

**Testimony of Montana Attorney General Steve Bullock**  
**Executive Summary**  
**United States Senate Committee on Rules and Administration**  
**February 2, 2010**

The Supreme Court's decision in Citizens United calls into question more than a century of law around the country. Yet the Court and others have overlooked the distinct impact corporate campaign spending has in state and local elections.

Montana's history provides an example of that impact. Senator William Clark and other "Copper Kings" once dominated political debate in Montana, spending as much as \$1000 per vote in a war of corporate interests that drowned out the voices of Montanans. This was corruption as it was understood since the framing of the Constitution: not just bribery but harnessing government power to benefit a single corporate faction at the expense of the broader and more diverse interests represented by the people themselves.

In 1912, Montanans passed an initiative to prohibit corporations from "paying or contributing in order to aid, promote or prevent the nomination or election of any person." Corporations are represented in Montana campaigns, but on equal terms alongside other political committees, all of them speaking through purely voluntary associations of their money, ideas, and voices. It is a system that has worked well, and one Montanans continue to believe in.

After Citizens United, I am concerned about the ways state elections are especially vulnerable to corporate corruption, and ask you keep these concerns in mind as you consider reforms. First, our campaigns are small compared to the corporations that would corrupt them. Second, for states, the concern about foreign corporations includes interstate as well as international influences. Third, special dangers arise from corporate corruption in the majority of states that hold judicial elections. Finally, campaign disclosure laws provide an opportunity to ensure voters know who is speaking, and shareholders know where their money goes.

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Last summer, Montana led more than half of the States in asking the Court to address only the narrow federal issues presented by *Citizens United*.<sup>1</sup> Instead the Court reached a broad decision that questions more than a century of law in Montana and across the country. Yet the case itself, and reactions on both sides of the political aisle, have largely overlooked the decision's impact upon the vast majority of elections in this country: those for state and local offices.

There is historic meaning in a Montanan's appearance here. One hundred and ten years ago, a predecessor of this Committee (the Senate Committee on Privileges and Elections) "expressed horror at the amount of money which had been poured into politics in Montana in elections from 1888 onward."<sup>2</sup> The setting was the investigation into the infamous bribery of the Montana Legislature by Senator William A. Clark, which led to its refusal to seat him.

The corruption of Montana politics was by no means limited to bribery. Senator Clark and his fellow "Copper Kings" dominated political debate in Montana and drowned out Montanans' own voices.<sup>3</sup> This was corruption as it was understood since the framing of the Constitution: not mere theft or bribery, but harnessing government power to benefit a single corporate faction at the expense of the broader and more diverse interests represented by the people themselves.<sup>4</sup> In an 1884 election establishing Helena as the State Capital, for example, Clark and his archrival Marcus Daly combined to spend between \$35 and \$70 million in today's dollars to influence 52,000 voters.<sup>5</sup> That's about \$1000 per vote.

Mining money reached every campaign -- legislators, judges, sheriffs, county commissioners, and assessors.<sup>6</sup> The result was best described in Clark's own testimony here before the Senate committee:

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<sup>1</sup> More than two-thirds of the States have limited corporate spending at some point. See Louise Overacker, *Money in Elections, Politics and People: The Ordeal of Self-Government in America*, 294-95 (1932).

<sup>2</sup> K. Ross Toole, *Montana: An Uncommon Land*, 190 (Univ. Okla. 1959).

<sup>3</sup> See generally, Carl B. Glasscock, *The War of the Copper Kings* (Bobbs-Merrill 1935).

<sup>4</sup> See Zephyr Teachout, *The Anti-Corruption Principle*, 94 Cornell L. Rev. 341, 393 n.245, 406 (2009); Robert G. Natelson, *The General Welfare Clause and the Public Trust: An Essay in Original Understanding*, 52 Kan. L. Rev. 1, 48 (2003).

<sup>5</sup> Michael Malone *et al.*, *Montana: A History of Two Centuries*, 214 (Revised ed., Univ. of Wash. 1991); Toole at 182.

<sup>6</sup> Toole at 205.

Many people have become so indifferent to voting there by reason of the large sums of money that have been expended in the state heretofore that you have to do a great deal of urging, and it takes a lot of men to do it, to go around among them and stir them up and get them out.<sup>7</sup>

Fed up, in 1912 our citizens through the initiative process passed several political reforms. One prohibited corporations that could most benefit from government action from “pay[ing] or contribut[ing] in order to aid, promote or prevent the nomination or election of any person.”<sup>8</sup> The law represented nothing less than the voters taking back a government that belongs to them, and only to them.

Montanans know their history as well as they know their public officials. Over nearly a century, our limit on corporate campaign spending in candidate elections has served us well, and never been challenged. Corporations are represented in Montana campaigns, but on equal terms alongside other political committees, all of them speaking through voluntary associations of their money, ideas, and voices.<sup>9</sup> It is a system Montanans continue to believe in.

We didn’t want this fight in Montana, but the *Citizens United* decision will likely invite a challenge to the people’s law of 1912. We do not want to be set back a century. I am principally concerned about the ways state elections are especially vulnerable to corporate corruption, and ask you keep these concerns in mind as you consider reforms.

First, our campaigns are small compared to the corporations that would corrupt them. In 2008, the average Montana state senator won on \$17,000 of spending; the average senator in this body won spending \$8.5 million.<sup>10</sup> That’s

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<sup>7</sup> Toole at 184-85.

