

1 SENATE BILL NO. 162

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5 TSCHIDA
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7 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CAMPAIGN FINANCE LAWS; REVISING
8 REPORTING REQUIREMENTS APPLICABLE TO RELIGIOUS ORGANIZATIONS IN CAMPAIGNS TO
9 PROTECT THE FREE EXERCISE OF RELIGION AS GUARANTEED BY THE FIRST AMENDMENT OF THE
10 UNITED STATES CONSTITUTION AND ARTICLE II, SECTION 5, OF THE MONTANA CONSTITUTION;
11 REVISING DEFINITIONS; AMENDING ~~SECTION SECTIONS~~ 13-1-101 AND 13-37-233, MCA; AND
12 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
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14 WHEREAS, Article II, section 5, of the Montana Constitution and the First Amendment to the United
15 States Constitution prohibit the state and Congress from making a law that prohibits the free exercise of
16 religion.
17

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
19

20 **Section 1.** Section 13-1-101, MCA, is amended to read:

21 "**13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the
22 following definitions apply:

23 (1) "Active elector" means an elector whose name has not been placed on the inactive list due to
24 failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

25 (2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

26 (3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that
27 is ordinarily not given away free but is purchased.

28 (4) "Application for voter registration" means a voter registration form prescribed by the secretary of

1 state that is completed and signed by an elector, is submitted to the election administrator, and contains voter
2 registration information subject to verification as provided by law.

3 (5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as
4 an optical scan system or other technology that automatically tabulates votes cast by processing the paper
5 ballots.

6 (6) (a) "Ballot issue" or "issue" means a proposal submitted to the people at an election for their
7 approval or rejection, including but not limited to an initiative, referendum, proposed constitutional amendment,
8 recall question, school levy question, bond issue question, or ballot question.

9 (b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by
10 the proper official that the legal procedure necessary for its qualification and placement on the ballot has been
11 completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the
12 secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

13 (7) "Ballot issue committee" means a political committee specifically organized to support or oppose a
14 ballot issue.

15 (8) "Candidate" means:

16 (a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or
17 appointment as a candidate for public office as required by law;

18 (b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained
19 contributions, made expenditures, or given consent to an individual, organization, political party, or committee
20 to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure
21 nomination or election to any office at any time, whether or not the office for which the individual will seek
22 nomination or election is known when the:

23 (i) solicitation is made;

24 (ii) contribution is received and retained; or

25 (iii) expenditure is made; or

26 (c) an officeholder who is the subject of a recall election.

27 (9) (a) "Contribution" means:

28 (i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit,

1 payment, or distribution of money or anything of value to support or oppose a candidate or a ballot issue;

2 (ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or
3 ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;

4 (iii) the receipt by a political committee of funds transferred from another political committee; or

5 (iv) the payment by a person other than a candidate or political committee of compensation for the
6 personal services of another person that are rendered to a candidate or political committee.

7 (b) The term does not mean:

8 (i) services provided without compensation by individuals volunteering a portion or all of their time on
9 behalf of a candidate or political committee or meals and lodging provided by individuals in their private
10 residences for a candidate or other individual; or

11 (ii) the cost of a communication by a religious organization exempt from federal income tax when
12 compliance with Title 13 would burden the organization's sincerely held religious beliefs or practices.

13 (c) This definition does not apply to Title 13, chapter 37, part 6.

14 (10) "Coordinated", including any variations of the term, means made in cooperation with, in
15 consultation with, at the request of, or with the express prior consent of a candidate or political committee or an
16 agent of a candidate or political committee.

17 (11) "De minimis act" means an action, contribution, or expenditure that is so small that it does not
18 trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant
19 enforcement as a campaign practices violation under Title 13, chapter 37.

20 (12) "Election" means a general, special, or primary election held pursuant to the requirements of state
21 law, regardless of the time or purpose.

22 (13) (a) "Election administrator" means, except as provided in subsection (13)(b), the county clerk and
23 recorder or the individual designated by a county governing body to be responsible for all election
24 administration duties, except that with regard to school elections not administered by the county, the term
25 means the school district clerk.

26 (b) As used in chapter 2 regarding voter registration, the term means the county clerk and recorder or
27 the individual designated by a county governing body to be responsible for all election administration duties
28 even if the school election is administered by the school district clerk.

1 (14) (a) "Election communication" means the following forms of communication to support or oppose a
2 candidate or ballot issue:

- 3 (i) a paid advertisement broadcast over radio, television, cable, or satellite;
- 4 (ii) paid placement of content on the internet or other electronic communication network;
- 5 (iii) a paid advertisement published in a newspaper or periodical or on a billboard;
- 6 (iv) a mailing; or
- 7 (v) printed materials.

