

## **BALLOT LANGUAGE FOR INITIATIVE NO. 168 (I-168)**

### INITIATIVE NO. 168

#### A LAW PROPOSED BY INITIATIVE PETITION

I-168 increases reporting and disclosure requirements for any person, nonprofit corporation, for-profit corporation, union, political committee, association, unincorporated association, and other organization engaged in election targeted issue advocacy or voter mobilization within 60 days of an election, or engaged in express election advocacy at any time. I-168 defines or redefines targeted issue advocacy, voter mobilization, express election advocacy and incidental committee. These reporting and disclosure requirements will apply to contributions or expenditures of \$500 or more, communications of more than 200 copies, or a mailing to 200 or more addresses. The requirements apply regardless of the tax status of the person or organization that expends the funds.

I-168 costs approximately \$2,386 of state funds biennially for a temporary staff person to manage disclosure and reporting forms.

YES on Initiative I-168

NO on Initiative I-168

## THE COMPLETE TEXT OF INITIATIVE NO. 168 (I-168)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short Title.** [Sections 1 through 7] may be cited as the "Sunshine in Political Spending Act."

NEW SECTION. **Section 2. Purpose.** The purpose of this [this Act] is to bring integrity back to Montana politics through transparency and accountability of political contributions and expenditures. [This Act] is not intended to limit or chill speech as contemplated by judicial precedent; rather, it is intended to fight corruption, protect the democratic process, and balance the rights and responsibilities associated with that process. Transparency is achieved by applying reporting and disclosure requirements to all persons and entities engaging in political activity regardless of political persuasion, tax status or incorporation or organization status. Accountability is achieved by providing Montana voters with timely information regarding the individuals and organizations that finance elections, political media, express election advocacy, election targeted issue advocacy and voter mobilization activities.

**Section 3.** Section 13-1-101, MCA, is amended to read:

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

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

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

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

(4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

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

(6) "Candidate" means:

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

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

- (i) solicitation is made;
  - (ii) contribution is received and retained; or
  - (iii) expenditure is made; or
- (c) an officeholder who is the subject of a recall election.

(7) "Communication" means:

(a) a paid advertisement broadcast over radio, television, cable, or satellite;

(b) paid placement of content on the internet, electronic mail, social media or other electronic communication network;

(c) paid advertisements published in a newspaper or periodical or on a billboard;

(d) paid telephone communications to two hundred or more recipients;

(e) mailings sent or distributed through the United States Postal Service or similar private mail carriers to two hundred or more addresses; or

(f) printed materials exceeding two hundred copies.

~~(7)~~(8) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

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

(b) "Contribution" does not mean:

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

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; ~~or~~

(iv) filing fees paid by the candidate; or

(v) funds received in the normal course of business.

~~(8)~~(9) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

~~(9)~~(10) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections not administered by the county, the term means the school district clerk.

(11)(a) "Election Targeted Issue Advocacy" means any communication other than express election advocacy made within sixty days before an election that:

(i) refers to one or more clearly identified candidates in that election;

(ii) depicts the name, image, likeness or voice of one or more clearly identified candidates in that election; or

(iii) refers to any clearly identified political party, constitutional amendment, ballot initiative, referendum or other question submitted to the voters in that election.

(b) "Election Targeted Issue Advocacy" does not mean a communication that is

(i) exclusively directed, sent or distributed by an organization to individuals who affirmatively consent to be members of the organization, contribute funds to the organization, or pursuant to the organization's articles or bylaws, have the right to vote directly or indirectly for the election of directors or officers, or on changes to bylaws, disposition of all or substantially all of the organization's assets or the merger or dissolution of the organization; or

(ii) for the purpose of promoting or staging any candidate debate, town hall or similar forum to which at least two candidates seeking the same office, or two proponents of differing positions on a referendum or question submitted to the voters, are invited as participants, and which does not promote or advance one candidate or position over another.

~~(10)~~(12) "Elector" means an individual qualified to vote under state law.

~~(11)~~(13) (a) "Expenditure" means:

(i) any election related purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election, express election advocacy, election targeted issue advocacy, or voter mobilization; or

(ii) any other transfer of funds, assets, services, or anything of value to a person, group, association, corporation whether organized for profit or not for profit, labor union, political committee, or any other entity that is used for express election advocacy, election targeted issue advocacy, or voter mobilization, whether the communication or expenditure is made by the recipient of the expenditure or by a third party.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection ~~(7)~~ (8);

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

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(14) "Express Election Advocacy" means any communication made at any time that:

(a) contains words such as "vote," "oppose," "support," "elect," "defeat," or "reject," which call for the nomination, election or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more constitutional amendments, ballot issues, referenda or other questions submitted to voters at any election; or

(b) refers to or depicts one or more clearly identified candidates, political parties, constitutional amendments, ballot issues, referenda or other questions submitted to the voters in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election or defeat of such candidates in an election, the election or defeat of such political parties, or the passage or defeat of such constitutional amendments, ballot issues, referenda or other questions submitted to the voters in any election.

~~(12)~~(15) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

~~(13)~~(16) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

~~(14)~~(17) "Inactive elector" means an individual who failed to respond to confirmation notices and whose name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

~~(15)~~(18) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

(19) (a) "Incidental committee" means a political committee that is not specifically organized for a primary purpose of influencing elections but that may incidentally become a political committee by making aggregate contributions or expenditures of \$500 or more to support or oppose a candidate or ballot issue or both, or for express election advocacy, election targeted issue advocacy, or voter mobilization.

(b) For the purposes of this subsection, "primary purpose" is determined based on criteria that include allocation of budget, staff, or members' activity and the statement of purpose or goals of the person or individuals that form the committee.

