

LEGAL REVIEW NOTE

Bill No.: HB 711

LC#: LC 2658, To Legal Review Copy, as
of February 19, 2025

Short Title: Prohibit selection of
redistricting chair with recent major party
contributions

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CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of jurisdictionally relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.

This review is intended to inform the bill draft requestor of potential constitutional conformity issues that may be raised by the bill as drafted. This review IS NOT dispositive of the issue of constitutional conformity and the general rule as repeatedly stated by the Montana Supreme Court is that an enactment of the Legislature is presumed to be constitutional unless it is proven beyond a reasonable doubt that the enactment is unconstitutional. See Alexander v. Bozeman Motors, Inc., 356 Mont. 439, 234 P.3d 880 (2010); Eklund v. Wheatland County, 351 Mont. 370, 212 P.3d 297 (2009); St. v. Pyette, 337 Mont. 265, 159 P.3d 232 (2007); and Elliott v. Dept. of Revenue, 334 Mont. 195, 146 P.3d 741 (2006).

Legal Reviewer Comments:

HB 711, as drafted, may raise potential constitutional conformity issues with respect to the First Amendment to the U.S. Constitution and Article II, section 7, of the Montana Constitution, which provides in pertinent part that "No law shall be passed impairing the freedom of speech or expression."

HB 711 provides that the Montana Supreme Court may not select a fifth member for the Districting and Apportionment Commission if the person has made a campaign contribution in the past 10 years to a major party candidate for state or federal office.

In *Citizens United v. FEC*, 558 U.S. 310, 75 L. Ed. 2d 753 (2010), the U.S. Supreme Court overturned federal limits on corporate independent expenditures, taking up the specific issue of independent expenditures in the form of electioneering communications. The Court found that a federal law prohibiting such expenditures had "restrictions [that] are . . . invalid and cannot be applied" *Id.* at 799. The Court reasoned that independent expenditures (including independent expenditures made for the purposes of electioneering communications) did not give rise to corruption or the appearance of corruption, although the Court did not extend this holding to direct corporate contributions or disclosure requirements. *Id.* at 794. The Court stated that "the Government may not suppress political speech on the basis of the speaker's corporate identity.

In *McCutcheon v. FEC*, 572 U.S. 185, 191, 134 S. Ct. 1434, 1441 (2014), the U.S. Supreme Court again considered the limitation of restrictions on political contributions:

The right to participate in democracy through political contributions is protected by the First Amendment, but that right is not absolute. Our cases have held that Congress may regulate campaign contributions to protect against corruption or the appearance of corruption. See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 26-27, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) (*per curiam*). At the same time, we have made clear that Congress may not regulate contributions simply to reduce the amount of money in politics, or to restrict the political participation of some in order to enhance the relative influence of others. See, e.g., *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 749-750, 131 S. Ct. 2806, 2827, 180 L. Ed. 2d 664, 686 (2011).

HB 711 provides that a person cannot be appointed as a fifth member of the Districting and Apportionment Commission based on the exercise of First Amendment rights for a period that goes back up to 10 years in the past. Therefore, HB 711 may present constitutional conformity issues with respect to the First Amendment to the U.S. Constitution and Article II, section 7, of the Montana Constitution.

Requester Comments: