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## THE ORIGINS OF MONTANA'S CORRUPT PRACTICES ACT: A MORE COMPLETE HISTORY

Jeff Wiltse\*

### I. INTRODUCTION

The copper kings once again loomed large over Montana's political and legal landscape and briefly recaptured the nation's attention. On December 30, 2011, the Montana Supreme Court issued a decision in the case of *Western Tradition Partnership v. Attorney General of the State of Montana* that conjured ghosts from the state's tumultuous early history.<sup>1</sup> At issue was Montana's Corrupt Practices Act, a law dating back to 1912 that prohibits a variety of political practices, including direct corporate spending on political campaigns.<sup>2</sup> In a 5–2 decision, the Court reversed a district court ruling—which had found the Corrupt Practices Act unconstitutional—and reinstated the longstanding law. In justifying its decision, the Court leaned, in part, on the state's early history of political corruption and corporate domination. “The Montana law at issue in this case,” Chief Justice Mike McGrath wrote in the majority opinion, “cannot be understood outside the context of the time and place it was enacted, during the early twentieth century.”<sup>3</sup> Chief Justice McGrath then went on to cite, as the relevant historical context, famous episodes from the wars of the copper kings and mining companies monopolizing the state's major newspapers.<sup>4</sup>

Then, the United States Supreme Court considered Montana's Corrupt Practices Act and its history. On June 21, 2012, a 5–4 majority summarily reversed the Montana Court's decision, ruling that its 2010 *Citizens United v. Federal Election Commission*<sup>5</sup> decision—which held that bans on direct corporate spending in political campaigns are unconstitutional—applied to the Montana law. The unsigned majority decision explained: “Montana's arguments in support of the [*Western Tradition* decision] either were already rejected in *Citizens United*, or fail to meaningfully distinguish that case.<sup>6</sup> The four dissenting justices—Breyer, Ginsburg, Sotomayor, and Kagan—disagreed. They accepted the Montana Court's conclusion that the

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1. *W. Tradition Partn. v. Atty. Gen. of the St. of Mont.*, 271 P.3d 1 (Mont. 2011).

2. *Id.* at 9.

3. *Id.* at 8.

4. *Id.* at 8–9.

5. *Citizens United v. FEC*, 130 S. Ct. 876 (2010).

6. *American Tradition Partnership Inc. v. Bullock*, 567 U.S. \_\_\_\_ (2012).

state's history of political corruption provides a compelling legal basis for maintaining the law today. Justice Breyer wrote in the dissent:

[E]ven if we were to accept *Citizens United*, this court's legal conclusion should not bar the Montana Supreme Court's finding . . . that independent expenditures by corporations did in fact lead to corruption and the appearance of corruption in Montana. Given the history and political landscape in Montana, that court concluded that the state had a compelling interest in limiting independent expenditures by corporations.<sup>7</sup>

The Supreme Court's summary reversal of *Western Tradition* generated a firestorm of commentary. Much of it agreed with the dissenting justices and repeated the Montana Supreme Court's contentions that the state enacted the Corrupt Practices Act in response to the sordid political activities of the copper kings and that this long-ago history is relevant to determining the status of the law today. The *New York Times*, for example, attacked the majority opinion, claiming that Montana's Corrupt Practices Act was "passed in 1912 not out of some theoretical concern about money corrupting elections but to put an end to actual influence-buying by copper barons."<sup>8</sup> In another editorial critical of the high court's ruling, *USA Today* began with a scathing description of copper king William A. Clark and then offered this explanation of the law's origin: "Barons like Clark—who poured money into Montana politics in the form of bribes, campaign contributions and expenditures that straddled the line—fomented a popular rebellion against corruption that led to a 1912 state law limiting the flow of campaign cash."<sup>9</sup> Clark probably would have been flattered to know that a major news outlet still deemed him relevant so long after his death.

There is a basic problem, however, with all this consideration of and commentary about Montana's Corrupt Practices Act. It has been based on an incomplete and faulty understanding of the history that led to the passage of the law. The copper kings—Marcus Daly, William A. Clark, and F. Augustus Heinze—did indeed corrupt Montana politics, but that occurred between 1891 and 1903, many years before the law was enacted in 1912. Their bribing of legislators, voters, and judges is part of the relevant history but only a small and distant part. More crucial to understanding the origins of Montana's Corrupt Practices Act are less well-known events that occurred between 1908 and 1912, such as: H. C. Stiff setting up an alternative polling station in a Missoula barbershop and recording second votes from his friends and supporters. John Marony, the chief lobbyist for the Amalga-

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7. *Id.*

8. *And refuse to revisit the Citizens United decision*, *New York Times* A22 (June 25, 2012).

9. *Montana's century-old law falls, opening door to corruption*, *USA Today* 8A (June 27, 2012).

mated Copper Mining Company<sup>10</sup> (“Amalgamated Copper” or “the Company”), silencing a speaker attempting to announce on the floor of the Montana Senate that a controversial bill had been brought to the legislature by company lobbyists. And Miles Romney and dozens of other “tried and true insurgents” forming the Montana People’s Power League and spearheading four initiative petition drives, one of which was for the Corrupt Practices Act.

This article offers a more complete account of the history that led to the passage of Montana’s Corrupt Practices Act, including the crucial parts of the story left out by the Montana Supreme Court and subsequently ignored by the United States Supreme Court and the national news media. It begins with a brief overview of the blatant and well-known examples of political corruption and corporate power in Montana during the 1890s and early 1900s. It then analyzes early political reform efforts in Montana, which led to the passage of an initiative and referendum amendment to the state constitution in 1906. The next section details Amalgamated Copper’s involvement in Montana politics between 1908 and 1911, especially the role it played in the legislative sessions of 1909 and 1911. The article then considers the response among “progressive” reformers to the Company’s political involvement, focusing in particular on the activities of the Montana People’s Power League and the public discourse about the corrupt practices act initiative. The final section examines the election of 1912, in which Montanans voted overwhelmingly in favor of the Corrupt Practices Act and several other landmark political reforms. The paper ends by considering the legacy of these reforms as part of Montana’s unique political culture.

In relating this history, the article develops three main points. First, it contends that Montanans passed the Corrupt Practices Act primarily in response to Amalgamated Copper’s political efforts, especially its manipulation of the 1909 and 1911 legislatures. In the 1909 session, for example, Company lobbyists coerced and likely bribed legislators in order to force through a permissive incorporation law that made business monopolies legal in the state. And, in the 1911 session, legislators loyal to the Company scuttled several popular reform measures by burying them in committees and then blocked the election of reform-minded Thomas Walsh to the United States Senate. These machinations outraged many Montanans and sparked the reform movement that led to the enactment of the Corrupt Practices Act. Second, the article asserts that in responding to Amalgamated Copper’s expansive role in state politics, Montana reformers drew heavily upon ideas being circulated nationally and reforms being implemented in

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10. The Amalgamated Copper Company, commonly called the “copper trust,” was the dominant corporation in Montana at the time. In 1915, it changed its name to the Anaconda Copper Mining Company, by which it is more commonly known.

other states. The Corrupt Practices Act, for example, was not a unique bill specially crafted to address the state's particular history of corruption and corporate domination. Rather, it was a standardized bill borrowed verbatim from Oregon. And, in getting the law passed, Montana reformers benefitted from a national reform wave that was cresting in 1912. In short, their efforts were part of a larger national movement to curb the political power of corporations. Finally, at the time of its passage, Montanans understood the Corrupt Practices Act as inextricably linked with other political reforms being advanced at the time, especially a direct primary election law. The public discourse leading up to the 1912 election invariably presented the two measures as necessary complements that would, in combination with one another, eliminate political corruption and curb corporate political influence. Any attempt to understand the original meaning that Montana voters attached to the Corrupt Practices Act must take into account its presumed symbiotic relationship with the direct primary.

## II. MINING MONEY CORRUPTS MONTANA POLITICS

Montanans witnessed many blatant examples of political corruption and corporate power during the late nineteenth and early twentieth centuries, including the Clark-Daly Feud, the legal wrangling between F. Augustus Heinze and Amalgamated Copper, and the Shutdown of 1903. These famous episodes from the wars of the copper kings did not lead directly or inevitably to the passage of the Corrupt Practices Act in 1912. Too much time and too much history intervened. And yet, they are nonetheless relevant to the passage of the law as historical background. In particular, the wars of the copper kings established habits of corporate political corruption in Montana that Amalgamated Copper continued in the years leading up to 1912. And, reformers responded to these early examples of corruption in ways that later reformers—such as Miles Romney—would build upon in 1912. In these limited ways, the wars of the copper kings are relevant for understanding the passage of the Corrupt Practices Act.

During the 1890s, “copper kings” William A. Clark and Marcus Daly engulfed Montana in a personal feud revolving around where the state capital should be located and whether Clark should represent Montana in the United States Senate.<sup>11</sup> The most sordid episodes in the feud occurred in 1894 and 1899, when both men used mining money to corrupt the electorate and the state legislature. In the 1894 election, Montana voters would determine where the state capital would be located.<sup>12</sup> Daly desperately wanted it

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11. Michael P. Malone, *The Battle for Butte: Mining & Politics on the Northern Frontier, 1864–1906* 80-130 (Mont. Historical Socy. Press 1995).

12. *Id.* at 98.

located in Anaconda, the smelter city that he had personally founded.<sup>13</sup> In part to spite Daly, Clark threw his support and considerable fortune behind Helena.<sup>14</sup> Leading up to the election, Daly and Clark both used the newspapers they owned or controlled as propaganda organs.<sup>15</sup> Clark's *Butte Miner* rhetorically asked readers: "Should the capital of the great state of Montana be located in a town owned and controlled by one corporation?"<sup>16</sup> Daly's *Anaconda Standard* responded by claiming that the Northern Pacific Railroad would dominate a Helena-based state government.<sup>17</sup> Far more damaging to the young state's political culture, however, were their attempts to bribe the electorate. Agents working for Clark and Daly gave away cigars, bought rounds of drinks, and sometimes just handed out money in an effort to garner support for one city or the other.<sup>18</sup> Voters could not help but conclude that, in Montana, votes were something to be sold or bartered. As historian Michael Malone contends, "the real significance of the capital fight lay less in geopolitics than in the fact that mining money and manipulation was now spreading like a cancer through the body politic."<sup>19</sup>

The cancer spread further in 1899, when Clark corrupted the state legislature by offering thousands of dollars to legislators willing to cast their vote for him to represent Montana in the United States Senate.<sup>20</sup> After several weeks of stalemate, Clark finally bribed enough legislators to gain a majority of the vote. According to estimates at the time, Clark paid \$431,000 for 47 votes.<sup>21</sup> A Senate committee that investigated Clark's right to the senate seat commented on the general political culture in Montana at the time, concluding that "elections in Montana were accompanied by enormous expenditures of money, unquestionably involving widespread belief that extensive corruption was resorted to in all elections."<sup>22</sup>

Mining money also corrupted the state's judiciary. Early in the twentieth century, a third "copper king" named F. Augustus Heinze battled Amalgamated Copper in an epic struggle to prevent the "copper trust" from consolidating its control over mining in Butte.<sup>23</sup> Amalgamated Copper was a holding company, formed by Standard Oil executives Henry Rogers and William Rockefeller in 1899, that acquired a controlling interest in several

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13. *Id.* at 99.

14. *Id.*

15. *Id.*

16. *Id.*

17. Malone, *supra* n.11, at 100.

18. *Id.* at 103.

19. *Id.* at 104.

20. *Id.* at 113–120.

21. *Id.* at 120. In 2010 dollars, \$431,000 is roughly the equivalent of \$11 million.

22. Steven L. Piott, *Giving Voters a Voice: The Origins of the Initiative and Referendum in America* 53 (U. of Mo. Press 2003).

23. Malone, *supra* n. 11, at 137–141.

Montana mining firms, including Marcus Daly's Anaconda Company.<sup>24</sup> After the turn of the century, Heinze owned one of the few remaining independent mining companies in Butte—the Montana Ore Purchasing Company.<sup>25</sup> His most effective weapons against Amalgamated Copper's efforts to dominate copper mining in Butte were two Silver Bow County judges named William Clancy and Edward Harney. These two district judges heard a series of cases between Heinze's interests and Amalgamated Copper pertaining to ownership rights of copper ore bodies and the right of Amalgamated Copper to absorb independent mining companies.<sup>26</sup>

The precise relationship between Heinze and the two district judges is clouded in mystery, but Heinze clearly served as their political patron and likely supplied them with money and entertainment.<sup>27</sup> Local observers certainly believed Heinze bribed both judges.<sup>28</sup> Whatever relationship existed between the judges and the copper king, Clancy and Harney were unflinchingly loyal to Heinze and issued many dubious rulings that benefitted his interests and injured Amalgamated Copper's.<sup>29</sup> After one of Harney's suspect rulings was appealed to the Montana Supreme Court, the Justices not only reversed the decision but issued a stinging personal rebuke, finding that Harney "was completely lost to all sense of decency and propriety, and that he made of the occasion, while off the bench, a carnival of drunkenness and debauchery."<sup>30</sup> Not to be outdone by Heinze, evidence suggests that agents working for Amalgamated Copper offered Harney \$150,000 to resign from office and sign a letter testifying that he had accepted bribes from Heinze.<sup>31</sup> As in the Clark-Daly feud, mining money competed to control the levers of public power in Montana.

The most blatant display of corporate economic and political power during this period was Amalgamated Copper's response to Heinze's legal shenanigans. On October 22, 1903, Judge Clancy issued two far-reaching decisions, which effectively ruled that the Company was an illegal trust and could not operate in Montana or issue dividends from any Montana firms.<sup>32</sup> Amalgamated Copper's response was sudden and drastic. The Company shut down its mining operations in Montana and threw nearly 20,000 employees out of work, just as winter approached.<sup>33</sup> The shutdown was a na-

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24. *Id.* at 137.

25. *Id.* at 142.

26. *Id.* at 147–148, 168–173.

27. *Id.* at 144, 170.

28. *Id.* at 171.

29. Malone, *supra* n.11, at 147–148, 168–173.

30. *Finlen v. Heinze*, 73 P. 123, 129 (Mont. 1903).

31. Malone, *supra* n. 11, at 170–171.

32. *Id.* at 173.

33. *Amalgamated Shut-Down: Thousands Suddenly Thrown out of Work in Montana*, N.Y Times 13 (Oct. 24, 1903).

ked attempt to blackmail the state of Montana. Amalgamated Copper officials made it clear to Governor Joseph Toole that the Company would not restart its operations until the state passed a “fair trials” law, which would make it relatively easy for either side in a lawsuit to disqualify a district judge for bias and have the case heard by a district judge in another county.<sup>34</sup> At first Governor Toole resisted the coercion but eventually gave in and called a special session of the legislature.<sup>35</sup> The legislators met and dutifully passed the law.<sup>36</sup> As far away as New York, the *Journal of Commerce* recognized what the shutdown of 1903 revealed about political power in the state of Montana: “It looks as tho [sic] the real governing power in Montana [is] the Amalgamated Copper Company.”<sup>37</sup>

### III. EARLY POLITICAL REFORM IN MONTANA

The connection between corporate power and political corruption during this period was not lost on Montanans. In response to these examples of bribery and coercion, many Montanans zealously pursued reforms that were intended to limit and counteract the political influence of the state’s large economic interests, especially the mining companies. These reform efforts came in two general waves. The first occurred during the 1890s and coincided with the larger Populist movement; the second occurred during the early twentieth century and coincided with Progressivism. In both cases, reformers in Montana borrowed heavily from ideas being circulated nationally, but their efforts were very much inspired by local conditions.

#### A. Montana Populists

Populism was a farmers’ protest movement that began in the agricultural areas of the South and Midwest.<sup>38</sup> Farmers in these regions believed that the industrial economic order, as it had developed by the late nineteenth century, injured their interests and benefitted the interests of industrialists, bankers, and the railroads.<sup>39</sup> Because the two major political parties mostly ignored their concerns, the populists formed an alternative third party—the People’s Party—to serve as the institutional means for pursuing their reforms.<sup>40</sup> The key to understanding populism in Montana is to recognize

34. Malone, *supra* n. 11, at 177.

35. *Id.* at 177–178.

36. *Id.* at 179.

37. *Id.* at 178.

38. Gene Clanton, *Populism: The Humane Preference in America, 1890-1900* 6-23 (Twayne Publishers 1991).

39. Lawrence Goodwyn, *Democratic Promise: The Populist Moment in America* xvii (Oxford U. Press 1976).

40. *Id.* 177–275.



that Montana was not a traditional agricultural state in the 1890s. Farming was a small part of the state's economy, and farmers constituted a relatively small percentage of the state's population.<sup>41</sup> Populism took root in the relatively infertile soil of Montana in large part because the People's Party afforded ordinary Montanans the opportunity to circumvent the two major political parties and bring reforms before the public that the economic elites who dominated the Democratic and Republican parties would not support.<sup>42</sup>

The Montana People's Party formed in January 1892, and was comprised mainly of three groups: representatives from local labor unions (especially the miners union), leaders of local farm organizations, and middle-class professionals.<sup>43</sup> This diverse group of Montanans prioritized two types of reforms, both of which related to their concern about corporate power. For one, they advocated labor laws—such as the eight-hour workday and mine safety inspection—that would have harnessed public power in defense of workers' interests.<sup>44</sup> They also promoted laws intended to make the political system more democratic. Specifically, they pushed for the initiative, the referendum, and the direct election of United States senators. These political reforms appealed to Montana populists because they would enable voters to bypass the political parties and the state legislature—both of which they assumed served special interests—and enact laws, repeal laws, and select United States senators by popular vote.<sup>45</sup> Populists enjoyed considerable electoral success in Montana during the mid-1890s but failed to pass their reforms into law.<sup>46</sup> During the 1897 legislative session, for example, populist M. J. Elliot introduced an initiative and referendum amendment. Despite support from Governor Robert Smith, the amendment failed to garner the necessary two-thirds vote. Elliot attributed the defeat to “the combined force of plutocracy among the Republicans and Democrats.”<sup>47</sup> Despite their lack of legislative success, Montana populists alerted the public to the dangers of corporate political power and introduced political reforms that would be enacted by later reformers.

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41. Michael P. Malone, Richard B. Roeder, and William L. Land, *Montana: A History of Two Centuries* 232–233 (U. of Wash. Press 1991).

42. *Id.* at 215–218.

43. Thomas A. Clinch, *Urban Populism and Free Silver in Montana* 46–50 (U. of Mont. Press 1970).

44. *Id.* at 46.

45. *Id.* at 53, 83, 113, 123.

46. *Id.* at 64–65, 169–174.

47. *Legislative News*, 4 Direct Legis. Rec. 5 (March 1897). The *Direct Legislation Record* was a periodical published by the Direct Legislation League, which was a private reform organization that pushed for initiative and referendum laws in states throughout the country. The *Record* publicized the activities of the League and reported on advances being made in the passage of initiative and referendum laws.

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*B. Passage of the Initiative and Referendum*

Around the turn of the century, labor unions and a small coterie of independent newspaper editors led the fight against corporate political influence in Montana. Both groups continued to see direct legislation as the key to victory. In 1901, the State Trades and Labor Council (“STLC”)<sup>48</sup> passed a resolution that expressed this view:

Realizing that if we would gain our industrial freedom we must use our political liberties and that there is only one great avenue through which this can be done, therefore, be it [r]esolved, that we again express our unqualified devotion to the great principle of political emancipation known as the Initiative and Referendum or direct legislation.<sup>49</sup>

A year later, in anticipation of the 1902 election, the STLC issued instructions to its member unions to create two special committees, one that would “call upon the candidates” asking them to pledge support for direct legislation and the second to record the signatures of voters pledged to support candidates who favored direct legislation.<sup>50</sup> In a letter accompanying the circular, the council’s secretary, Oscar Partelow, described politics in the state as “rotten” and “unsavory.”<sup>51</sup>

William Eggleston, the reform-minded editor of the *Helena Independent*, also advocated steadfastly for passage of the initiative and referendum. In a 1903 editorial, Eggleston urged readers to “[g]et a legislature that will . . . submit to the people a direct legislation amendment.”<sup>52</sup> Such an amendment, Eggleston claimed, “will give the people of the state the opportunity to get rid of the corruptionists and lobbyists and the men who hire lobbyists. The longer we delay the stronger the corporations will become, and the harder it will be to get the corporations off our necks.”<sup>53</sup> The people of Montana, however, did not elect such a legislature, at least not in 1903. A proposed direct legislation amendment passed in the house but failed to get the required two-thirds majority in the state senate.<sup>54</sup> Eggleston blamed Amalgamated Copper and its newspapers for the bill’s defeat: “Over and over again the corporation papers of the state have sneered at this proposition and have rejoiced when the members of the legislature, obeying

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48. The State Trades and Labor Council was a general labor organization that consisted of representatives from local unions around the state.

49. Piott, *supra* n. 22, at 54–55.

50. *The Work of the Federation for Majority Rule*, 8 Direct Legis. Rec. 67 (Dec. 1902).

51. *Id.*

52. *Montana to Question Candidates*, 20 The Nat. New Era, no. 24, 7 (June 12, 1903).

53. *Id.*

54. *Field Notes: Montana*, 10 Direct Legis. Rec., 6 (Mar. 1903) (quoting Montana Daily Record, Feb. 27, 1903).

the commands of the corrupting corporations, have refused to let the people decide whether or not they want majority rule.”<sup>55</sup>

The shutdown of 1903 galvanized anti-Amalgamated Copper sentiment and spurred the cause of reform in Montana. Independent newspaper editors throughout the state condemned the copper trust’s obvious power play. Republican editor William Harber, writing in the Fort Benton *River Press*, decried “corporation interference in Montana politics.”<sup>56</sup> The *Lewistown Democrat* expressed “utmost contempt” for the Company.<sup>57</sup> For self-serving reasons, F. Augustus Heinze emerged as the most eloquent critic of corporate power, at least the power exercised by Amalgamated Copper. Standing before thousands of angry miners who largely blamed him for the shutdown of 1903, Heinze redirected their anger back onto the copper trust:

My friends, the Amalgamated Copper Company, in its influence and functions, and the control it has over the commercial and economic affairs of this state, is the greatest menace that any community could possibly have within its boundaries. . . . If they crush me today, they will crush you tomorrow. They will cut your wages and raise the tariff in the company stores on every bite you eat and every rag you wear. They will force you to dwell in Standard Oil houses while you live, and they will bury you in Standard Oil coffins when you die.<sup>58</sup>

Then, during the special session of the legislature Governor Toole called to pass the “fair trials” law, Heinze organized a mass meeting in Helena in order to form an Anti-Trust Party.<sup>59</sup> The 650 delegates representing every county in the state agreed upon a set of anti-trust policies built around the initiative and referendum.<sup>60</sup> Even though nothing concrete came of the Anti-Trust Party, the Helena convention testified to the widespread popular concern about the political power exercised by Amalgamated Copper.<sup>61</sup>

The shutdown of 1903 and the widespread denunciation of Amalgamated Copper temporarily altered Montana’s political landscape in ways that enabled passage of the initiative and referendum. Leading up to the 1904 election, Amalgamated Copper publicly claimed that it was getting “out of politics.”<sup>62</sup> And, to a certain extent, it did. Delegates at both the Democratic and Republican conventions that year noted the unusual ab-

55. *Candidates to be Questioned in Montana*, 20 *The Nat. New Era*, no. 31, 7–8 (July 31, 1903).

56. Dennis L. Swibold, *Copper Chorus: Mining, Politics, and the Montana Press, 1889-1959* 104 (Mont. Historical Socy. Press 2006).

57. *Id.*

58. Malone, *supra* n. 11, at 176.

59. Piott, *supra* n. 22, at 56–57.

60. *Id.* at 57.

