pursuant to 7-4-2206 until a successor is elected and qualified."

10

11 **Section 6.** Section 13-14-111, MCA, is amended to read:

12 **"13-14-111. Application of general laws.** Except as otherwise provided in this chapter, candidates  
13 for nonpartisan offices, including judicial offices, must be nominated and elected according to the provisions of  
14 this title."

15

16 **Section 7.** Section 13-14-118, MCA, is amended to read:

17 **"13-14-118. Vacancies among nominees after nomination and before general election.** (1) If  
18 after the primary election and before the 85th day before the general election a candidate is not able to run for  
19 the office for any reason, the vacancy must be filled by the candidate next in rank in number of votes received  
20 in the primary election.

21 (2) If a vacancy for a nonpartisan nomination cannot be filled as provided in subsection (1) and the  
22 vacancy occurs no later than 85 days before the general election, a 10-day period for accepting declarations for  
23 nomination or statements of candidacy and nominating petitions for the office must be declared by:

24 (a) the governor for national, state, judicial district, legislative, or any multicounty district office;

25 (b) the governing body of the appropriate political subdivision for all other offices.

26 (3) The names of the candidates who filed as provided in subsection (2) must be certified and must  
27 appear on the general election ballot in the same manner as candidates nominated in the primary.

28 (4) If the vacancy occurs later than 85 days before the general election and a qualified individual is

1 not elected to the office at the general election, the office is vacant and must be filled as provided by law."

2

3 **Section 8.** Section 13-37-211, MCA, is amended to read:

4 **"13-37-211. Joint fundraising committee.** (1) (a) One or more candidates for a statewide office and  
5 political committees may join together to establish a joint fundraising committee to act as a fundraising  
6 representative for all participants. A joint fundraising committee may not be construed to be a political  
7 committee.

8 (b) The participants in a joint fundraising committee may include only a candidate for statewide  
9 office, an independent committee, or a political party committee. Any combination of these entities may form a  
10 joint fundraising committee.

11 (c) The participants in a joint fundraising committee may not include an incidental committee, a  
12 ballot issue committee, a judicial candidate, or a political committee that is a corporation or a union.

13 (d) The joint fundraising committee may not be a participant in any other joint fundraising effort.

14 (e) A participant may participate in an unlimited amount of concurrent joint fundraising committees.

15 (f) A joint fundraising committee may not amend its list of participants after filing its certification  
16 and organizational statement as provided by 13-37-201.

17 (2) A joint fundraising committee shall:

18 (a) appoint a campaign treasurer and certify an organization statement pursuant to 13-37-201;  
19 (b) designate one separate campaign depository as provided in 13-37-205 to be used solely for  
20 the receipt of all contributions received and the disbursement of all expenditures made by the joint fundraising  
21 committee; and

22 (c) keep records as provided by 13-37-207 and 13-37-208.

23 (3) The participants in a joint fundraising committee shall enter into a written agreement that states  
24 a formula for the allocation of fundraising proceeds. The formula must be stated as the amount or percentage of  
25 each contribution received to be allocated to each participant. The joint fundraising committee shall retain the  
26 written agreement for the same amount of time the campaign treasurer is required to retain accounts under 13-  
27 37-208(3) and shall make it available to the commissioner on request.

28 (4) Each solicitation for contributions to the joint fundraising committee must include a notice that

1 includes the following information:

2 (a) the name of each participant in the joint fundraising committee;

3 (b) the allocation formula to be used for distributing joint fundraising proceeds;

4 (c) a statement informing contributors that, despite the state allocation formula, they may

5 designate their contributions for particular participants;

6 (d) a statement informing contributors that the allocation formula may change if a contributor

7 makes a contribution that would exceed the amount that a contributor may give to a participant or if a

8 participant is otherwise prohibited from receiving the contribution; and

9 (e) if one or more participants engage in the joint fundraising activity solely to satisfy outstanding

10 debts, a statement informing contributors that the allocation formula may change if a participant receives

11 sufficient funds to pay its outstanding debts.

12 (5) (a) A joint fundraising committee may accept contributions on behalf of its participants under

13 the provisions of the fundraising formula and may make expenditures on behalf of and to its participants under

14 the limitations provided in this section.

15 (b) Except as provided by subsection (8), a joint fundraising committee may not accept a

16 contribution that, when allocated pursuant to the joint fundraising committee's allocation formula in subsection

17 (3), in addition to any other contributions received by the participant from that contributor, would be in excess of

18 the contribution limits of that contributor calculated pursuant to this section. A participant may not accept

19 contributions allocated from the joint fundraising committee that, but for the joint fundraising committee acting

20 as an intermediary, the participant could not otherwise accept.

21 (c) Contributions to the joint fundraising committee may only be deposited in the joint fundraising

22 committee depository.

23 (d) The joint fundraising committee shall report and maintain records concerning contributions as

24 provided by Title 13, chapter 37. The joint fundraising committee shall make its records available to each

25 participant.

