SENATE BILL NO. 42

INTRODUCED BY D. EMRICH

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

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING JUDICIAL ELECTION LAWS; PROVIDING FOR THE PARTISAN NOMINATION AND ELECTION OF SUPREME COURT JUSTICES, DISTRICT COURT JUDGES, JUSTICES OF THE PEACE, AND MUNICIPAL COURT JUDGES ~~;~~ REQUIRING INDEPENDENT CANDIDATES TO BE NOMINATED IN A SEPARATE PRIMARY ELECTION CONDUCTED IN A MANNER SIMILAR TO THAT OF CANDIDATES AFFILIATED WITH A POLITICAL PARTY; EXEMPTING REVISING SIGNATURE REQUIREMENTS FOR INDEPENDENT JUDICIAL CANDIDATES; FROM CERTAIN SIGNATURE AND FILING DEADLINES; REQUIRING AN UNOPPOSED INDEPENDENT CANDIDATE IN A JUDICIAL PRIMARY ELECTION TO RECEIVE A MINIMUM NUMBER OF VOTES TO ADVANCE TO THE GENERAL ELECTION; ALLOWING JUDICIAL CANDIDATES TO ACCEPT ENDORSEMENTS FROM POLITICAL PARTIES; ALLOWING POLITICAL PARTIES TO CONTRIBUTE TO JUDICIAL CANDIDATES; AMENDING SECTIONS 3-2-101, 3-5-201, 3-10-201, 3-10-206, 13-1-103, 13-10-501, 13-10-502, 13-10-503, 13-10-601, 13-14-111, 13-14-118, AND 13-37-211, MCA; REPEALING SECTIONS 13-14-211, 13-14-212, 13-14-213, AND 13-35-231, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

WHEREAS, the Montana Legislature has received numerous comments from constituents stating that constituents have insufficient information to vote in judicial elections in an informed manner; and

WHEREAS, among the factors contributing to this lack of information are the absence of party labels on election material, the absence of party labels on ballots, and the relative lack of information about judicial candidates that is distributed by party organizations; and

WHEREAS, the fact that judicial candidates are barred from party primaries further reduces the public scrutiny they receive; and

WHEREAS, an additional effect of the lack of party designation is the excessive influence on judicial

elections of wealthy special interest groups; and

WHEREAS, other states have had long and successful experience with partisan judicial elections.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Shall (insert title of officer) (insert name of the incumbent officer) of the (insert title of the court) of the state of Montana be retained in office for another term?

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

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

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

SECTION 6. ~~Section 13-1-103, MCA, is amended to read:~~

"~~**13-1-103. Determination of winner.** (1) The~~ Except as provided in subsection (2), the ~~individual receiving the highest number of valid votes for any office at an election is elected or nominated to that office.~~

~~(2) To be nominated and to advance to the general election, an independent candidate for judicial office who is the only candidate in the independent primary must receive at least 5% of the total votes cast for the successful candidate with the least votes in the most recent primary held for that office.~~ "

SECTION 7. ~~Section 13-10-501, MCA, is amended to read:~~

"~~**13-10-501. Petition for nomination by independent candidates or political parties not eligible to participate in primary election.** (1) Except as provided in 13-10-504~~ AND ~~13-10-601(3), nominations for public office by an independent candidate or a political party that does not meet the requirements of 13-10- 601 (1)~~ OR ~~(2) may be made by a petition for nomination.~~

~~(2) The petition must contain the same information and the oath of the candidate required for a declaration for nomination.~~

~~(3) If a petition is filed by a political party, it must contain the party name and, in five words or less, the principle that the body represents.~~

~~(4) The form of the petition must be prescribed by the secretary of state, and the secretary of state shall furnish sample copies to the election administrators and on request to any individual.~~

~~(5) Each sheet of a petition must contain signatures of electors residing in only one county."~~

Section 6. Section 13-10-502, MCA, is amended to read:

"**13-10-502. Signature requirements for petition** ~~**-- EXCEPTION FOR INDEPENDENT JUDICIAL CANDIDATES**~~**.** (1) The petition for nomination must be signed by electors residing within the state and district or political subdivision in which the officer or officers are to be elected. Each signature line must contain spaces

for the signature, post-office address, and printed last name of the signer.

(2) (A) ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (2)(B), THE number of signatures must be 5% or more of the total vote cast for the successful candidate for the same office at the last general election.

(B) FOR CANDIDATES FOR A JUDICIAL OFFICE, THE NUMBER OF SIGNATURES MUST BE 3% OR MORE OF THE TOTAL VOTE CAST FOR THE SUCCESSFUL CANDIDATE FOR THE SAME OFFICE AT THE LAST GENERAL ELECTION.

(3) If the office sought is a new office or the boundaries of the district or political subdivision in which the election is to be held have changed since the last election for the office, the officer with whom nominations for the office sought are filed shall determine the number of signatures required for a petition of nomination for that office.