61. *Id.*

62. Thomas A. Jacobson, *The Battle for Direct Legislation: Montana Politics Beyond the Copper Kings, 1902-1906* 24 (unpublished M.A. thesis, U. of Mont., 1987) (on file with Mansfield Lib., U. of Mont., Missoula).

sence of the Company's influence.<sup>63</sup> At the same time, politicians in both parties recognized that they had to be, or at least appear to be, more responsive to the will of voters. Montanans were "so aroused," commented Ralph Albertson that "political leaders vied with each other in declaring for the initiative and referendum."<sup>64</sup> At their 1904 state conventions, the Democrats and Republicans both endorsed direct legislation.<sup>65</sup> And then, the 1905 state legislature finally passed an initiative and referendum amendment. It was based, in part, on Oregon's model law.<sup>66</sup> To get on the ballot, an initiative petition would require the signatures of 8 percent of the total number of voters who cast ballots for governor in the previous election.<sup>67</sup> A referendum petition would require the signatures of 5 percent.<sup>68</sup> The Montana law also included limitations not contained in the Oregon law. Notably, Montana voters would not be able to pass initiatives or referendums on constitutional amendments or appropriation laws.<sup>69</sup> Additionally, the required percentage of signatures had to be collected in at least two-fifths of the state's counties.<sup>70</sup> In a state as large as Montana and in a time before good roads, this would be a major undertaking. Despite these restrictions, Montanans voted overwhelmingly in favor of the amendment in the 1906 election, approving it 36,374 to 6,616.<sup>71</sup>

Some longtime advocates of direct legislation anticipated that the amendment would usher in a new era of state politics by freeing it from corporate domination. At the 1907 annual convention of the Montana Federation of Labor, for example, president Alexander Fairgrieve predicted that "this amendment will be the means of abolishing the corrupt lobby by making it useless for corporate interests to use money or other considerations to influence legislators in passing laws giving them special privileges."<sup>72</sup>

At first, it appeared Fairgrieve's prediction might prove accurate. The 1907 Legislature seemed to justify the widespread optimism that a new political era was dawning in Montana. Republicans throughout the state triumphed in the 1906 election and held significant majorities in both houses of the legislature.<sup>73</sup> After minor internal squabbling, the Republican caucus selected the young and ambitious Joseph Dixon to represent Montana in the

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63. *Id.* at 23–24.

64. Ralph Albertson, *The Initiative and Referendum*, 37 *The Arena*, 198–199 (Feb. 1907).

65. Jacobson, *supra* n. 62, at 25–27.

66. Piott, *supra* n. 22, at 50, 57.

67. *Id.* at 57.

68. *Id.* at 58.

69. *Id.*

70. *Id.*

71. *Id.* at 58.

72. Richard Brown Roeder, *Montana in the Early Years of the Progressive Period* 176 n. 80 (unpublished Ph.D. dissertation, U. of Pa., 1971) (on file with Mansfield Lib., U. of Mont., Missoula).

73. *Id.* at 180.

United States Senate. Compared to the corruption and turmoil that accompanied such decisions in the past, the 1907 decision was a model of efficiency and fairness. Most commentators agreed that Dixon was the people's choice.<sup>74</sup> The legislature also passed a long list of progressive reforms. It created a railroad commission, strengthened existing gambling prohibitions, outlawed saloon "wine rooms" (where prostitution was presumed to flourish), expanded the state Board of Health, extended prohibitions against child labor, and expanded state regulation of the livestock and life insurance industries. In most cases, these bills passed with little or no opposition.<sup>75</sup> Newspapers throughout the state judged the 1907 Legislature quite favorably, commenting in particular on the absence of corruption and corporate influence. The Plains *Plainsman* described it as "singularly free of corrupt men."<sup>76</sup> Even the Democratic *Helena Independent* conceded that the Republican-dominated legislature "was clean and honest."<sup>77</sup>

#### IV. AMALGAMATED COPPER GETS BACK INTO POLITICS

If Amalgamated Copper got out of Montana politics between 1905 and 1907, it returned for the 1908 elections. Then, during the 1909 and 1911 legislative sessions, the Company aggressively asserted its political influence. Company men pushed through unpopular bills that benefitted the Company's interests and scuttled popular reforms they found objectionable. The Company also successfully blocked the election of reform-minded Democrat Thomas Walsh to the United States Senate. More so than any other factors, the Company's widely criticized role in the 1909 and 1911 legislative sessions sparked the public outrage that led to the passage of the Corrupt Practices Act.

##### A. 1909 Legislative Session

The Company's return to Montana politics became apparent at the 1908 Democratic state convention. The convention that year was held in the Company stronghold of Anaconda, and the Company's attorney Cornelius "Con" Kelly and executive Harry A. Galloway led the enormous Silver Bow County delegation.<sup>78</sup> The convention passed without significant friction or obvious signs of political coercion, but some newspapers took note that Company men played prominent roles.<sup>79</sup> Then, the Company sent a

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74. *Id.* at 187–191.

75. *Id.* at 191–212.

76. *Id.* at 221.

77. *Id.* at 222.

78. *Convention Work of Montana Democrats*, *Montana Lookout* (Helena, Mont.) 1 (Sept. 12, 1908).

79. *Democratic Ticket and Platform*, *Montana Lookout* 4 (Sept. 12, 1908).

small army of lobbyists to Helena for the 1909 Legislature. Early in the session, the *Montana Lookout*, a Helena newspaper owned and edited by the strident reformer Jerre Murphy, noted the Company's massive showing and wondered what it might mean: "The particular purpose to be served [by the Company lobby] is not revealed, but it must be important both to the public and the corporation to warrant the latter in such glaring display."<sup>80</sup>

Amalgamated Copper's interest was revealed six weeks into the session, when William Ward, a Democrat from Great Falls, introduced a Company-sponsored bill that would drastically liberalize the state's incorporation laws.<sup>81</sup> House Bill Number 160 was modeled on New Jersey's infamously permissive incorporation law.<sup>82</sup> The proposed Montana law would grant corporations the legal right to acquire a controlling interest in an unlimited number of businesses in the state. In effect, it would legalize monopolies, making it permissible, critics pointed out, for a single corporation to own every business in Montana.<sup>83</sup> "If this bill becomes a law," the *Lookout* explained to reader, "all restrictions upon [Amalgamated Copper] as a foreign corporation will be removed, and it will be in an excellent position to absorb any and all the industries of the state that it may consider worthwhile, and it will no longer be subject to any disabilities in carrying out that enterprise."<sup>84</sup> There would be no legal limits on the extent of the Company's economic empire, which in the wake of the shutdown of 1903 frightened many observers.<sup>85</sup>

House Bill 160 sailed through the House of Representatives, which critics claimed was controlled by Company men, which left the Senate to decide the matter.<sup>86</sup> At first, it appeared the bill had little chance to pass in the upper chamber. One senator claimed that "it would have received mighty few votes" had it been considered immediately.<sup>87</sup> But instead, the bill sat in the senate Steering Committee, a small committee comprised of senate leaders that controlled when bills were brought before the full senate. Critics charged that Company lobbyists orchestrated the delay in order to give them time to coerce and bribe enough senators into supporting the measure.<sup>88</sup> The Steering Committee finally moved the bill to the full senate

80. *Amazing Activity of a Corporation Out of Politics*, *Montana Lookout* 1 (Jan. 9, 1909).

81. *The Amalgamated Company Seeks Great Powers by New Laws*, *Montana Lookout* 1 (Feb. 13, 1909).

82. *Delivery of Montana to Jobbing Trusts*, *Montana Lookout* 1 (Mar. 6, 1909).

83. *All the Amalgamated Copper Company Wants*, *Montana Lookout* 4 (Feb. 13, 1909).

84. *Desperate Corporate Tactics to Legalize Monopoly in Montana*, *Montana Lookout* 1 (Feb. 27, 1909).

85. *Id.*; *Delivery of Montana to Jobbing Trusts*, *Montana Lookout* 1, 14, 15 (Mar. 6, 1909).

86. *Delivery of Montana to Jobbing Trusts*, *Montana Lookout* 1 (Mar. 6, 1909).

87. *Id.* at 14.

88. *Desperate Corporate Tactics to Legalize Monopoly in Montana*, *Montana Lookout* 1 (Feb. 27, 1909).

a couple of days before the session was set to end. The senate's consideration of House Bill 160 generated intense interest. Members of the house rushed to the senate chamber to hear the debate, spectators quickly filled the gallery, and lobbyists jammed the remaining nooks and crannies. Everyone knew something portentous was happening.<sup>89</sup>

After reading the bill, Senate Chairman Miles Romney of Ravalli County asked if any senator wanted to move consideration of the bill. There was a long pause that extended into an uncomfortable silence. Finally, W. M. Cockrell, a Democrat from Powell County, rose from his chair and made the motion.<sup>90</sup> An intense and revealing debate followed. Thomas Everett decried that the bill as worse than "the notorious New Jersey trust law" and condemned Amalgamated Copper for forcing it upon the legislature.<sup>91</sup> Everett exhorted:

The most baleful power of the trusts is not that of fixing prices. The most baleful power of the trusts is that they can go into the halls of legislation and control the passage of laws. . . . Are we going to let one gigantic corporation take everything in the state of Montana, and we get nothing at all?<sup>92</sup>

Cockrell defended the bill primarily on the grounds that seventeen other states had similar laws and claimed that it would not lead to further concentration of businesses within the state.<sup>93</sup> Republican W. F. Meyer of Carbon County disagreed. After sarcastically congratulating Amalgamated Copper lobbyists for manipulating the legislature so successfully that session, Meyer condemned House Bill 160 as "simply a means by which one corporation can control the whole state, body and soul."<sup>94</sup> He concluded his remarks by placing the bill into historical context: "This is only another [step] in the history of the process by which the state is being handed over to this great corporation."<sup>95</sup>

The final speaker was Democrat Thomas Long of Flathead County, who offered an extended justification of the bill. During his remarks, Long openly acknowledged that it had been brought before the legislature by Company lobbyists. At this point in his remarks, an odd and telling interruption occurred. John Morony, president of the Daly Bank & Trust Company and chief lobbyist for Amalgamated Copper, stepped out in front of the senate, raised his hand to silence Long, and exclaimed, "Senator Long. What are you saying?" Lobbyists were not supposed to have such access to the senate floor, but this was no ordinary lobbyist. After Morony silenced

89. *Delivery of Montana to Jobbing Trusts*, Montana Lookout 1 (Mar. 6, 1909).

90. *Id.*

91. *Id.* at 14.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Delivery of Montana to Jobbing Trusts*, Montana Lookout 15 (Mar. 6, 1909).

Senator Long and returned to his seat, the debate ended, and the Senate finally voted. House Bill 160 passed 14 to 8 and became law shortly thereafter.<sup>96</sup>

The *Montana Lookout* offered a stinging assessment of the 1909 Legislature: “No more abject servility to corrupt lobby influences can be imagined in any legislative body, than that made manifest by the law-makers of Montana in this proceeding.”<sup>97</sup> And yet, the paper was not without hope. It told readers that the people of Montana could take control of the state government by passing a direct primary law. By giving voters rather than party bosses the power to select candidates for elected office, corporate interests would find it more difficult to force “treasonable legislation” on the state.<sup>98</sup> Over the next two years, support for a direct primary law grew, and it became one of the major issues of the next legislative session.

### B. 1910 Election

The key issue in Montana's 1910 election involved who would be chosen to represent Montana in the United States Senate. Voters would not decide directly—United States senators were still chosen by the state legislature—but they would influence the decision based on which candidates they elected to the legislature. As for Amalgamated Copper, it had a definite favorite. As far back as 1888, when the erstwhile Democrat Marcus Daly supported the Republican candidate in an important election, Anaconda and Amalgamated Copper officials showed little party loyalty. While most leading Company men were ostensibly Democrats, they generally supported whichever party and candidate best served the Company's interests at the moment. In 1910, Company executives wanted conservative Republican Thomas Carter returned to the United States Senate and sought to block reform-minded Democrat Thomas Walsh.<sup>99</sup> And so, the Company organized support for Republican candidates to the state legislature and for Democrats who would not support Walsh. Their efforts occurred in counties throughout the state, because county conventions were the crucial political battlegrounds where party nominees for seats in the state legislature were selected.<sup>100</sup>

Amalgamated Copper could effectively engage in local, county-by-county politicking because its business operations were so extensive. In

96. *Id.* at 1, 15.

