

1 SENATE BILL NO. 284

2 INTRODUCED BY J. GROSS, B. BENNETT, P. FLOWERS, T. JACOBSON, M. MACDONALD, S. MALEK,
3 E. MCCLAFFERTY, N. MCCONNELL, M. MCNALLY, M. PHILLIPS, J. POMNICHOWSKI, D. SALOMON,
4 D. SANDS, J. SESSO, F. SMITH, G. VUCKOVICH, S. WEBBER

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN DISCLOSURES ON THE FACE OF
7 ELECTION MATERIAL THAT REFERENCES A CANDIDATE'S VOTING RECORD; AND AMENDING SECTION
8 13-35-225, MCA."

9
10 WHEREAS, Montana citizens have a compelling state interest in knowing what information is behind
11 claims on election materials about a candidate's voting record; and

12 WHEREAS, requiring disclosure of information underlying claims about a candidate's voting record as
13 set forth in this bill does not violate the First Amendment constitutional right to free speech because the
14 requirement and restriction on the right to free speech is narrowly tailored to serve a compelling state interest;
15 and

16 WHEREAS, the First Amendment prevents the government from proscribing speech unless the
17 proscription is narrowly tailored to serve a compelling state interest (see *R.A.V. v. City of St. Paul, Minn.*, 505 U.S.
18 377, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992), and *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2227, 192
19 L. Ed. 2d 236 (2015), and *Am. Civ. Liberties Union of Nevada v. Heller*, 378 F.3d 979 (9th Cir. 2004)); and

20 WHEREAS, a regulation of speech that requires vote reporting requirements in political materials is a
21 content-based restriction and must be reviewed under strict scrutiny; and

22 WHEREAS, the restriction provided for in this bill is a content-based restriction, subject to strict scrutiny
23 and only enforceable if it is narrowly tailored to a compelling state interest, because it is based on a topic, in this
24 case campaign disclosures; and

25 WHEREAS, this bill provides information that citizens would not otherwise know and have no other way
26 of obtaining because the information required by the bill is the information on which claims made on election
27 materials about a candidate's vote are based; and

28 WHEREAS, no alternate means exists to find this information and there is no database, state-provided
29 or otherwise, that provides the link to the underlying basis of this factual information because the information must
30 be provided by the person or entity making the claim; and

1 WHEREAS, three previous versions of this statute requiring information underlying claims about a
2 candidate's voting record on election materials have been found unenforceable; and

3 WHEREAS, the 2011 version of section 13-35-225(3)(a)(ii), Montana Code Annotated (MCA), required
4 that when printed election material includes information about a candidate's voting record, the material must also
5 include "a disclosure of contrasting votes known to have been made by the candidate on the same issue if closely
6 related in time"; and

7 WHEREAS, this bill does not include the unenforceable provision in the 2011 version of section
8 13-35-225(3)(a)(ii) that required disclosure on the face of election material referencing a particular vote of
9 contrasting votes known to have been made by the candidate "on the same issue if closely related in time" (see
10 *Lair v. Murry*, 817 F. Supp. 2d 1058 (D. Mont. 2012)); and

11 WHEREAS, this 2011 version was determined to be unconstitutionally vague in *Lair v. Murry*, 817 F.
12 Supp. 2d 1058 (D. Mont. 2012), because the phrase "closely related in time" was not defined anywhere in
13 Montana's statutes or regulations and a candidate could not know what this term meant; and

14 WHEREAS, the requirement of reporting on "the same issue" was likewise unconstitutionally vague
15 because it was undefined and ambiguous what that term meant and a person "of ordinary intelligence" would not
16 have "a reasonable opportunity to know what is prohibited" by the phrase "the same issue" and this requirement
17 failed to clearly mark the boundary between permissible and impermissible speech; and

18 WHEREAS, in *Montforton v. Motl*, 2014 U.S. Dist. LEXIS 190170 (D. Mont. 2014), the 2013 version of
19 section 13-35-225(3)(a)(ii), MCA, that required disclosure of contrasting votes known to have been made by the
20 candidate on "the same issue if the contrasting votes were made in any of the previous 6 years" was determined
21 to be unconstitutionally vague because the term "issue" was not defined; and

22 WHEREAS, this bill does not include the unconstitutionally vague terms that required disclosure of votes
23 on the "same issue" or for the "previous 6 years"; and

24 WHEREAS, the 2015 version of section 13-35-225(3)(a)(ii), MCA, required disclosure of "all votes made
25 by the candidate on the same legislative bill or enactment"; and

26 WHEREAS, in *Nat'l Ass'n for Gun Rights v. Motl*, 188 F. Supp. 3d 1020 (D. Mont. 2016), the restriction
27 in the 2015 version was not enforceable because it was not narrowly tailored to serve a compelling state interest
28 because the information required to be reported was "all votes made by the candidate on the same legislative
29 bill or enactment" and was information that is readily available on the internet and could be accessed on the
30 legislative website to show all the votes a candidate took on a certain bill; and