8 (b) The term does not mean:

- 9 (i) an activity or communication for the purpose of encouraging individuals to register to vote or to
10 vote, if that activity or communication does not mention or depict a clearly identified candidate or ballot issue;
- 11 (ii) a communication that does not support or oppose a candidate or ballot issue;
- 12 (iii) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any
13 broadcasting station, newspaper, magazine, internet website, or other periodical publication of general
14 circulation;
- 15 (iv) a communication by any membership organization or corporation to its members, stockholders, or
16 employees;
- 17 (v) a communication by a religious organization exempt from federal income tax when compliance
18 with Title 13 would burden the organization's sincerely held religious beliefs or practices; or
- 19 ~~(vi)~~ a communication that the commissioner determines by rule is not an election communication.

20 (15) "Election judge" means a person who is appointed pursuant to Title 13, chapter 4, part 1, to
21 perform duties as specified by law.

22 (16) (a) "Electioneering communication" means a paid communication that is publicly distributed by
23 radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other
24 distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does
25 not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the
26 district voting on the candidate or ballot issue, and that:

- 27 (i) refers to one or more clearly identified candidates in that election;
- 28 (ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that

1 election; or

2 (iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

3 (b) The term does not mean:

4 (i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any
5 broadcasting station, newspaper, magazine, internet website, or other periodical publication of general
6 circulation unless the facilities are owned or controlled by a candidate or political committee;

7 (ii) a communication by any membership organization or corporation to its members, stockholders, or
8 employees;

9 (iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in the
10 candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy;

11 (iv) a communication that constitutes a candidate debate or forum or that solely promotes a candidate
12 debate or forum and is made by or on behalf of the person sponsoring the debate or forum; ~~or~~

13 (v) a communication by a religious organization exempt from federal income tax when compliance
14 with Title 13 would burden the organization's sincerely held religious beliefs or practices; or

15 ~~(vi)~~ a communication that the commissioner determines by rule is not an electioneering
16 communication.

17 (17) "Elector" means an individual qualified to vote under state law.

18 (18) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or
19 gift of money or anything of value:

20 (i) made by a candidate or political committee to support or oppose a candidate or a ballot issue; or

21 (ii) used or intended for use in making independent expenditures or in producing electioneering
22 communications.

23 (b) The term does not mean:

24 (i) services, food, or lodging provided in a manner that they are not contributions under subsection

25 (9);

26 (ii) payments by a candidate for personal travel expenses, food, clothing, lodging, or personal
27 necessities for the candidate and the candidate's family;

28 (iii) the cost of any bona fide news story, commentary, blog, or editorial distributed through the facilities

1 of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; ~~or~~
2 (iv) the cost of any communication by any membership organization or corporation to its members or
3 stockholders or employees; or

4 (v) the cost of a communication by a religious organization exempt from federal income tax when
5 compliance with Title 13 would burden the organization's sincerely held religious beliefs or practices.

6 (c) This definition does not apply to Title 13, chapter 37, part 6.

7 (19) "Federal election" means an election in even-numbered years in which an elector may vote for
8 individuals for the office of president of the United States or for the United States congress.

9 (20) "General election" means an election that is held for offices that first appear on a primary election
10 ballot, unless the primary is canceled as authorized by law, and that is held on a date specified in 13-1-104.

11 (21) "Inactive elector" means an individual who failed to respond to confirmation notices and whose
12 name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

13 (22) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

14 (23) (a) "Incidental committee" means a political committee that is not specifically organized or
15 operating for the primary purpose of supporting or opposing candidates or ballot issues but that may
16 incidentally become a political committee by receiving a contribution or making an expenditure.

17 (b) For the purpose of this subsection (23), the primary purpose is determined by the commissioner
18 by rule and includes criteria such as the allocation of budget, staff, or members' activity or the statement of
19 purpose or goal of the person or individuals that form the committee.

20 (24) "Independent committee" means a political committee organized for the primary purpose of
21 receiving contributions and making expenditures that is not controlled either directly or indirectly by a candidate
22 and that does not coordinate with a candidate in conjunction with the making of expenditures except pursuant
23 to the limits set forth in 13-37-216(1).

24 (25) "Independent expenditure" means an expenditure for an election communication to support or
25 oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue
26 committee.

27 (26) "Individual" means a human being.

28 (27) "Legally registered elector" means an individual whose application for voter registration was

1 accepted, processed, and verified as provided by law.

2 (28) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing
3 ballots to all active electors.

4 (29) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee,
5 including a political committee, club, union, or other organization or group of individuals or a candidate as
6 defined in subsection (8).

7 (30) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-
8 307 for a mail ballot election conducted under Title 13, chapter 19.

9 (31) (a) "Political committee" means a combination of two or more individuals or a person other than
10 an individual who receives a contribution or makes an expenditure:

11 (i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a
12 petition for nomination;

13 (ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

14 (iii) to prepare or disseminate an election communication, an electioneering communication, or an
15 independent expenditure.