97. *Montana Surrendered to the Trusts*, *Montana Lookout* 4 (Mar. 6, 1909).

98. *Id.*; *Working For Honest Primary Elections*, *Montana Lookout* 4 (Mar. 6, 1909).

99. John Morrison & Catherine Wright Morrison, *Mavericks: The Lives and Battles of Montana's Political Legends* 99–100 (U. of Idaho Press 1997).

100. Reprinted as *How Big Business Rules Montana By Small Politics*, *Montana Lookout* 3 (Sept. 17, 1910).



addition to the mines in Butte and the giant smelter complex in Anaconda, the Company also operated a large metals refinery in Great Falls; sawmills in Hamilton, Bonner, and St. Regis; coalmines in Belt, Carbanado, Storrs, Cokedale, and Sand Coulee; and newspapers in several Montana cities.<sup>101</sup> This put Company men on the ground not just in Silver Bow (Butte) and Deer Lodge (Anaconda) counties but also in Missoula, Ravalli, Lewis and Clark, Cascade, Gallatin, Park, Carbon, and several more counties.

This is part of what made the Company such a potent political force at the time. The managers of these Company outposts had the money, influence, and business relationships necessary to become leaders within the local Democratic and Republican parties and, to varying degrees, enabled them to manipulate the county conventions. In 1910, for example, the Hamilton *Western News* reported that Company men in Ravalli County had been at work since spring handpicking party nominees and organizing support for them among local businessmen, especially ones who benefitted financially from dealings with the copper giant and its subsidiaries.<sup>102</sup> Company men were also active at the Ravalli County Democratic convention, according to party insider C. S. Wagner. In an interview with the *Western News*, Wagner described how “Amalgamated agents” negotiated deals with other delegates, trading one favor or another in return for their support of Company-favored candidates.<sup>103</sup> The same type of machination occurred at county conventions elsewhere in the state. After witnessing firsthand the Company’s deal-making at the Choteau County Republican convention, the *Chester Signal* concluded that “the convention system is rotten” and declared its support for a direct primary law as the only way to prevent corporate-backed “factions” from controlling the party.<sup>104</sup>

Company men were also active at the state conventions that year. Several Amalgamated Copper employees and lobbyists—including Company president John Ryan—served as delegates to the Democratic convention in Livingston.<sup>105</sup> On the key issue of whom the convention would endorse as the party’s choice for United States Senate, Ryan and the other Company men outmaneuvered the party’s progressive element—which was determined to endorse Thomas Walsh—and ensured that the convention did not officially endorse any particular candidate.<sup>106</sup> “The overwhelming of the progressive democrats at Livingston was so arrogantly done as to leave no

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101. Isaac F. Marcossan, *Anaconda* 55, 127 (Dodd, Mead & Co. 1957).

102. Reprinted as *How Big Business Rules Montana By Small Politics*, *Montana Lookout* 3 (Sept. 17, 1910).

103. *Id.*

104. Reprinted as *Convention System in Practice*, *Montana Lookout* 6 (Sept. 24, 1910).

105. *The Copper Combine’s Political Combines*, *Montana Lookout* 4 (Oct. 8, 1910).

106. J. Leonard Bates, *Senator Thomas J. Walsh: Law and Public Affairs from TR to FDR* 56-57 (U. of Ill. Press 1999).

false estimate of their position,” wrote the *Daily Yellowstone Journal*. “They were told to keep still; to go way back and sit down, and finding that it was not W. A. Clark that they were bucking up against, but the real thing in the shape of the Amalgamated, they did go back and sit down.”<sup>107</sup> The task was easier at the Republican convention. Company representatives merely had to ensure that the party continued to support its longtime standard-bearer Thomas Carter. Despite tepid support for Carter from fellow Republican senator Joseph Dixon and other progressive Republicans, convention delegates officially endorsed Carter as the party’s choice for United States Senate.<sup>108</sup>

For the 1910 general election, reformers around the state framed it as a choice between conservatism in the form of Thomas Carter and progressivism in the form of Thomas Walsh. Voting for a Republican legislative candidate meant support for returning Carter to the Senate; voting for a Democratic legislative candidate meant replacing him with Walsh. In its continuing effort to ensure Carter’s return to the Senate, Amalgamated Copper used its Company-owned newspapers to undermine Walsh’s candidacy.<sup>109</sup> There is also evidence that suggests Carter and the Company attempted to bribe independent newspapers into endorsing Republican candidates.<sup>110</sup> In general, critics accused Company men of being busy throughout the state “distributing promises in some counties, cash in others” in an effort to ensure Carter’s reelection.<sup>111</sup> An anonymous worker at the Company’s Washoe smelter in Anaconda even published a claim that on the day of the election, smelter workers were “lined up before the bosses and ordered to cast their votes for the republican ticket, or that part of it which would elect Tom Carter to the senate.”<sup>112</sup> The anonymous worker’s account was lent credibility by the fact that Deer Lodge County, which normally voted Democratic, did indeed elect Republicans to the legislature that year.<sup>113</sup>

Despite Amalgamated Copper’s efforts, the 1910 election was a triumph for Democrats. The party gained a seven-seat majority in the state legislature, which meant their caucus would choose Montana’s United States senator. The election also revealed a growing reform impulse in the state that transcended and trumped party affiliation. A large number of progressive Republicans voted for Democratic candidates in order to ensure

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107. As “*Ryan and Marony Want It*”, *Montana Lookout* 6 (Sept. 24, 1910).

108. Morrison & Morrison, *supra* n. 99, at 67–68, 99.

109. Bates, *supra* n. 106, at 56.

110. *Story of the Carter-Amalgamated-“Labor” Combine*, *Montana Lookout* 12 (Nov. 19, 1910).

111. *The Combine’s Campaign for Carter*, *Montana Lookout* 4 (Nov. 5, 1910).

112. *How Anaconda Was Carried for Carter*, *Montana Lookout* 1 (Nov. 12, 1910).

113. *Id.* On Deer Lodge County typically voting Democrat, see Ellis Waldron & Paul B. Wilson, *Atlas of Montana Elections 1889-1976* 37-40 (U. of Mont. Press 1978).

that the conservative Carter did not return to the Senate.<sup>114</sup> Progressives in both parties viewed the election results as a popular endorsement of Thomas Walsh and the direct primary.<sup>115</sup> In a fit of post-election optimism, the *Montana Lookout* interpreted the results as representing the state's political emancipation:

This triumph of the people, this apparent relegation of Carter to private life and rebuff to the monied and corporate powers of the state, points the way to final political freedom in Montana. It proves that the people are unconquerable when they see the right and join hands irrespective of political partisanship or creed to secure it. The people in this election not only removed from office a powerful enemy, but took a step forward toward political liberty. They have but to continue this activity and they will teach the Copper company and allied corporations and interests to withdraw from public affairs.<sup>116</sup>

The only thing that tempered this optimism was recognition that some legislators loyal to the Company had also been elected. They were not numerous enough to keep Thomas Carter in the Senate or force through any legislation like House Bill 160, but they were probably numerous and experienced enough to derail any legislation detrimental to the Company's interests.<sup>117</sup>

### C. 1911 Legislative Session

Montana progressives had high hopes for the 1911 legislative session. They anticipated the selection of Thomas Walsh as senator and the passage of landmark reform measures, especially a statewide direct primary law.<sup>118</sup> In small ways, some of their hopes were realized. As in 1907, the 1911 Legislature passed some important reforms, including a pure food and drug law, a law providing for the adoption of orphaned children, a law intended to prevent the pollution of streams, and a law requiring sanitary working conditions. In addition, the legislature established a state tuberculosis sanitarium and a state insane asylum.<sup>119</sup> This was not a "do-nothing" legislature, as some critics charged.<sup>120</sup> Yet, as some had feared, Amalgamated

114. *Montana Rebukes Corporate Bosses and Defeats Mr. Carter*, *Montana Lookout* 1 (Nov. 12, 1910).

115. *Id.*; Morrison & Morrison, *supra* n. 99, at 100–101.

116. *Montana Rebukes Corporate Bosses and Defeats Mr. Carter*, *Montana Lookout* 1 (Nov. 12, 1910).

117. *Influences for Good Legislation*, *Montana Lookout* 4 (Nov. 12, 1910).

118. *Party Divisions on Primary Election Laws*, *Montana Lookout* 5 (Nov. 26, 1910); *Opinions by Montana Editors*, *Montana Lookout* 4 (Dec. 3, 1910); reprinted as Judge E. K. Cheadle, *Progressive Legislation Needed in Montana*, *Montana Lookout* 1 (Dec. 31, 1910); *Governor Norris Declares for Reform Measure*, *Western News* 1 (Hamilton, Mont.) (Jan. 6, 1911).

119. Edrie Lee Vinson, *The People's Power League: A Progressive Organization in Montana 1911–1915* 22 (unpublished M.A. thesis, Mont. State U., Aug. 1976) (on file in Mont. State U. Lib., Bozeman, Mont.).

120. *A Do Nothing Session*, *Western News* 4 (Jan. 24, 1911).

Copper did indeed maintain enough influence to block legislation contrary to its interests. Legislators loyal to the Company, for example, killed two different bills that would have increased state taxes on mine companies.<sup>121</sup> The Senate also killed a bill that would have established a general workingmen's compensation law. "Score another for the combined 'interests,'" commented the *Hamilton Western News*.<sup>122</sup> The key issues, however, were the choice of United States Senator and the direct primary law. They would prove the most contentious of the legislative session and cause the most disappointment for reformers.

The election of Montana's United States Senator engulfed the entire session. Most Democrats favored Thomas Walsh, but the large delegation from Silver Bow County, which was dominated by Company men, prevented Walsh's election by casting their votes for W. G. Conrad.<sup>123</sup> The Republicans voted for Thomas Carter but, as the minority party, could not muster enough votes to elect him. Day after day for nearly two months, the legislature voted, but no candidate received a majority. Finally, after the seventy-ninth ballot and shortly before the legislature was set to adjourn, someone threw a new name into the ring—Henry Lee Myers. Myers was a relatively unknown judge from Ravalli County, whose chief virtue was that no Democrats found him particularly objectionable. Fearing a continued stalemate might result in the re-election of Carter, Walsh threw his support behind Myers. The county judge was elected on the eightieth ballot, just minutes before the legislative session was set to expire.<sup>124</sup> It is unclear whether Company lobbyists orchestrated Myers' ascension to the United States Senate. Regardless, the proceedings showed that even though reformers seemed to have defeated the Company in the 1910 elections, Amalgamated Copper nonetheless retained enough influence in the state legislature to block Walsh's election and force the legislature to choose a person more favorable to its interests.<sup>125</sup>

The direct primary met the same fate as Walsh's candidacy for the Senate. At the beginning of the legislative session, Montanans had good reason to expect the legislature would pass a direct primary law. Both Democratic and Republican state conventions had endorsed direct primary laws, and Governor Edwin Norris had urged such a law in his message to the legislature. And yet, astute political observers recognized that, in this case, appearances were deceiving. The *Hamilton Western News*, for exam-

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121. *Lawmakers Kill Bill to Tax Mine Combine Fairly*, *Montana Lookout* 1 (Feb. 4, 1911).

122. *Western News* 2 (Feb. 21, 1911).

123. *A Hog-Tied Legislature*, *River Press* (Fort Benton, Mont.) 2 (Feb. 22, 1911); *Timely Notice to Corporate Political Bosses*, *Western News* 2 (Feb. 14, 1911); Morrison & Morrison, *supra* n. 99, at 68.

124. Vinson, *supra* n. 119, at 16–18.

125. Morrison & Morrison, *supra* n. 99, at 68.

ple, anticipated that the direct primary would be “the big political battle of the Twelfth legislative assembly.”<sup>126</sup> The problem was that the Democrats and Republicans endorsed slightly differed versions of a direct primary law, and many legislators were at best ambivalent about the issue. After all, they had made their way into the legislature through the old convention system, which primary elections would replace.