26 (e) A participant shall make the participant's contributor records available to the joint fundraising

27 committee to enable the joint fundraising committee to carry out its duty to screen contributions pursuant to

28 subsection (6)(a).

3 (b) A corporation or a union prohibited from making a contribution to a candidate under 13-35-  
4 227(1) may make a contribution to a joint fundraising committee if one or more participants are not otherwise  
5 prohibited from receiving the contribution. A joint fundraising committee may not make an expenditure in  
6 contravention of 13-35-227(1), and a participant in a joint fundraising committee prohibited from accepting or  
7 receiving a contribution under 13-35-227(1) may not accept or receive such a contribution from a joint  
8 fundraising committee.

9 (c) A joint fundraising committee may not make an expenditure in contravention of 13-35-231 if a  
10 participant is a political party committee.

(d)(c) A joint fundraising committee may not act as an intermediary for contributions or expenditures by any entity, including participants, that is otherwise prohibited under Title 13, chapters 35 and 37.

13 (7) For reporting and limitation purposes:

14 (a) the joint fundraising committee shall report contributions in the reporting period in which they  
15 are received and expenditures in the reporting period in which they are made; and

16 (b) the date of receipt of a contribution by a participant is the date that the contribution is disbursed  
17 by the joint fundraising committee to the participant. However, the funds must be allocated to the general  
18 election or primary election cycle during which the joint fundraising committee received them.

19 (8) (a) Expenditures by the joint fundraising committee must be allocated to each participant in  
20 proportion to the formula in the written agreement provided for in subsection (3).

21 (b) If expenditures are made for fundraising costs, a participant may pay more than its  
22 proportionate share. However, the amount that is in excess of the participant's proportionate share may not  
23 exceed the amount that the participant could legally contribute to the remaining participants. A participant may  
24 only pay expenditures on behalf of another participant subject to the limits provided in 13-37-216.

25 (c) If distribution according to the fundraising formula extinguishes the debts of one or more  
26 participants and results in a surplus for those participants, or if distribution under the formula results in a  
27 violation of the contribution limits under 13-37-216, the joint fundraising committee may reallocate the excess  
28 funds. Reallocation must be based on the remaining participants' proportionate shares under the allocation

1 formula. If reallocation results in a violation of a contributor's limit under 13-37-216, the joint fundraising  
2 committee shall return the amount of the contribution that exceeds the limit to the contributor. However,  
3 contributions that have been designated by a contributor may not be reallocated by the joint fundraising  
4 committee without prior written permission of the contributor. If the contributor does not give the contributor's  
5 permission for reallocation, the funds must be returned to the contributor.

6 (9) The joint fundraising committee shall allocate total gross contributions received by the joint  
7 fundraising committee to the participants. The joint fundraising committee shall inform each participant of the  
8 participant's gross contribution total, make the joint fundraising committee's contribution and expenditure  
9 records available to each participant, and subject to the limitations provided in 13-37-216, and this section, pay  
10 fundraising expenses and distribute each participant's allocated net contributions.

11 (10) An independent committee may not be construed to violate the requirement that it is not  
12 controlled directly or indirectly by a candidate or that it may not coordinate with a candidate in connection with  
13 the making of expenditures as provided in 13-1-101 solely because:

14 (a) the independent committee participates in a joint fundraising committee; and  
15 (b) the joint fundraising committee makes a total gross contribution to a candidate that is in excess  
16 of an individual independent committee's limits provided in 13-37-216 but that is not in excess of the remaining  
17 combined limit, if any, of all the entities within the joint fundraising committee.

18 (11) The joint fundraising committee is liable for its violations of the provisions of Title 13, chapters  
19 35 and 37. In addition, each participant of a joint fundraising committee is severally liable for violations of the  
20 provisions of Title 13, chapters 35 and 37, pertaining to the contributions allocated or disbursed to the  
21 participant by the joint fundraising committee."

22

23 **NEW SECTION. Section 9. Judicial endorsements lawful.** A judicial candidate may accept  
24 endorsements from political parties.

25

26 **NEW SECTION. Section 10. Repealer.** The following sections of the Montana Code Annotated are  
27 repealed:

28 13-14-211. Judicial offices separate and independent offices for election purposes.

1 13-14-212. Form of ballot on retention of certain incumbent judicial officers.

2 13-14-213. Form of ballot on retention for other judicial offices.

3 13-35-231. Unlawful for political party to contribute to judicial candidate.

4

5 **NEW SECTION. Section 11. Codification instruction.** (1) [Section 4] is intended to be codified as  
6 an integral part of Title 13, chapter 12, part 2, and the provisions of Title 13, chapter 12, part 2, apply to [section  
7 4].

8 (2) [Section 9] is intended to be codified as an integral part of Title 13, chapter 35, part 2, and the  
9 provisions of Title 13, chapter 35, part 2, apply to [section 9].

10

11 **NEW SECTION. Section 12. Saving clause.** [This act] does not affect rights and duties that  
12 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

13

14 **NEW SECTION. Section 13. Applicability.** [This act] applies to elections for judicial offices occurring  
15 on or after [the effective date of this act].

16

- END -