

### ***I. Introduction***

Thank you Chairperson Klobuchar, Ranking member Blunt, and members of the committee. I am honored to participate in today’s hearing.

I appear today to discuss one state’s experience with campaign finance transparency and disclosure as you consider legislation to provide additional disclosure requirements to the Federal Election Campaign Act.

I will briefly describe the role of Montana’s Commissioner of Political Practices (COPP) specific to campaign finance transparency and disclosure against the backdrop of my state’s unique and storied past, which continues to influence its citizens’ expectations for their government, their candidates, and their elected officials.

Common threads running through Montana’s colorful history since its statehood in 1889 include fierce independence, bipartisan traditions, and citizen-driven reform. Montanans’ persistent demands for transparency and accountability in government, in elections, and in campaign finance disclosure have profoundly influenced and shaped state law and continue to do so.

The COPP is no exception; its very existence and statutory duties are based on the transparency and accountability that have become part of the fabric of Montana’s state institutions and elections.

#### ***a. COPP Creation***

First and foremost, the office I represent is and has always been an independent and nonpartisan office. Coming on the heels of passage of the 1971 Federal Election Campaign Act and Montana’s ratification in 1972 of its state Constitution enshrining Montanans’ right to know about and participate in government, the state’s citizen legislature in 1975 established the Office of the Commissioner of Campaign Finance and Practices. The intent of the 1975 Legislature, to establish disclosure and reporting of money used to influence Montana elections and to enforce Montana’s election laws, continues to guide the office’s operations. State laws and court decisions alter the landscape, but the COPP’s overarching goals remain the same.

#### ***b. COPP Appointment and Confirmation***

Montana’s governor appoints the COPP from a list submitted by a bipartisan legislative nomination committee, and the state Senate confirms the nominee. With certain limitations for individuals who have engaged in recent political activity, any Montana resident may apply for the position. The application process is transparent and open to the public.

In 2017, when I was appointed by then-Governor Steve Bullock, a Democrat, the Senate consisted of 32 Republicans and 18 Democrats—the second-largest Republican majority in decades. The Senate confirmed my nomination by a vote of 49-1, a testament once again to Montana’s bipartisan approach to campaign finance reporting and disclosure.

#### ***c. COPP Duties***

Montana campaign finance law specifically requires that the Commissioner monitor and enforce Montana’s campaign finance reporting and disclosure laws. COPP handles this statutory responsibility in a variety of ways. Montana’s COPP works tirelessly to provide information regarding Montana’s campaign finance reporting and disclosure requirements directly to candidates, committees, and citizens of Montana.

First, COPP compliance staff and I work to compile and distribute educational materials and trainings intended to familiarize candidates and political committees with Montana’s reporting and disclosure requirements. Examples

include training manuals outlining how to access and utilize Montana's electronic filing system (the Campaign Electronic Reporting System or CERS); in-person campaign finance reporting and disclosure trainings conducted across the state by myself and COPP compliance specialists; and general reporting and disclosure tips, including reminders of upcoming finance reports, sent by COPP compliance specialists via email to all registered candidates and committees. COPP staff consider it a core mission of the agency to provide education and guidance to candidates and political committees participating in Montana's elections.

Second, COPP staff, including myself, serve as a direct resource to answer questions about Montana's campaign finance reporting and disclosure requirements. COPP receives questions pertaining to Montana's campaign finance and disclosure laws on a daily basis, be they from candidates, political committees, or citizens of Montana.

Finally, COPP compliance specialists inspect all campaign finance reports filed by candidates and political committees. If a compliance specialist notices an area where a candidate or committee may not have fully complied with Montana's reporting and disclosure requirements, they will work directly with that candidate or committee to address the matter and, if necessary, rectify the problem. I consider this formal inspection process to be an integral part of the office's the education and guidance mission.

## ***II. Montana History as Background for Corrupt Practices Act***

A convergence of events during the turn of the century helps illustrate how Montana started down the path, which it still walks, to regulate spending in elections and ensure that spending is public information. That path is paved with copper.

### *a. Copper Kings*

Expansive deposits of copper, unearthed in the late 1800s in Butte, Montana, became increasingly valuable as industrialization and the widespread use of electricity swept the nation. Butte's copper mining industry developed into one of the first centralized and industrialized businesses in the world, and even today, Butte is often called "The Richest Hill on Earth."

Three prominent figures who would become known as the "Copper Kings" capitalized on and controlled that wealth. When Montana achieved statehood in 1889, two of the Copper Kings, William A. Clark and Marcus Daly, vied ferociously for the new U.S. Senate seat and spared no expense bribing politicians and judges and purchasing newspapers to propagate negative and scandalous stories about each other.