These circumstances enabled legislators in both parties who did not want a direct primary law to obstruct its passage. Their tactic was delay. Early in the session, the House and Senate passed competing bills, so the issue moved to a “joint conference committee on primary bills,” whose task it was to formulate a compromise measure that would satisfy both Republicans and Democrats.<sup>127</sup> There the issue languished for several weeks. Eventually, the joint committee reported several different versions of a direct primary bill, one of which applied only to the election of United States senators.<sup>128</sup> The different versions then passed to the Committee on Privileges and Elections, where again they languished. Finally, with time running out on the legislative session and little chance for a comprehensive law to be passed, the House and Senate approved the most limited version that only applied to the selection of candidates for the United States Senate.<sup>129</sup> It was a bitter pill for many legislators to swallow. Representative D. J. Donohue, a Democrat from Dawson County, angrily denounced the bill and the delay tactics that brought it to the fore:

I think the action of this house is surprising. It is the majority in the senate that concocted this monstrosity. This is a makeshift to extend corporation control. I can't see for the life of me how the conference committee reported this hybrid measure. It is astounding they should ask us to vote for it. The reason given is that the session is nearly over and we can't get a primary bill. So they cram this down our throats.<sup>130</sup>

When the 1911 legislative session finally ended, the *Montana Lookout* printed a cartoon on its front page. It depicted a prim and proper woman who represented “Montana” telephoning a respectable-looking man who represented the “Montana Legislature.” She asked him, “Why didn’t you elect T. J. Walsh, and pass primary election and other important laws as you promised?” The man representing the legislature replied, “Speak louder, please; I can’t hear you. There must be somebody on the line.” Sure enough. Sitting atop the telephone wires, bending them down low to the ground, was a short, fat, pug-nosed, cigar-smoking cupid representing “Cor-

126. *Big Fight on Direct Primary Law*, Western News 1 (Jan. 6, 1911).

127. *Makeshifts for a Primary Election Law*, Montana Lookout 12 (Feb. 25, 1911).

128. *Id.*; *Legislative Perfidy in Defeat of Primary Election Law*, Montana Lookout 2 (Mar. 4, 1911).

129. *Legislative Perfidy in Defeat of Primary Election Law*, Montana Lookout 2 (Mar. 4, 1911).

130. *Id.*

porate Interest.” The caption read, “Somebody on the Party Lines.”<sup>131</sup> Other newspapers chose to express their frustration and anger in words. “If the copper trust must rule Montana,” the Hamilton *Western News* commented sarcastically, “why not cut out all pretense of representative government and haul down the flag of a free state? Why not abolish the legislature and dispense with a state government?”<sup>132</sup> The Cutbank *Pioneer Press* sneered, “For masterly inactivity, astounding stupidity and blind bigotry this late legislature will claim all the grapes.” The *Miles City Independent* added its voice to the chorus of critics, charging that the 1911 Legislature should be “damned for what it did do and damned for what it didn’t do.”<sup>133</sup> Whether these condemnations were entirely justified or not, the failure of the legislature to elect Thomas Walsh as Senator and pass a meaningful direct primary law outraged many Montanans and sparked a reform movement that would use the initiative to rewrite the rules of Montana politics.

#### V. THE PEOPLE’S POWER LEAGUE, DIRECT PRIMARY ELECTIONS, AND THE CORRUPT PRACTICES ACT

The lesson that Montana progressives learned from the 1911 legislative session was that voters had to take matters into their own hands. They could not trust elected officials to obey the will of the people. As then-practicing Missoula attorney Theodore Lentz explained:

The powerful influences that have dominated Montana politics so long have succeeded in keeping this state in the rotten borough class. After the failure of the last legislature to fulfill its pledges in this regard the people [have come] to realize that it was useless folly to longer entertain a hope of relief through the regular law making channels.<sup>134</sup>

Lentz and other progressives looked back to the initiative amendment passed in 1906 as the best means for empowering the mass of ordinary citizens. The initiative had not yet been used in Montana, but that was about to change.<sup>135</sup>

##### A. *The People’s Power League*

Miles Romney, a Ravalli County Democrat and editor of the Hamilton *Western News*, was the key figure in the political drama that would unfold over the next year and a half. A month after the 1911 Legislature ended, Romney invited a diverse group of “tried and true insurgents” to form a

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131. *Somebody on the Party Lines*, Montana Lookout 1 (Mar. 4, 1911).

132. *Haul Down the Flag!*, Western News 4 (Feb. 17, 1911).

133. *Opinions by Montana Editors*, Montana Lookout 6 (Mar. 11, 1911).

134. Vinson, *supra* n. 119, at 69.

135. *The People Will Do It*, Western News 4 (Oct. 6, 1911).

provisional committee that would spearhead an initiative “movement.”<sup>136</sup> The committee consisted of newspaper editors, politicians, judges, and lawyers of every partisan stripe, including Democrat Thomas Walsh, Republican editor William Harber, Butte’s Socialist mayor Lewis Duncan, and District Judge Edwin Cheadle.<sup>137</sup> After the group’s first meeting, Romney explained that, “the key to the situation in this trust-bound state is a real, genuine direct primary, accompanied and strengthened by a corrupt practices act . . . . We shall try out the I & R anyway and see how it works before it becomes rusty.”<sup>138</sup> The group officially organized as the People’s Power League of Montana (“League”) at a meeting in Deer Lodge on June 11, 1911.<sup>139</sup> Shortly thereafter, the League added two additional initiative measures to its campaign—a presidential preference primary and popular election of United States Senators. In total, the League sponsored four initiative petition drives for the 1912 election: (1) Direct primary elections, (2) Corrupt Practices Act, (3) Presidential preference primary, and (4) Popular election of United States Senators.<sup>140</sup> League members viewed the direct primary and Corrupt Practices Act as most crucial for cleansing Montana politics of corruption and corporate influence.<sup>141</sup>

Union leaders from around the state also joined the People’s Power League and brought one additional concern with them. The 1911 Legislature had passed a law that went barely noticed in the press but made a big impression on organized labor. Commonly called the “Donohue Militia Law,” it forced every able-bodied male in the state into a “reserve militia” that could be called into service for up to three years.<sup>142</sup> The law also made it relatively easy for the governor to call out the state militia to suppress civil disorders.<sup>143</sup> Labor leaders claimed that the law had been drafted by Amalgamated Copper’s lawyers and would be used liberally to suppress strikes and other forms of labor protest.<sup>144</sup> They were particularly concerned that union members could be drafted into the state militia and then forced to attack other workers.<sup>145</sup> Union leaders sought the League’s support in organizing a referendum drive to overturn the law. The League agreed.<sup>146</sup>

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136. *First Anniversary of the League*, Western News 1, 3 (June 14, 1912).

137. Vinson, *supra* n. 119, at 27-28.

138. “*For a Free State*” is *Stirring Slogan*, Western News 1 (Mar. 28, 1911).

139. *First Anniversary of the League*, Western News 1, 3 (June 14, 1912).

140. *Id.*

141. *Id.*

142. *Militia Law Tyrannical Say State Labor Unions*, Western News 1 (June 16, 1911).

143. Malone, et al., *supra* n. 41, at 260.

144. *How Would You Like to be a Soldier?*, Western News 4 (June 16, 1911).

145. *Id.*

146. *Militia Law Tyrannical Say State Labor Unions*, Western News 1, 3 (June 16, 1911).

### B. Direct Primary Elections

League members believed that primary elections were the most potent means for shifting the balance of political power from corporations and special interests to the people. They claimed that the convention system—in which party nominees for elected office were selected at conventions controlled by party leaders—placed too much political control in too few hands. Organized special interests could too easily manipulate the convention to ensure that favorable nominees were chosen, unfavorable nominees defeated, and party platforms constructed to serve their interests. As District Judge and League Member Edwin Cheadle explained to readers of the *Miles City Independent*:

The convention system is open to much abuse, and is, in fact, often greatly abused. Under the plan of nominating by conventions, a powerful corporation or individual may, and often does, by ingenious combination, secret intrigue or undue influence over the members of the conventions, practically assume to itself or himself sufficient strength to dictate the choice of the convention for any office or offices which such corporation or individual desires to control.<sup>147</sup>

This undemocratic aspect of the convention system was particularly problematic in Montana, because, as explained above, Amalgamated Copper was politically active and influential throughout much of the state. Managers of the Company's far-flung operations assumed leadership roles in many counties, where they frequently had sufficient influence to secure the selection of favored delegates to the state conventions and the nomination of favored candidates for elected office.<sup>148</sup> This meant that enough Company-supported delegates and candidates emerged from county conventions around the state to give Amalgamated Copper considerable influence at the state conventions and ultimately in the state legislature.<sup>149</sup> In such a system, Miles Romney charged, Montana's political parties had become "corporation controlled political machines."<sup>150</sup>

The People's Power League believed that a statewide direct-primary law would deprive Amalgamated Copper of its political influence by decentralizing power within the parties. Voters, rather than party leaders, would decide party nominees, which meant Company men would not be able to manipulate and control party decision-making. As the Fort Benton *River Press* explained to readers, the direct primary "places political power in the hands of the people, whose vote and influence cannot be controlled or traded by schemers who frequently directed the proceedings of the old-time

147. Morrison & Morrison, *supra* n. 99, at 70.

148. *To Progressive Democrats*, Western News 2 (July 30, 1912).

149. Morrison & Morrison, *supra* n. 99, at 70.

150. *The People Will Rule*, Western News 2 (July 23, 1912).



conventions.”<sup>151</sup> Miles Romney put it more bluntly, declaring that the direct primary law would “put the Anaconda Copper company’s political machine in the scrap heap.”<sup>152</sup>

### C. *Corrupt Practices Act*

Members of the People’s Power League recognized, however, that primary elections solved only part of the problem that plagued Montana politics. Special interests also used money to corrupt and control politics in the state. So, as a necessary complement to the direct primary, the League sought passage of a stringent “Corrupt Practices Act” that would severely restrict the use of money in political campaigns. This type of law was not new. Twenty states, including Montana, had passed limited corrupt practices laws back in the 1890s. The Montana law that was passed in 1893 and revised in 1895 prohibited public officials from accepting bribes and trading votes. It also mandated that each candidate set up a “political committee” to collect and spend campaign funds, all of which had to be publicly disclosed.<sup>153</sup> Laws in other states varied in their details but were generally similar.<sup>154</sup> By the early 1900s, however, many reformers found this first generation of corrupt practices laws too limited. Noting the recent trend of large corporate contributions to political campaigns, they sought new laws that would cap the total amount of money that could be spent on a campaign and would limit or totally prohibit campaign contributions by corporations.<sup>155</sup> The purpose of such laws, one advocate explained, was “to secure the freedom of elections from improper influences.”<sup>156</sup>

Oregon led the nation in adopting a comprehensive corrupt practices act, which voters approved through an initiative measure in 1908.<sup>157</sup> The Oregon law included the common features of earlier laws but added many new restrictions. It prohibited corporations or anything resembling a corporation from contributing money to political campaigns.<sup>158</sup> It limited the total amount that a candidate’s campaign could spend on an election to 25

151. Vinson, *supra* n. 119, at 38–39.

152. *A Free State!*, Western News 2 (Sept. 5, 1911).

153. *Laws, Resolutions and Memorials of the State of Montana Passed at the Third Regular Session of the Legislative Assembly* 44–45 (Inter Mountain Publ. Co. 1893); *The Complete Codes and Statutes of the State of Montana in Force July 1, 1895* 1035–1041 (Wilbur F. Sanders ed., Helena, Mont. 1895).

154. Perry Belmont, *Publicity of Election Expenditures*, 180 N. Am. Rev. 171–176 (Feb. 1905).

155. *Id.* at 182–185.

156. *Id.* at 182.

157. Burton J. Hendrick, *Law-Making by the Voters: How the People of Oregon, Working under the Initiative and Referendum, Have Become Their Own Political Bosses*, 37 McClure’s Magazine 435, 447 (Aug. 1911).

