

To: The Honorable Members of the North Dakota Interim Judiciary Committee

From: Rob Cook, former member of the Montana House of Representatives

Subject: Testimony in Support of Dark Money Legislation

Date: November 13, 2019

My name is Rob Cook and I served in the Montana House of Representatives for four terms spanning from 2011 to 2017. In the 2015 legislative session, four years ago, the Montana Legislature passed sweeping legislation designed to reform our existing campaign finance disclosure regulations. The bill, called the Disclose Act, has now been in place for two election cycles and it has had a marked effect on Montana's campaign environment. I am proud to have been an integral part of its passage and I thank you for letting me tell you about it today.

Beginning in 2008, Montana voters were treated to a new campaign tactic. For the first time, they began to receive a significant volume of mailers and other campaign advertising from groups that were, on the surface, unaffiliated with a candidate. These groups had anonymous funding sources and they had benign and helpful sounding names like: "Western Tradition Partnership", "Mothers Against Child Predators", and many others. The campaign strategy employed by these groups was always the same. The groups saturated mailboxes and filled radio time with incendiary mailers and inflammatory radio ads during the period just before and just after mail ballots were delivered and again during the week leading up to election day. The volume and timing of these attacks caught most candidates unprepared to respond and the composition of our legislature began to change significantly.

To understand why Montana's elections were so vulnerable to this spending it is necessary to know a little about Montana's election history.

From the Copper Kings and the Anaconda Mining Company to William Clark himself, Montana's elections have a rather sordid past. In 1899 the US Senate refused to seat William Clark after it was discovered that he had bribed the Montana Legislature to attain the appointment. Clark's behavior was deemed so egregious that it became a major contributor to the passage of the 17th amendment which provides for the direct election of US Senators. In response, Montana's citizens used the constitutional initiative process to ban corporate spending in elections and, not to be outdone, Montana's Legislature passed strict campaign finance reporting laws with very low individual maximum contribution limits for candidates.

These laws, and our small population, served to keep the cost of a legislative race very low. Our inexpensive races had the advantage of increasing access to the legislature but it also made them extremely vulnerable to unregulated, outside spending. In other words, a relatively small influx of outside money could, and did, significantly influence the composition of our state legislature.

For example, in 2008 one outside group spent \$19,000 in each of fourteen Montana legislative elections. This spending represented more than four times the amount spent in previous elections and it resulted in a significant change in the makeup of our legislature. No information was available for radio listeners or mailer recipients to ascertain who was spending this money in their elections. The donors were anonymous, and the money was dark.

Montana had reached a crisis and by 2013 voters had had enough. A statewide referendum was passed opposing the Citizens United decision and voters were asking for laws to address the lack of transparency in election spending. The 2013 legislature tried, and failed, to improve transparency. And it fell upon the 2015 legislature to satisfy the voter's request.

During the 2015 session, the transparency debate was juxtaposed against the right to privacy or anonymity. But when these two concepts were evaluated against the backdrop of election spending it was necessary to determine which provided the greater good. It was my belief that, under existing campaign finance reporting laws, the local voter was functionally disenfranchised. Whether it be because of the arbitrarily low individual contribution limits, candidate disclosure requirements, or simply the limited wealth at the disposal of a single individual. Political groups, however, played by different rules. Their donations were not limited, they were currently anonymous, and the process of association with like-minded donors ensured that they had more money to apply to political outcomes.

Should a citizen, who is directly affected by the outcome of a local race, be functionally disenfranchised by an enormous pot of outside money, collected anonymously, whose only tie to the race is most often just a single issue? I don't think so. Further, I think that by illuminating the source of funds, transparency requirements actually reduce the efficacy of outside spending. This, in turn, helps to ensure a more level playing field for the voter.

Montana's legislature did not pass the Disclose Act unanimously. In fact, the reforms were extremely contentious, and it required a collection of both Republicans and Democrats to get the bill to our Governor's desk. Coalitions, by their nature, demand compromise, Republicans did not get higher individual contribution limits and Democrats did not get a lower disclosure threshold. I do not view the need for a bipartisan coalition to be unusual as campaign finance reform is generally seen as a larger threat to the party that is in power. This is one of the factors that makes it so difficult to achieve meaningful reforms. For those who might hold this concern, subsequent election results have provided compelling evidence that the reforms didn't hamper either party.

And finally, for me the question became: "Can truly representative government continue to exist in a universe of highly skewed campaign finance regulations?" When I analyzed Montana's existing laws I found that, almost without exception, each of my state's campaign finance laws favored political groups at the expense of the individual donor. Surely this is not what our founders envisioned when they established the Republic. Change was required, the voters asked for it, and our legislature complied with their request.