16 (b) Political committees include ballot issue committees, incidental committees, independent
17 committees, and political party committees.

18 (c) A candidate and the candidate's treasurer do not constitute a political committee.

19 (d) A political committee is not formed when a combination of two or more individuals or a person
20 other than an individual makes an election communication, an electioneering communication, or an
21 independent expenditure of \$250 or less.

22 (32) "Political party committee" means a political committee formed by a political party organization
23 and includes all county and city central committees.

24 (33) "Political party organization" means a political organization that:

25 (a) was represented on the official ballot in either of the two most recent statewide general elections;

26 or

27 (b) has met the petition requirements provided in Title 13, chapter 10, part 5.

28 (34) "Political subdivision" means a county, consolidated municipal-county government, municipality,

1 special purpose district, or any other unit of government, except school districts, having authority to hold an
2 election.

3 (35) "Polling place election" means an election primarily conducted at polling places rather than by
4 mail under the provisions of Title 13, chapter 19.

5 (36) "Primary" or "primary election" means an election held on a date specified in 13-1-107 to nominate
6 candidates for offices filled at a general election.

7 (37) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not
8 been verified as provided by law.

9 (38) "Provisionally registered elector" means an individual whose application for voter registration was
10 accepted but whose identity or eligibility has not yet been verified as provided by law.

11 (39) "Public office" means a state, county, municipal, school, or other district office that is filled by the
12 people at an election.

13 (40) "Random-sample audit" means an audit involving a manual count of ballots from designated races
14 and ballot issues in precincts selected through a random process as provided in 13-17-503.

15 (41) "Registrar" means the county election administrator and any regularly appointed deputy or
16 assistant election administrator.

17 (42) "Regular school election" means the school trustee election provided for in 20-20-105(1).

18 (43) "School election" has the meaning provided in 20-1-101.

19 (44) "School election filing officer" means the filing officer with whom the declarations for nomination
20 for school district office were filed or with whom the school ballot issue was filed.

21 (45) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount
22 duties in school elections.

23 (46) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is
24 designed to:

25 (a) allow election officials, upon examination of the outside of the envelope, to determine that the
26 ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

27 (b) allow it to be used in the United States mail.

28 (47) "Special election" means an election held on a day other than the day specified for a primary

1 election, general election, or regular school election.

2 (48) "Special purpose district" means an area with special boundaries created as authorized by law for
3 a specialized and limited purpose.

4 (49) "Statewide voter registration list" means the voter registration list established and maintained
5 pursuant to 13-2-107 and 13-2-108.

6 (50) "Support or oppose", including any variations of the term, means:

7 (a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or
8 "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election
9 or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to
10 voters in an election; or

11 (b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or
12 ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the
13 nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the
14 passage or defeat of the ballot issue or other question submitted to the voters in an election.

15 (51) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in
16 13-15-206.

17 (52) "Voted ballot" means a ballot that is:

18 (a) deposited in the ballot box at a polling place;

19 (b) received at the election administrator's office; or

20 (c) returned to a place of deposit.

21 (53) "Voter interface device" means a voting system that:

22 (a) is accessible to electors with disabilities;

23 (b) communicates voting instructions and ballot information to a voter;

24 (c) allows the voter to select and vote for candidates and issues and to verify and change selections;

25 and

26 (d) produces a paper ballot that displays electors' choices so the elector can confirm the ballot's
27 accuracy and that may be manually counted.

28 (54) "Voting system" or "system" means any machine, device, technology, or equipment used to

1 automatically record, tabulate, or process the vote of an elector cast on a paper ballot."
2

3 **NEW SECTION. Section 2. Religious organization exemptions to be broadly construed.**

4 Pursuant to the first amendment to the United States constitution and to ensure the consistent application of the
5 law, the commissioner shall broadly construe the exemptions concerning religious organizations provided in 13-
6 1-101(9)(b)(ii), (14)(b)(v), (16)(b)(v), and (18)(b)(v).
7

8 **SECTION 3. SECTION 13-37-233, MCA, IS AMENDED TO READ:**

9 **"13-37-233. Reports to be filed regardless of tax status.** (1) A person that makes an election
10 communication, an electioneering communication, or an independent expenditure shall file reports required by
11 this chapter regardless of the person's tax status under state or federal law.

12 (2) This section does not apply to the exemptions granted to a religious organization under the
13 definitions of a contribution, election communication, electioneering communication, and expenditure as
14 provided in 13-1-101."
15

16 **NEW SECTION. Section 4. Codification instruction.** [Section 2] is intended to be codified as an
17 integral part of Title 13, chapter 37, part 2, and the provisions of Title 13, chapter 37, part 2, apply to [section 2].
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19 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.
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- END -