158. *Id.* at 447.

percent of a year's salary of the office for which the person was running.<sup>159</sup> It mandated a detailed account of campaign contributions and expenditures.<sup>160</sup> It also required the state to distribute a "publicity pamphlet" before each election, in which candidates would have the same opportunity to inform voters of their positions.<sup>161</sup> The Oregon law would serve as a model for corrupt practices acts proposed in other states, including Montana.<sup>162</sup>

The nationwide movement for more stringent corrupt practices acts received a boost in 1909 and 1910 as a result of a political scandal in Illinois. After the Illinois state legislature unexpectedly elected Congressman William Lorimer to represent the state in the United States Senate, rumors circulated that bribes had been paid to legislators to secure their vote. The Senate Committee on Privileges and Elections eventually investigated the charges and found that at least four members of the legislature had indeed been paid to vote for Lorimer. The findings caused a national stir that prompted renewed calls for more stringent corrupt practices laws.<sup>163</sup> In February 1911, the national "Progressive Republican League," which was comprised of leading "insurgent" reformers within the Republican Party, identified a "thoroughgoing corrupt practices act" as one of its highest legislative priorities.<sup>164</sup> In a March 1912 speech at New York's Carnegie Hall, Theodore Roosevelt predicted that "stringent" corrupt practices acts, when coupled with direct primary laws, would "break up the corrupt partnership of corporations and politicians."<sup>165</sup> Not to be outdone by these reform-minded Republicans, leading Democrats also championed corrupt practices acts. William Jennings Bryan's newspaper, *The Commoner*, touted a "thorough-going corrupt practices act" as the best means for combating a long litany of political abuses.<sup>166</sup> Most notably, New Jersey's Democratic Governor Woodrow Wilson pushed a comprehensive corrupt practices act through the state's legislature in 1912. This received widespread attention because Wilson was already pegged as the Democratic frontrunner for President in the upcoming election.<sup>167</sup>

Interest within Montana for a more stringent corrupt practices act mirrored these national trends. In January of 1910, the *Terry Tribune* pub-

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159. *Id.*

160. *Id.*

161. *Id.* at 448.

162. *First Anniversary of the League*, *Western News* 1 (June 14, 1912).

163. *See e.g. The Lorimer Case*, 97 *The Outlook* 13–14 (Jan. 7, 1911).

164. *The Insurgent League*, 97 *The Outlook* 256 (Feb. 4, 1911).

165. Theodore Roosevelt, *The Right of the People to Rule*, 100 *The Outlook* 618–619 (Mar. 23, 1912).

166. *The Initiative*, *Commoner* (Lincoln, Nebr.) 7 (Mar. 31, 1911).

167. James A. O'Gorman, *Why I Am for Woodrow Wilson*, 196 *N. Am. Rev.* 460, 462 (Oct. 1912).

lished an editorial titled “Campaign Devoid of Principle or Patriotism,” in which it lamented that money determined the outcome of elections more so than the candidates’ qualifications and policy positions.<sup>168</sup> Commenting specifically on campaigns for the United States Senate, the newspaper complained that there was

no definite platform or contention upon which to base reasons for [candidates’] election—simply the opening of a barrel, and sowing the state from one end to the other with corruption money—the largest barrel winning in the end. Here you will hear nothing of tariff, of “insurgent,” of democracy, of Bryanism—only the jingle of the “coin of the realm” in a gigantic struggle between two men who command gigantic fortunes, and who are willing to spend freely in order to gratify a personal ambition without a thought of the good that might be done the state if properly represented.<sup>169</sup>

In November 1910, the *Montana Lookout* published an article that touted corrupt practices acts being enacted in other states.<sup>170</sup> The article identified three crucial provisions necessary for offsetting the “advantage to men of means over poor men”: limits on campaign expenditures; prohibition of corporate campaign contributions; and a “publicity pamphlet” distributed to all eligible voters, which would contain “necessary information concerning the qualifications of candidates.”<sup>171</sup> And so, in the years before the People’s Power League adopted the Corrupt Practices Act as one of its key reforms, voices inside the state were already clamoring for such a law.

The Corrupt Practices Act proposed by the Montana People’s Power League copied the Oregon law verbatim.<sup>172</sup> It ran thousands of words long and contained 53 sections.<sup>173</sup> According to the League, the proposed law was “designed to limit campaign expenditures, to prevent and punish corrupt and illegal practices in primaries and elections, to secure and protect the purity of the ballot, [and] to provide information to the voters.”<sup>174</sup> Section 25, which prohibited corporations from contributing money to election campaigns, read: “No corporation . . . 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.”<sup>175</sup> Many of the 53 sections were written in abstruse legal language that would have been difficult for voters to understand. It is likely that few voters read and understood the full law before signing a petition or

168. Reprinted as *Campaign Devoid of Principle or Patriotism*, *Montana Lookout* 6 (Jan. 5, 1910).

169. *Id.*

170. *Suppressing Corrupt Campaign Practices*, *Montana Lookout* 12 (Nov. 12, 1910).

171. *Id.*

172. *Text of Corrupt Practices Act Designed to Limit Campaign Expenses, Protect Purity of Ballot, to Provide Information, Etc.*, *Western News* 2 (Apr. 14, 1911).

173. *Id.* at 2–3, 6–7.

174. *Id.* at 2.

175. *Id.* at 3.

ultimately voting for or against it. Rather, they would have understood the law based on what they read in newspapers, what they heard at community forums, and how politicians and union leaders explained it to them. In other words, the public discourse provides the best source for recovering how the people who enacted the law—the voters—understood its scope, function, and purpose.

The People's Power League and other reformers told Montana voters that the Corrupt Practices Act, when combined with the direct primary, would eliminate corporate influence from state politics. Miles Romney wrote in the *Western News* that “[t]he moment that the petitions demanding the submission of a direct primary [and] corrupt practices [act] . . . are filed, will mark the beginning of the end of corporate dictation and corruption in Montana. The great Amalgamated-Anaconda Copper trust will of necessity be retired from politics.”<sup>176</sup> Oregon Senator Jonathan Bourne offered Montanans a more detailed analysis of the law in an article published in state newspapers. “The corrupt practices act is necessary as a complement to the initiative and referendum and the direct primary,” Bourne explained, “for without the corrupt practices act these other good features of popular government would be abused.”<sup>177</sup> The abuse would result from the corrupting influence of money in political campaigning. As Thomas Walsh explained to an audience in Billings, large campaign contributions came with the expectation of political favors, which meant elected officials ended up serving the interests of wealthy corporations rather than public good.<sup>178</sup> A second problem with money in political campaigning was that wealthy candidates or those backed by corporations had an unfair advantage in advertising themselves to the public. This made the “publicity pamphlet” a particularly important component of the corrupt practices law.<sup>179</sup> According to Bourne, it would level the political playing field by affording “all candidates for nomination or election equal means of presenting before the voter their views upon public questions.”<sup>180</sup> The law as a whole, Bourne predicted, would transform politics in Montana by elevating the level of political discourse: “Under the operation of this law popular verdicts will be based upon ideas, not money; argument, not abuse; principles, not boss and machine dictation.”<sup>181</sup>

Montana Senator Joseph Dixon agreed. In November 1911, Dixon attended a meeting of Missoula's “Neighborhood Club” and commented on

176. *A Better Era Dawning*, *Western News* 2 (Apr. 4, 1911).

177. *Senator Bourne Praises People's Power League*, *Western News* 4 (Oct. 17, 1911).

178. *Tom Walsh Sounds Keynote of the Democratic Campaign for Montana at Coliseum Meeting*, *Billings Gazette* 1, 6 (Sept. 24, 1912).

179. *Senator Bourne Praises People's Power League*, *Western News* 4 (Oct. 17, 1911).

180. *Id.*

181. *Id.*

the benefits of the proposed Corrupt Practices Act. Dixon claimed that the law was necessary to the functioning of representative government, because it would purify political discourse and enable voters to make informed choices.<sup>182</sup> Like Bourne, he touted the publicity pamphlet in particular. According to him, the pamphlet would force candidates to clearly and publicly articulate their positions on vital issues. Dixon also claimed that the law would create “a lively interest in politics throughout the state,” which would make Montanans better voters.<sup>183</sup> “Those who have dammed the stream in Montana for so long are being forced to loose their hold,” Dixon concluded. “Under the proposed scheme, the candidate for office will now be required to take his own true measurement before the people and when given the opportunity you will find the great mass of American people taking the action it believes to be right.”<sup>184</sup>

Newspapers in the state focused readers’ attention on the limitations the law would place on campaign contributions and expenditures. The Fort Benton *River Press* was typical. In an editorial that began by warning readers that “the voter may not fully understand the propositions unless he give[s] the matter careful attention,” the paper went on to describe the Corrupt Practices Act as “a bill for a law limiting candidates’ campaign expenses.”<sup>185</sup> Through these varied sources, Montana voters formed their understanding of what the proposed law was and what it was supposed to accomplish.

#### D. Initiative Petition Drives

The People’s Power League began collecting signatures for its four initiative measures on Labor Day, September 4, 1911.<sup>186</sup> League members circulated petitions among the crowds gathered for public celebrations, and the League arranged for speakers in some cities to publicize the initiative campaigns.<sup>187</sup> It was an auspicious start, but the threshold for placing initiative and referendum measures on the ballot was relatively high in Montana, which meant the campaign would take considerable time and require concerted effort.<sup>188</sup> The League circulated petitions in 25 of Montana’s 31 counties.<sup>189</sup> It enlisted the help of sympathetic newspapers to publicize the petition drives and identify where voters could go to sign them. Petitions

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182. *People’s Power League Movement Discussed by Neighborhood Club*, Western News 1 (Nov. 17, 1911).

183. *Id.*

184. *Id.*

185. *Four Initiative Measures*, River Press 2 (Oct. 30, 1912).

186. Vinson, *supra* n. 119, at 67.

187. *Id.*

188. *Id.* at 68–72.

189. *First Anniversary of the League*, Western News 3 (June 14, 1912).

were typically placed in local businesses, especially ones that received large amounts of foot traffic.<sup>190</sup> Labor unions also played a vital role collecting signatures by circulating petitions among their membership and setting up special committees to carry petitions into their communities.<sup>191</sup> Finally, on April 24, 1912, the League had surpassed the necessary 5,455 signatures for each of the four initiatives, and Governor Norris certified that the measures would be on the ballot for the upcoming November election.<sup>192</sup>

## VI. THE 1912 ELECTION

Much was at stake in the election of 1912. Montana voters would decide the fate of the four initiative measures sponsored by the People's Power League and the referendum to repeal the militia law. They would elect the state's governor, lieutenant governor and legislature. They would express their preference on who should represent Montana in the United States Senate. Additionally, Montana voters would help select the President of the United States. The presidential campaign of 1912 was a historic race that involved a former president, Theodore Roosevelt, the current president, William Howard Taft, a future president, Woodrow Wilson, and the most important political radical of the time, Eugene Debs. Political scientist James Chace claims that the 1912 presidential election was "the election that changed the country," because it culminated years and years of reform agitation and led to national policies that altered the basic relationship between the federal government and large corporations.<sup>193</sup> In part, the same was true in Montana. The 1912 election marked a high point of political reform in the state and established policies and voting tendencies that would shape Montana's political history for much of the twentieth century. And yet, as we shall see, the election would not ultimately alter the state's political relationship with Amalgamated Copper.

### A. 1912 Primaries and Conventions

With so much at stake in the November election, Montana politics were especially active and contentious during the summer of 1912. The *Hamilton Western News* reported that "Amalgamated political agents are busy in every one of the 31 counties of the state."<sup>194</sup> Reformers in both parties were also busy organizing support on the local level. Because 1912

190. Vinson, *supra* n. 119, at 67–68.

191. *Id.* at 68.

192. *Id.* at 73.

193. James Chace, *1912: Wilson, Roosevelt, Taft & Debs—The Election that Changed the Country* 8, 244 (Simon & Schuster 2004).