Clark emerged the victor, having spent over a million dollars in bribes and other expenses. The U.S. Senate investigated and found Clark guilty of his schemes to buy the seat and was on the verge of denying it when he resigned. Clark ran again in 1901 and won on the platform of improved working conditions for miners. He failed to fulfill his campaign promises, and it was said of him among his colleagues in Washington "If you took away the whiskers and the scandal there would be nothing left."

### *b. Corrupt Practices Act*

The Clark-Daly scandal and other schemes to purchase public offices led in 1912 to passage by a 3-1 margin of the citizen-initiated Corrupt Practices Act, the first of its kind in the state, prohibiting corporate contributions to, and expenditures on, candidate elections. Subsequent citizen-initiated measures to limit campaign contributions and expenditures would follow.

#### *i. 1994; I-118*

In 1994, voters overwhelmingly approved I-118, a citizen-initiated proposal to limit contributions to candidates and political parties. It is worth noting that in 1994, Montana's Governor was a Republican; its legislative bodies were

split between the two parties; a Republican won re-election to the U.S. Senate; and a Democrat won re-election to the U.S. House.

*ii. 1996; I-125*

In 1996, Montana voters approved I-125, another ground-up proposal prohibiting corporations from using corporate funds to make contributions to or expenditures on ballot issue campaigns.

*iii. 2012: I-166*

In 2012, passage of I-166 with 75% of the vote, codified an initiative to prohibit corporate contributions and expenditures in state and national elections. Although this measure was quickly struck down by a state district court, its passage by such a large margin again demonstrates the passion Montana voters have with regard to campaign finance matters.

*c. Citizens United/American Tradition Partnerships*

Through the years, the 1912 Corrupt Practices Act had remained largely intact, withstanding a challenge in 2011 in which the Montana Supreme court held that unlimited corporate donations creates a dominating impact on the Montana political process and inevitably minimizes the impact of individual Montana citizens.

Two U.S. Supreme Court decisions would significantly alter the landscape of campaign finance law and ultimately result in the demise of that portion of Montana's Corrupt Practices Act.

In 2010, the U.S. Supreme Court held in *Citizens United v. Federal Election Commission* that corporations and other outside groups can spend unlimited money on elections. Montana stood alone against the decision, citing the state's extensive history with political corruption and corporations in our electoral processes. Two years later, in *American Tradition Partnership, Inc. v. Bullock*, the court held "[t]here can be no serious doubt" that its decision in *Citizens United* that "political speech does not lose First Amendment protection simply because its source is a corporation" applied to Montana state law.

*d. Montana Disclose Act*

Three years after the Supreme Court's ruling, the 2015 Montana Legislature enacted and Governor Steve Bullock signed the Montana Disclose Act, a sweeping revision of the state's campaign finance laws. The act has been lauded as one of the most robust campaign finance laws in the country. Its many reforms included increasing reporting and disclosure requirements for political committees and candidates and modifying laws governing campaign contributions, expenditures, attribution requirements. Notably, the legislation required disclosure reports by entities regardless of their tax status.

The state had again flashed its bipartisan stripes with the measure sponsored by a Republican Senator, enacted by a Republican-controlled legislature, and signed by a Democratic Governor.

In 2018, the 9<sup>th</sup> U.S. Circuit Court of Appeals upheld the constitutionality of the Montana Disclose Act, and in early 2019, the U.S. Supreme Court declined to hear the appeal.

*e. Prohibition on campaign contributions and expenditures by foreign nationals (SB 326, 2019)*

Directly related to the measure you are considering today and demonstrating again that state and federal campaign finance and disclosure issues are inextricably linked, in 2019, the Montana Legislature enacted SB 326, prohibiting foreign nationals from making contributions or expenditures or promising contributions or expenditures in connection with any candidate election. The bill incorporates references to the sections of the Federal Election

Campaign Act that the proposal in front of you seeks to amend, and Montana relies on the Federal government in shouldering its responsibilities to enforce violations of the law.

### ***III. Conclusion***

Since statehood, Montana's citizens have grappled with the ramifications of money in elections while holding fiercely to protecting the public's constitutional right to know. It is an immutable fact that campaign finance reporting and disclosure laws will continue to evolve, as they should, through legislation and in the courts, but regardless of which political party holds sway in the executive and legislative branches of Montana state government, the state's history has shown that its citizens will continue to expect no less than absolute transparency from its candidates and those who seek to help place them in positions of public trust.

Respectfully submitted,

Jeff Mangan