~~(4) A candidate for judicial office who files for office as an independent candidate is not subject to the signature requirements provided by this section.~~"

SECTION 9. Section 13-10-503, MCA, is amended to read:

"**13-10-503. Filing deadlines -- EXCEPTION FOR INDEPENDENT JUDICIAL CANDIDATES.** ~~(1) A petition for nomination, the affidavits of circulation required by 13-27-302, and the required filing fee must be filed with the same officer with whom other nominations for the office sought are filed. Petitions must be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306. If sufficient signatures are verified and certified pursuant to 13-10-502, the county election administrator shall file the petition for nomination with the same officer with whom other nominations for the office sought are filed.~~

~~(2) Except as provided in 13-10-504, each petition for nomination and the required filing fee must be filed before the scheduled primary election or the filing deadline for the special or general election if a primary election is not scheduled.~~

~~(3) A candidate for judicial office who files for office as an independent candidate is not subject to the filing deadlines provided by this section.~~ "

SECTION 10. Section 13-10-601, MCA, is amended to read:

"**13-10-601. Parties eligible for primary election -- petitions by minor parties -- INDEPENDENT**

~~**CANDIDATE FOR JUDICIAL OFFICE**. (1) Each political party that had a candidate for a statewide office in either of the last two general elections who received a total vote that was 5% or more of the total votes cast for the most recent successful candidate for governor shall nominate its candidates for public office, except for presidential electors, by a primary election as provided in this chapter.~~

~~(2) After certification of a petition by the secretary of state under 13-10-610 (1), a political party that does not qualify to hold a primary election under subsection (1) shall nominate its candidates for public office by primary election. However, this section may not be construed to prohibit an election administrator from not preparing a primary election ballot pursuant to 13-10-209.~~

~~(3) (a) Except as provided in subsection (3)(b), in an election for judicial office, a candidate who chooses to run as an independent candidate must be nominated by a primary election conducted in the same manner as provided for candidates who belong to political parties covered in subsection (1).~~

~~(b) If an independent candidate for judicial office is the only candidate in the independent primary, the candidate must receive at least 5% of the total votes cast for the successful candidate with the least votes in the most recent primary held for that office.~~ "

Section 7. Section 13-14-111, MCA, is amended to read:

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

Section 8. Section 13-14-118, MCA, is amended to read:

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

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

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

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

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

(4) If the vacancy occurs later than 85 days before the general election and a qualified individual is not elected to the office at the general election, the office is vacant and must be filled as provided by law."

Section 9. Section 13-37-211, MCA, is amended to read:

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

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

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

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

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

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

(2) A joint fundraising committee shall:

(a) appoint a campaign treasurer and certify an organization statement pursuant to 13-37-201;

(b) designate one separate campaign depository as provided in 13-37-205 to be used solely for the receipt of all contributions received and the disbursement of all expenditures made by the joint fundraising committee; and

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

(3) The participants in a joint fundraising committee shall enter into a written agreement that states

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

(4) Each solicitation for contributions to the joint fundraising committee must include a notice that includes the following information:

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

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

(c) a statement informing contributors that, despite the state allocation formula, they may designate their contributions for particular participants;

(d) a statement informing contributors that the allocation formula may change if a contributor makes a contribution that would exceed the amount that a contributor may give to a participant or if a participant is otherwise prohibited from receiving the contribution; and

(e) if one or more participants engage in the joint fundraising activity solely to satisfy outstanding debts, a statement informing contributors that the allocation formula may change if a participant receives sufficient funds to pay its outstanding debts.

(5) (a) A joint fundraising committee may accept contributions on behalf of its participants under the provisions of the fundraising formula and may make expenditures on behalf of and to its participants under the limitations provided in this section.

(b) Except as provided by subsection (8), a joint fundraising committee may not accept a contribution that, when allocated pursuant to the joint fundraising committee's allocation formula in subsection (3), in addition to any other contributions received by the participant from that contributor, would be in excess of the contribution limits of that contributor calculated pursuant to this section. A participant may not accept contributions allocated from the joint fundraising committee that, but for the joint fundraising committee acting as an intermediary, the participant could not otherwise accept.

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

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

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

(e) A participant shall make the participant's contributor records available to the joint fundraising committee to enable the joint fundraising committee to carry out its duty to screen contributions pursuant to subsection (6)(a).

(6) (a) The joint fundraising committee shall screen all contributions received to ensure the prohibitions provided in Title 13, chapters 35 and 37, are followed.

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

~~(c) A joint fundraising committee may not make an expenditure in contravention of 13-35-231 if a 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.

(7) For reporting and limitation purposes:

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

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

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

(b) If expenditures are made for fundraising costs, a participant may pay more than its proportionate share. However, the amount that is in excess of the participant's proportionate share may not exceed the amount that the participant could legally contribute to the remaining participants. A participant may

only pay expenditures on behalf of another participant subject to the limits provided in 13-37-216.

(c) If distribution according to the fundraising formula extinguishes the debts of one or more participants and results in a surplus for those participants, or if distribution under the formula results in a violation of the contribution limits under 13-37-216, the joint fundraising committee may reallocate the excess funds. Reallocation must be based on the remaining participants' proportionate shares under the allocation formula. If reallocation results in a violation of a contributor's limit under 13-37-216, the joint fundraising committee shall return the amount of the contribution that exceeds the limit to the contributor. However, contributions that have been designated by a contributor may not be reallocated by the joint fundraising committee without prior written permission of the contributor. If the contributor does not give the contributor's permission for reallocation, the funds must be returned to the contributor.

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

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

(a) the independent committee participates in a joint fundraising committee; and

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

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

NEW SECTION. **Section 10. Judicial endorsements lawful.** A judicial candidate may accept

endorsements from political parties.

NEW SECTION. **Section 11. Repealer.** The following sections of the Montana Code Annotated are repealed:

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

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

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

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

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

(2) [Section ~~9~~ 14 10] is intended to be codified as an integral part of Title 13, chapter 35, part 2, and the provisions of Title 13, chapter 35, part 2, apply to [section ~~9~~ 14 10].

NEW SECTION. **Section 13. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

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