194. *To Progressive Democrats*, *Western News* 2 (July 30, 1912).

was a presidential election year, there was a set of primary elections and state party conventions in May to determine party delegates to the national conventions. Political wrangling began during these early primaries, which one newspaper described as a “knockdown-dragout” fight between Company men and reformers.<sup>195</sup> In Missoula, for example, a particularly hard-fought campaign pitted H. C. Stiff, who was the local legal counsel for Amalgamated Copper, against Frank Woody, a longtime local politician. On the morning of the election, Stiff “established a little primary of his own” in a local barbershop and, according to the *Missoulian*, started collecting votes for himself.<sup>196</sup> The problem, according to the paper, was that Stiff’s supporters had already voted at the usual polling place and were voting a second time at the barbershop. When Woody caught wind of the ploy, he confronted Stiff and accused him of political chicanery and of being a Company stooge. In the midst of the tirade, Stiff kicked Woody in his leg. Woody then “cut loose with a haymaker” but missed.<sup>197</sup> Spectators of the affray finally separated the men. Not only did Woody suffer an injured leg, he lost the election. At the end of the article, the *Missoulian* quoted an unnamed “prominent democrat” who offered this assessment of his party’s primary elections in Missoula County: “It was just the same as the republican primaries, with this difference: It wasn’t necessary for the Amalgamated supporters to spend so much money or to exert themselves quite so strongly. It was a repetition of the tactics that have been employed by the corporation men since time immemorial.”<sup>198</sup>

The wrangling between Company men and reformers continued at the state conventions. The task for the conventions was to choose delegates to the national party conventions, where each party’s nominee for president would be selected. One contentious issue at the state conventions was how delegates to the national conventions would be chosen. Company men wanted the delegates selected by a committee of party leaders, whereas reformers wanted the delegates “elected from the floor of the convention by secret ballot.”<sup>199</sup> Reformers feared that, in an open vote, some delegates would feel pressure to back Company men.<sup>200</sup> The second contentious issue was whether the delegates to the national conventions would be instructed to support a particular candidate for president or be left to decide for themselves.<sup>201</sup> This was an important issue because, on the national

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195. *Democratic Primaries Are Captured by Henchmen of the Amalgamated*, *Missoulian* (Missoula, Mont.) 6 (May 26, 1912).

196. *Id.*

197. *Id.*

198. *Id.*

199. *Amalgamated Machine Blocks Instruction of Delegates*, *Western News* 1 (May 28, 1912).

200. *Id.*

201. *Id.*

level, the Democratic and Republican parties were split into two competing factions: insurgent reformers and conservative party regulars. At the national Republican convention, delegates would choose between sitting President William Howard Taft, who had the support of the party establishment, and former President Theodore Roosevelt, who had the support of the reformers. The leading contenders for the Democratic nomination were reform-minded Woodrow Wilson and more conservative Champ Clark.<sup>202</sup>

At the state conventions in Montana, reform Republicans wanted the delegates instructed to support Roosevelt, and reform Democrats wanted the delegates instructed to support Wilson. Company men in both parties wanted the delegates sent to the national conventions without instruction on who to support.<sup>203</sup> In this battle, the outcome differed by party. The Republicans sent an uninstructed delegation to the national convention in Chicago, whereas the Democrats sent a delegation instructed to support Wilson or an alternative progressive candidate.<sup>204</sup> With reformers tasting both success and defeat, the *Western News*—which now labeled itself a “Progressive newspaper”—encouraged reformers in both parties to redouble their efforts. “[T]he point may be drawn,” the paper wrote, “that every man who would help free this country from corporation domination should keep busy from now until election day.”<sup>205</sup>

The rest of the 1912 campaign in Montana was shaped by what happened at the national conventions. At the Republican convention, William Howard Taft used his control of the party machinery to ensure his re-nomination as the Republican candidate for president. Outmaneuvered, Roosevelt bolted the Republican Party and formed a competing third party named the Progressive Party.<sup>206</sup> Roosevelt selected Montana Senator Joseph Dixon as his campaign manager.<sup>207</sup> The progressive elements within Montana’s Republican Party—led by Dixon—formed a state Progressive Party that would support Roosevelt for president and put forth its own slate of candidates for state offices.<sup>208</sup> At the Democratic national convention, the reform-minded Wilson was finally selected on the 46th ballot.<sup>209</sup> The selection of Wilson kept progressive Democrats within the party both na-

202. John Milton Cooper, Jr., *Pivotal Decades: The United States, 1900–1920* 169–174 (W. W. Norton & Co. 1990).

203. *Amalgamated Machine Blocks Instruction of Delegates*, *Western News* 1 (May 28, 1912); *A Two-Ring Performance*, *Western News* 2 (May 28, 1912).

204. *Fine, Very Fine!*, *Western News* 2 (May 31, 1912).

205. *A Two-Ring Performance*, *Western News* 2 (May 28, 1912).

206. Cooper, *supra* n. 202, at 173–174.

207. Morrison & Morrison, *supra* n. 99, at 72.

208. *Id.* at 73–74.

209. Cooper, *supra* n. 202, at 174–175.



tionally and in Montana.<sup>210</sup> So, by the summer of 1912, three major parties operated in Montana: the Democratic, Republican, and Progressive.<sup>211</sup>

Astute political observers in Montana recognized that the split in the Republican Party assured the Democrats a sweep in statewide races and large majorities in the legislature. This meant that the critical battle for control of the state government would be waged within the Democratic Party.<sup>212</sup> Whereas the earlier primaries and conventions had been closely contested between Company men and reformers, the second round in late August resulted in landslide victories for progressive Democrats. Spurred by the success of the initiative petition drives and the reform fervor generated by the Roosevelt and Wilson campaigns, most Democrats voted for progressive delegates to the county conventions. In some areas, local Democrats organized “progressive tickets” and ran coordinated campaigns. In Hamilton, home to Miles Romney, the progressive ticket won by a two-to-one majority.<sup>213</sup>

As a result, most county conventions selected reform candidates for legislative races and sent solidly progressive delegations to the state convention.<sup>214</sup> The two significant exceptions were Silver Bow and Deer Lodge counties, whose delegations were filled with Company men.<sup>215</sup> Unlike in past years, however, the Silver Bow and Deer Lodge delegations could not control the state convention. On almost every important issue, the progressive Democrats triumphed. Thomas Walsh was nominated “by acclamation” as the party’s preferred candidate for United States Senate. Samuel Stewart was chosen as the party’s nominee for governor. The convention also nominated two candidates of “pronounced progressive tendencies” to run for United States Congress.<sup>216</sup> The *Western News* celebrated the party’s slate of candidates as “remarkable for its freedom from corporate alliances and the progressive record of its nominees.”<sup>217</sup> The Democratic state convention also endorsed the four initiative measures that would be on the ballot in November and actually wrote them into the party platform.<sup>218</sup> The convention as a whole was a remarkable triumph for progressives within the Democratic Party.

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210. *Id.*; Morrison & Morrison, *supra* n. 99, at 73–74.

211. The Socialist Party also campaigned actively throughout the state. See *Mayor Duncan Gives Address in Billings*, *Billings Gazette* 6 (Sept. 24, 1912).

212. *To Progressive Democrats*, *Western News* 2 (July 30, 1912).

213. *Amalgamated Beaten in Hamilton Primaries*, *Western News* 3 (Aug. 27, 1912).

214. *The State Convention*, *Western News* 2 (Sept. 3, 1912).

215. *Id.*

216. *Id.*

217. *Id.*

218. *Democratic State Platform*, *Western News* 2 (Sept. 10, 1912).

The same proved true for the state's Republican Party. Even without the "insurgents" who had bolted for the Progressive Party, Montana Republicans adopted a remarkably progressive platform at their fall convention. It endorsed all four of the initiative measures sponsored by the People's Power League.<sup>219</sup> As for the Corrupt Practices Act, the Republicans predicted it would "secure and protect the purity" of elections within the state.<sup>220</sup> The platform also implicitly endorsed women's suffrage by recommending that the word "male" be stricken from the voting rights section of the Montana Constitution.<sup>221</sup> The Fort Benton *River Press*, a Republican newspaper edited by reform-minded William Harber, celebrated the party platform as "more progressive than any other platform ever adopted by [the] party."<sup>222</sup> It seemed that all Montanans were jumping on the reform bandwagon in 1912.

### B. 1912 General Election

During the campaign leading up to the general election, candidates competed with one another to level the most damning attacks against Amalgamated Copper and corporate influence on politics. Joseph Dixon, who was running to retain his seat in the United State Senate, characterized the struggle with Amalgamated Copper in Manichean terms:

The issue in Montana is clearly defined. Shall the special interests which know no party allegiance, acting in our own state through the Amalgamated Copper Company and its allies, control the Republican as well as the Democratic party, or shall the [parties] be controlled by the people themselves? There can be no compromise in the situation which confronts us. It is a struggle between two diametrically opposed and conflicting ideals and interests. There is and can be no middle ground.<sup>223</sup>

Dixon's principal opponent in the race for senate, Thomas Walsh, also attacked Amalgamated Copper for its domineering role in Montana politics. At the end of a speech in Billings, Walsh exhorted the crowd to vote for him

as a protest against the attempt upon the part of [Amalgamated Copper] to regulate our political affairs and dictate to the sovereign people of Montana who shall and who shall not represent them . . . . I am asking you to stand with me in this fight to preserve to the people of Montana the right of self-government.<sup>224</sup>

219. *Platform is Progressive*, *River Press* 4 (Sept. 11, 1912).

220. *Id.*

221. *Id.*

222. *All Parties "Progressive"*, *River Press* 4 (Oct. 23, 1912).

223. Morrison & Morrison, *supra* n. 99, at 73.

224. *Tom Walsh Sounds Keynote of the Democratic Campaign for Montana at Coliseum Meeting*, *Billings Gazette* 1, 6 (Sept. 24, 1912).

Even the Bull Moose himself, Theodore Roosevelt, took aim at Amalgamated Copper. During a campaign tour of the state in early September, Roosevelt gave speeches in a dozen cities and towns along the Northern Pacific railroad line from Miles City to Missoula.<sup>225</sup> At each stop, Roosevelt condemned the Company's involvement in state politics: "The reason I didn't bother to come to Montana in the spring campaign," he explained to 2,500 people gathered in Billings, "was that the Amalgamated had it all fixed. They wouldn't give you the primaries. They picked their own delegates to Chicago. Now I'm willing to give every one of them a vote, but that's all. They must not do your voting for you."<sup>226</sup> Roosevelt also promised that, as president, he would apply the "Abyssinian treatment" to Amalgamated Copper, meaning he would aggressively use governmental power to force the Company into submission.<sup>227</sup> According to press reports, the large crowds responded to Roosevelt's "denunciations of the Amalgamated" with "thunders of applause." After spending two days in Montana traveling with Roosevelt, a reporter for the *Chicago Daily Tribune* concluded that "Montana is the scene of as bitter a political struggle as that through which California passed in its fight upon the Southern Pacific Railroad."<sup>228</sup> Montana had moved to the forefront of the nationwide struggle to curb the political power of large corporations.

Faced with the swelling tide of progressive sentiment in the state, Company-owned newspapers resorted to obfuscation and indirect attacks. One of the Company's Republican newspapers, the *Montana Daily Record*, attempted to discredit Democratic candidates by claiming they were controlled by the copper giant. About gubernatorial candidate Samuel Stewart, the paper insisted that "Stewart is the Amalgamated candidate for governor."<sup>229</sup> Stewart vehemently denied the accusation, and leading progressive Democrats vouched for his credentials as a reformer.<sup>230</sup> The *Record* also attempted to tarnish the candidacy of Thomas Walsh by claiming he had made a secret deal with the Company to secure his selection as the party's senatorial candidate.<sup>231</sup> By contrast, the Company's leading Democratic paper, the *Anaconda Standard*, claimed that the Company had, once again, gotten out of politics. "The Amalgamated Copper company and its of-

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225. John Callan O'Laughlin, *Copper Combine Colonel's Target*, *Chicago Daily Tribune* 1 (Sept. 8, 1912).

226. *Colonel Takes Wallop at Wilson*, *Washington Herald* 1 (Sept. 8, 1912).

227. John Callan O'Laughlin, *Montana Scene of Bitter Fight*, *Chicago Daily Tribune* 5 (Sept. 9, 1912).

228. *Id.*

229. *Only a "Scare Crow"*, *Montana Daily Record* (Helena, Mont.) 4 (Sept. 11, 1912); *What Sam Stewart Did*, *Montana Daily Record* 4 (Sept. 24, 1912).

230. *Challenge Is Accepted*, *Montana Daily Record* 4 (Oct. 18, 1912).