1 WHEREAS, the 2015 version of section 13-35-225(3)(a)(ii) impermissibly compelled speech in violation
 2 of the First Amendment because it was not narrowly tailored to serve a compelling state interest because it
 3 required "disclosure of all votes made by the candidate on the same legislative bill or enactment"; and

4 WHEREAS, the court stated it could be serving a compelling state interest but it was not narrowly tailored
 5 since the information was already publicly available about all votes taken on a bill; and

6 WHEREAS, no internet database or other compilation of information can tell citizens what information
 7 is underlying claims on election materials about an individual's voting record; and

8 WHEREAS, no court has determined that the sole requirement that information underlying the reference
 9 to a particular vote or votes on which a claim about a candidate's voting record is based is by itself
 10 unconstitutional or unenforceable; and

11 WHEREAS, this bill does not include portions of Montana's campaign disclosure requirements previously
 12 found unconstitutional; and

13 WHEREAS, a statute must be sufficiently clear so as to allow persons of "ordinary intelligence a
 14 reasonable opportunity to know what is prohibited" and the information required in this bill clearly allows a person
 15 of ordinary intelligence to know what information is required and what is therefore prohibited.

16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18

19 **Section 1.** Section 13-35-225, MCA, is amended to read:

20 **"13-35-225. Election materials not to be anonymous -- ~~statement of accuracy~~ -- ~~notice~~ -- penalty.**

21 (1) All election communications, electioneering communications, and independent expenditures must clearly and
 22 conspicuously include the attribution "paid for by" followed by the name and address of the person who made
 23 or financed the expenditure for the communication. The attribution must contain:

24 (a) for election communications or electioneering communications financed by a candidate or a
 25 candidate's campaign finances, the name and the address of the candidate or the candidate's campaign;

26 (b) for election communications, electioneering communications, or independent expenditures financed
 27 by a political committee, the name of the committee, the name of the committee treasurer, and the address of
 28 the committee or the committee treasurer; and

29 (c) for election communications, electioneering communications, or independent expenditures financed
 30 by a political committee that is a corporation or a union, the name of the corporation or union, its chief executive

1 officer or equivalent, and the address of the principal place of business.

2 (2) Communications in a partisan election financed by a candidate or a political committee organized
3 on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

4 ~~(3) (a) Printed election material described in subsection (1) that includes information about another
5 candidate's voting record must include the following:~~

6 ~~—— (i) a reference to the particular vote or votes upon which the information is based;~~

7 ~~—— (ii) a disclosure of all votes made by the candidate on the same legislative bill or enactment; and~~

8 ~~—— (iii) a statement, signed as provided in subsection (3)(b), that to the best of the signer's knowledge, the
9 statements made about the other candidate's voting record are accurate and true.~~

10 ~~—— (b) The statement required under subsection (3)(a) must be signed:~~

11 ~~—— (i) by the candidate if the election material was prepared for the candidate and includes information about
12 another candidate's voting record; or~~

13 ~~—— (ii) by the person financing the communication or the person's agent if the election material was not
14 prepared for a candidate.~~

15 (3) All election material described in subsection (1) that includes information about another candidate's
16 voting record must include a reference to the particular vote or votes on which the information is based so that
17 citizens will know what vote is referenced in the communication. The reference must include:

18 (a) the title of the bill or resolution. For the purposes of this subsection (3)(a), the first clause of the bill
19 or resolution's title or a concise abbreviation of the title's substance is sufficient.

20 (b) the year in which the vote was made; and

21 (c) the bill number or resolution number on which the vote was made.

22 (4) If a document or other article of advertising is too small for the requirements of subsections (1)
23 through (3) to be conveniently included, the candidate responsible for the material or the person financing the
24 communication shall file a copy of the article with the commissioner of political practices, together with the
25 required information or statement, at the time of its public distribution.

26 (5) If information required in subsections (1) through (3) is omitted or not printed or if the information
27 required by subsection (4) is not filed with the commissioner, upon discovery of or notification about the omission,
28 the candidate responsible for the material or the person financing the communication shall:

29 (a) file notification of the omission with the commissioner of political practices within 2 business days of
30 the discovery or notification;

1 (b) bring the material into compliance with subsections (1) through (3) or file the information required by
2 subsection (4) with the commissioner; and

3 (c) withdraw any noncompliant communication from circulation as soon as reasonably possible.

4 (6) Whenever the commissioner receives a complaint alleging any violation of subsections (1) through
5 (3), the commissioner shall as soon as practicable assess the merits of the complaint.

6 (7) (a) If the commissioner determines that the complaint has merit, the commissioner shall notify the
7 complainant and the candidate or political committee of the commissioner's determination. The notice must state
8 that the candidate or political committee shall bring the material into compliance as required under this section:

9 (i) within 2 business days after receiving the notification if the notification occurs more than 7 days prior
10 to an election; or

11 (ii) within 24 hours after receiving the notification if the notification occurs 7 days or less prior to an
12 election.

13 (b) When notifying the candidate or campaign committee under subsection (7)(a), the commissioner shall
14 include a statement that if the candidate or political committee fails to bring the material into compliance as
15 required under this section, the candidate or political committee is subject to a civil penalty pursuant to
16 13-37-128."

17 - END -