<sup>8</sup> The full Section 25 of the 1912 Act provided:

No corporation, and no person, trustee, or trustees owning or holding the majority of the stock of a corporation carrying on the business of a bank, savings bank, cooperative bank, trust, trustees, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, water, cemetery, or crematory company, or any company having the right to take or condemn land or exercise franchise in public ways granted by the state or by any county, city or town, shall pay or contribute in order to aid, promote or prevent the nomination or election of any person, or in order to aid or promote the interests, success or defeat of any political party or organization. No person shall solicit or receive such payment of contribution from such corporation or such holder of a majority of such stock.

<sup>9</sup> National Institute on Money in State Politics, *State Overview: Montana 2008*, Table 4 (Top 15 Industries), available at [http://www.followthemoney.org/database/state\\_overview.phtml?s=MT&y=2008](http://www.followthemoney.org/database/state_overview.phtml?s=MT&y=2008).

<sup>10</sup> [http://www.opensecrets.org/bigpicture/elec\\_stats.php?cycle=2008](http://www.opensecrets.org/bigpicture/elec_stats.php?cycle=2008).

more than the combined amount raised by all 327 candidates running for Montana state office in 2008.<sup>11</sup> With the floodgates opened to corporate spending, it won't take a Copper King to buy a \$17,000 election.

Second, the “foreign corporations” that can corrupt our elections are more likely to come from Delaware than offshore. While we can legislate to hold Montana corporations accountable to their shareholders, our state laws may not always reach businesses incorporated elsewhere. As you protect federal elections from foreign influence, understand that federalism requires room for states to protect their elections from foreign influence too, whether international or interstate.

Third, Montana's history shows the special dangers arising from corporate corruption in judicial elections. Like the majority of the States, we hold our judges accountable through elections. Supreme Court justices in Montana campaign on as little as \$100,000, far less than the stakes in the cases they are asked to decide.<sup>12</sup> As *Caperton* recognized, independent expenditures can have a “significant and disproportionate influence” in corrupting the administration of justice.<sup>13</sup>

Finally, I am encouraged by the Supreme Court's nearly unanimous affirmation of disclosure and disclaimer laws, and hope more can be done. By amplifying disclosure and disclaimer requirements for corporations, voters can know the identity of the wizard behind the curtain. We may not be able to stop Acme, Inc. from using other people's money to campaign, but we can strive to ensure voters know it's Acme speaking in their elections, not “Citizens for Motherhood and Apple Pie” or another front group. We can also protect the shareholders who are just trying to save for retirement, and want nothing to do with some CEO's politics.

In Montana we have ensured that the voices of our candidates, and those of the natural persons that support and vote for them, are not displaced by the treasuries of corporations. The Supreme Court has challenged all of us to find new ways to keep those voices heard. I look forward to working with our legislature and Congress in doing so.

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<sup>11</sup> National Institute on Money in State Politics, *State Overview: Montana 2008*, Table 1 (Candidates).

<sup>12</sup> *Id.*

<sup>13</sup> *Caperton v. A.T. Massey Coal Co.*, 129 S. Ct. 2252, 2264-65 (2009).

## Montana Attorney General Steve Bullock

Steve Bullock was elected as Montana's 20th Attorney General in November 2008. As Attorney General, Bullock is the state's chief lawyer and law enforcement officer. He leads the Montana Department of Justice, which encompasses the Forensic Science Laboratory, the Montana Highway Patrol, the Motor Vehicle Division, Gambling Control, Legal Services and the Division of Criminal Investigation, as well as the department's information technology staff.

Attorney General Bullock is committed to:

- **curbing prescription drug abuse and reducing drunk driving** in Montana by supporting strong enforcement, building community awareness and working with the legislature to strengthen Montana law. He has assembled a diverse advisory council on prescription drug abuse and used grant funding to create a six-person drug diversion unit.
- **protecting Montana consumers.** He has increased the commitment to the Office of Consumer Protection, including adding two new attorneys, one of whom specializes in issues affecting Montana's farmers and ranchers.
- **making Montana communities safer, especially for children.** Bullock has dedicated a prosecutor within his office to focus exclusively on crimes against children; improved the policing of online predators; supported the development of a Children's Justice Center within the Department of Justice to coordinate efforts to enforce the laws relating to sexual violence against children, and provided the staff resources necessary to ensure that offenders comply with Sexual or Violent Offender Registry requirements.

Steve also has a strong **commitment to public access** to Montana's streams and public lands, and worked with the legislature to solidify the public's right to access streams. Another of his top priorities is providing strong **support to local law enforcement and Montana's county attorneys.**

Bullock began his career in public service in 1996 as chief legal counsel to the Montana Secretary of State. He went on to serve four years with the Montana Department of Justice, first as executive assistant attorney general, and later as acting chief deputy (1997-2001). During this time, he also served as legislative director, coordinating the Attorney General's legislative efforts.

From 2001 to 2004, Bullock practiced law with the Washington, D.C. firm of Steptoe & Johnson. While there, he also served as an adjunct professor at the George Washington University School of Law.

Prior to his election as Attorney General, Bullock was in private practice in Helena where he represented individuals, consumer organizations, labor unions, peace officers, associations of political subdivisions, and small and large businesses.

Steve was born in Missoula and graduated from the Helena public school system. He received his undergraduate degree from Claremont McKenna College and his law degree with honors from Columbia University Law School in New York.

Steve and his wife Lisa have three children, Caroline, Alexandria and Cameron.