231. *Mr. Walsh Punctures the Cry of Amalgamated*, *Western News* 1 (Sept. 17, 1912).

ficers,” the paper declared, “have taken and are taking no part in the present political campaign in Silver Bow County or in the state of Montana.” The paper acknowledged that several Company employees were running for elected office and had served as delegates to the state conventions but claimed that was just good citizenship.<sup>232</sup>

As for the four initiative measures, the *Standard* offered clever but subtle criticism. In an effort to convey the impression that voters cared little about the reforms, the paper feigned concern that “so little attention is being paid” to them by the public. The paper then predicted that the direct primary and Corrupt Practices Act would bring about “radical change” and expressed “grave doubt” that the change “would prove of benefit.”<sup>233</sup> In another editorial, the paper characterized the measures as “an experiment.”<sup>234</sup> These attacks were unusually indirect for the *Standard* and likely reflected the paper’s recognition that defeating the initiative measures was a lost cause.

The outcomes of the 1912 election were a foregone conclusion. As expected, Democrats swept all the state races and took control of both houses of the state legislature. Woodrow Wilson was elected president, receiving 42 percent of the national vote compared to Theodore Roosevelt’s 27 percent, Taft’s 23 percent, and Debs’ 6 percent. In Montana, Wilson received 35 percent of the vote and Roosevelt 28 percent. Taft and Debs tallied 23 and 14 percent respectively.<sup>235</sup> Montana voters expressed their preference for Thomas Walsh to represent the state in the United States Senate, giving him 28,421 votes compared to 22,161 for Joseph Dixon.<sup>236</sup> Montanans also elected Democrats Samuel Stewart as governor and William McDowell as lieutenant governor.<sup>237</sup> Democrats gained sizable majorities in the state legislature. In the House, there would be 49 Democrats, 20 Republicans, 16 Progressives, and 1 Socialist for the 1913 session. The Senate would be filled with 17 Democrats, 13 Republicans, and 2 Progressives.<sup>238</sup> Finally, Montanans voted overwhelmingly in favor of all four initiative measures and voted to repeal the militia law. As for the two most important initiatives, the Corrupt Practices Act passed with over 76 percent of the vote (44,337 to 13,645), and the direct primary law passed with over

232. *The Company and Politics* (pt. 2), *Anaconda Standard* (Anaconda, Mont.) 4 (Oct. 13, 1912).

233. *Direct Primaries*, *Anaconda Standard* 6 (Oct. 9, 1912).

234. *An Experiment, Eh?*, *Western News* 2 (Sept. 24, 1912).

235. Ellis Waldron & Paul B. Wilson, *Atlas of Montana Elections 1889-1976* 44 (U. of Mont. Press 1978). Debs fared much better in Montana than nationally because of the relatively large number of industrial workers in the state and the strength of the Socialist Party in Montana.

236. *Id.* at 48.

237. *Id.* at 47.

238. *Id.* at 45.

78 percent of the vote (46,437 to 12,879).<sup>239</sup> It was a landslide victory for the People's Power League and for progressive reform in Montana.

### C. Consequences of the 1912 Election

Reformers heralded the election results as marking a turning point in the state's political history. Their goal had been to "put the Amalgamated out of Montana politics," and they expected the direct primary and corrupt practices act to do just that.<sup>240</sup> "As a result of Tuesday's election," the *Western News* editorialized, "Montana now has the most modern and carefully drafted primary laws and corrupt practices act of any state in the union. These laws . . . will assist mightily in ridding the state of corporation and other corrupt influences in politics."<sup>241</sup> The *Libby News* confidently predicted that the direct primary and Corrupt Practices Act would end "the condition of bossism that has ruled the state's politics for so long."<sup>242</sup> Reformers also anticipated that their successful use of the initiative and referendum would teach corporations and politicians a lasting political lesson. "The [corporate] powers that prey [upon the state] and future legislative assemblies," Miles Romney wrote, "will do well to heed the object lesson afforded by this demonstration of the efficacy of direct legislation. The people have secured for themselves by direct vote laws that [which] the corporations and political machines have denied them for a decade." If corporations or elected officials again attempted to thwart the will of the people, Romney warned, "the I. & R. will doubtless be unsheathed again."<sup>243</sup> Even Joseph Dixon's *Missoulian* newspaper shrugged off his loss to Walsh and appreciated the election as a watershed in Montana politics:

This vote, the first to be taken in Montana upon an initiative measure, shows something more than the fact that the people of the state want a primary law. It shows that the people of the state are capable of enacting their own laws . . . . The people of Montana have learned how to get laws which the legislature denies them.<sup>244</sup>

Despite the optimism expressed by Romney, the *Libby News*, and the *Missoulian* that the 1912 election would eliminate corporate influence from state politics, it did not. Amalgamated Copper proved remarkably adept at adapting to reforms meant to limit its role in politics. After the 1912 election, the Company extended its control over more newspapers in the state,

239. *Id.* at 51–53.

240. K. Ross Toole, *Montana: An Uncommon Land* 214 (U. of Okla. Press 1959).

241. *Montana Has Primary Law*, *Western News* 2 (Nov. 8, 1912).

242. Reprinted as *Giving the People More Power*, *Western News* 2 (Nov. 19, 1912).

243. *Montana Has Primary Law*, *Western News* 2 (Nov. 8, 1912).

244. Reprinted as *The Initiative*, *Western News* 2 (Dec. 6, 1912).

including the *Billings Gazette* and the *Missoulian*.<sup>245</sup> By 1917, Amalgamated Copper—which changed its name to the Anaconda Copper Mining Company in 1915—controlled seven of the eight largest circulation papers in Montana, which enabled it to manage the flow of information to many state residents.<sup>246</sup> The Company used its newspapers to promote favored candidates and policies and to attack its critics. In 1928, for example, the *Anaconda Standard* described an anti-Company candidate who was running for governor as having “all the dignity of a baboon, all the self-restraint and poise of a tomcat, all the calm deliberation and judicial decision of a jack-ass, all the finer emotions and sentiments of a yellow dog, all the nobility and character of a snake.”<sup>247</sup> The editors of the *Standard* were nothing if not clever.

The Company also found new and ingenious ways to influence the state legislature. During legislative sessions, the Company provided a free bill-writing service, where legislators could get bills drafted by the Company's legal experts.<sup>248</sup> The Company established an information bureau, which provided legislators with research on bills and policy issues.<sup>249</sup> Most notoriously, the Company operated 24-hour watering holes in Helena, where lawmakers could get free food and drink.<sup>250</sup> The Company also maintained a large staff of lobbyists, who, according to Michael Malone, were “highly skilled and ingenious.” Malone cites the example of one Company lobbyist who reportedly boasted, “Give me a case of Scotch, a case of gin, one blonde, and one brunette, and I can take any liberal.”<sup>251</sup> By any assessment, the Anaconda Copper Mining Company continued to dominate state politics for decades after 1912, despite the enactment of the Corrupt Practices Act and the direct primary law.

## VII. CONCLUSION

Recognizing the Company's continued dominance of Montana politics, the historian K. Ross Toole famously dismissed Progressive reform in the state as “sound and fury—and one small tax reform,” meaning that reformers made a lot of noise but accomplished very little.<sup>252</sup> Such an assessment unfairly diminishes the significance of the initiative and referendum, the direct primary law, and the Corrupt Practices Act. These progressive

245. Swibold, *supra* n. 56, at 149, 157–158.

246. *Id.* at 158.

247. Peter J. Powell & Michael P. Malone, *Montana: Past and Present: Papers Read at a Clark Library Seminar, April 5, 1975* 64 (U. of Cal. 1976).

248. *Id.* at 63.

249. *Id.*

250. *Id.*

251. *Id.*

252. Toole, *supra* n. 240, at 211–227.

reforms did not eliminate corporate political influence, but they did change the rules of Montana politics in ways that made it more accessible to ordinary people. Toole's dismissal also unfairly diminishes the achievements of Miles Romney, the People's Power League, and the reformers who triumphed so thoroughly in 1912. Their efforts demonstrated the democratic potential of politics in Montana and established a tradition of grassroots activism that persists to this day. These are important legacies that have become part of the state's political heritage.

Recently, the constitutionality of one piece of this political heritage was challenged. In its widely publicized *Western Tradition* decision, the Montana Supreme Court shocked some commentators by finding the state's Corrupt Practices Act and its ban on direct corporate spending in political campaigns constitutional. Recognizing the apparent conflict with the United States Supreme Court's 2010 *Citizens United* decision, the Montana court justified its ruling, in part, by citing the state's particularly sordid early history of corporate domination and political corruption.<sup>253</sup> The United States Supreme Court summarily reversed the *Western Tradition* decision, but four justices signed a dissenting opinion that accepted the Montana court's conclusions about the relevance the state's early history has in determining the Corrupt Practices Act's constitutionality.<sup>254</sup> Leading national newspapers—including the *New York Times* and *USA Today*—have likewise focused on Montana's long-ago history as important to the consideration of the law's constitutionality.<sup>255</sup> In other words, many people believe that the history in this case really does matter.

As this article has attempted to show, the Montana Supreme Court's account of the history that led to the Corrupt Practices Act—an account that has been widely accepted and repeated—is incomplete and erroneous. It locates the origins of the law in the famous wars of copper kings, which occurred between 1891 and 1903. The Corrupt Practices Act, however, was passed by a citizens' initiative in 1912, long after the Clark-Daly feud and the Heinze-Amalgamated fight had ended. Rather, the political events and circumstances in Montana between 1909 and 1912 are most relevant for understanding the law's origins. Miles Romney and the other Montana progressives who spearheaded the initiative petition drive did not mention Marcus Daly—who had died in 1900—or the infamous shutdown of 1903. Their efforts were inspired most directly by the Company's controversial role in the 1909 and 1911 legislative sessions. And, their criticisms of the Company—and their justification for the law—focused primarily on what

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253. *W. Tradition Partn. v. Atty. Gen. of the St. of Mont.*, 271 P.3d 1 (Mont. 2011).

254. *American Tradition Partnership Inc. v. Bullock*, 567 U.S. \_\_\_\_ (2012).

255. *And refuse to revisit the Citizens United decision*, *New York Times* A22 (June 25, 2012); *Montana's century-old law falls, opening door to corruption*, *USA Today* 8A (June 27, 2012).

one reformer termed “small politics,” such as manipulating county conventions and buying political loyalty with money or favors.<sup>256</sup> It was the assumed pervasiveness of these “small” acts of political corruption that voters likely had in mind when they overwhelmingly approved the Corrupt Practices Act.

Now that the Supreme Court has overturned the *Western Tradition* decision, why does this more complete and accurate account matter? For one, it provides an object lesson in the problems with using history to inform contemporary political and legal questions. It reminds us that the history conjured by partisans to support their views is almost always distorted and sometimes just plain wrong. History is not rocket science, but it is complicated and ambiguous. It rarely yields simple lessons or conclusions that can neatly be applied to the present, especially when presented in the compressed and tendentious form of court decisions, newspaper editorials, and let's not forget talk radio. Whenever public officials and pundits use history to support their positions on contemporary issues, be skeptical—even when you are inclined to agree with them.

Most importantly, the more complete history offered in this article helps us better understand how Montana's history of political corruption and reform should have informed the courts' consideration of the Corrupt Practices Act and how it might now inform the commentary about the Supreme Court's summary reversal of *Western Tradition*. The copper kings and Amalgamated Copper are long gone. To my knowledge, no candidates for public office in Montana are setting up makeshift polling stations in order to record second votes from their friends. Corporate lobbyists are not silencing elected officials on the floor of the state senate. In short, the economic and political circumstances of today are vastly different than they were early in the twentieth century. As such, I am not willing to say that the solutions reformers devised to the political problems back then are necessarily the solutions best suited for the problems we face today. And yet, it is important to recognize that the reforms implemented 100 years ago—including the Corrupt Practices Act—are now woven into the fabric of the state's unique political culture, a culture characterized by face-to-face campaigning, weak party loyalty, skepticism of outside interests, and grassroots activism. The United States Supreme Court has pulled one of the threads from that fabric, which will surely alter the culture. People will disagree whether the change that results is for the better or the worse. I think it will be for the worse.

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256. *How Big Business Rules Montana by Small Politics*, Montana Outlook 3 (Sept. 17, 1910).