~~(16)~~(20) "Individual" means a human being.

~~(17)~~(21) (a) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.

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

~~(18)~~(22) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

~~(19)~~(23) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

~~(20)~~(24) "Person" means an individual, for-profit corporation, nonprofit corporation, association, unincorporated association, firm, partnership, cooperative, committee, club, union, entity organized under Title 35, political organization as defined in 26 U.S.C. § 527, or other organization or group of individuals or a candidate as defined in subsection (6).

~~(21)~~(25) "Place of deposit" means a location designated by the election administrator pursuant to 13-19-307 for a mail ballot election conducted under Title 13, chapter 19.

~~(22)~~(26) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

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

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

(c) as an earmarked contribution; or

(d) for express election advocacy, election targeted issue advocacy, or voter mobilization.

~~(23)~~(27) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

~~(24)~~(28) "Polling place election" means an election primarily conducted at polling places rather than by mail under the provisions of Title 13, chapter 19.

~~(25)~~(29) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

~~(26)~~(30) "Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not been verified as provided by law.

~~(27)~~(31) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose identity or eligibility has not yet been verified as provided by law.

~~(28)~~(32) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

~~(29)~~(33) "Random-sample audit" means an audit involving a manual count of ballots from designated races and ballot issues in precincts selected through a random process as provided in 13-17-503.

~~(30)~~(34) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

~~(31)~~(35) "School election" has the meaning provided in 20-20-101.

~~(32)~~(36) "School election filing officer" means the filing officer with whom the declarations for nomination for school district office were filed or with whom the school ballot issue was filed.

~~(33)~~(37) "School recount board" means the board authorized pursuant to 20-20-420 to perform recount duties in school elections.

~~(34)~~(38) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:

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

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

~~(35)~~(39) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

~~(36)~~(40) "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

~~(37)~~(41) "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence address has changed within the county.

~~(38)~~(42) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

~~(39)~~(43) "Voted ballot" means a ballot that is:

- (a) deposited in the ballot box at a polling place;
- (b) received at the election administrator's office; or
- (c) returned to a place of deposit.

(44) "Voter mobilization" means activities conducted within sixty days of an election to encourage potential voters to register to vote or vote, including voter registration activity, get-out-the-vote activity and voter identification as defined in 11 CFR § 100.24(a), voter education and voter engagement.

~~(40)~~(45) "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot."

**Section 4.** Section 13-37-226, MCA, is amended to read:

**"13-37-226. Time for filing reports.** (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports electronically as follows:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March, April, July, August, and September;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of \$200 or more if received between the 10th day before the election and the day of the election;

(e) not more than 20 days after the date of the election; and

(f) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in [13-37-228](#)(3).

(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which the text of the proposed ballot issue is submitted for review and approval pursuant to [13-27-202](#) during the year or years prior to the election year that an issue is or is expected to be on the ballot;



(b) on the 10th day of March and on the 10th day of each subsequent month through September in each year that an election is to be held;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of \$500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in [13-37-228\(3\)](#).

(3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 12th day preceding the date on which an election is held;

(b) within 48 hours after receiving a contribution of \$100 or more if received between the 17th day before the election and the day of the election. The report under this subsection (3)(b) must be made by mail or by electronic communication to the commissioner pursuant to [13-37-225](#).

(c) not more than 20 days after the date of the election; and

(d) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in [13-37-228\(3\)](#).

(4) Candidates for any other public office and political committees that are specifically organized to support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds \$500, except as provided in [13-37-206](#).

(5) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file reports:

(a) ~~a report~~ on the 12th day preceding the date of an election in which it participates by making an expenditure;

(b) ~~a report~~ within 24 hours of making an expenditure or incurring a debt or obligation of \$500 or more for election material described in [13-35-225\(1\)](#) if made between the 17th day before the election and the day of the election;

(c) ~~a report~~ not more than 20 days after the date of the election in which it participates by making an expenditure; and

(d) ~~a report~~ on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

(6) ~~The commissioner may promulgate rules regarding the extent to which organizations that are incidental political committees shall report their politically related activities in accordance with this chapter.~~ An incidental committee shall file reports:-

(a) two days before the deadlines specified in subsections (2)(a), (b), (c), (e) and (f), when applicable; or

(b) two days before the deadlines specified in subsection (3)(a), and (b), for an incidental committee that makes contributions or expenditures to a state district candidate, to a local candidate or issue, or to a political committee that is specifically organized to support or oppose a state district candidate or a local candidate or issue.

(7) Except as provided in subsections (1)(d), (2)(d), (3)(b), and (5)(b), all reports required by this section must be complete as of the fifth day before the date of filing as specified in [13-37-228\(2\)](#) and this section.”

**Section 5.** Section 13-37-228, MCA, is amended to read:

“**13-37-228. Time periods covered by reports.** Reports filed under [13-37-225](#) and [13-37-226](#) must be filed to cover the following time periods even though no contributions or expenditures may have been received or made during the period:

(1) The initial report must cover all contributions received or expenditures made by a candidate or political committee prior to the time that a person became a candidate or a political committee, as defined in [13-1-101](#), until the fifth day before the date of filing of the appropriate initial report pursuant to [13-37-226\(1\)](#) through ~~(5)(6)~~. Reports filed by political committees organized to support or oppose a statewide ballot issue must disclose all contributions received and expenditures made prior to the time an issue becomes a ballot issue by transmission of the petition to the proponent of the ballot issue or referral by the secretary of state even if the issue subsequently fails to garner sufficient signatures to qualify for the ballot.

(2) Subsequent periodic reports must cover the period of time from the closing of the previous report to 5 days before the date of filing of a report pursuant to [13-37-226\(1\)](#) through ~~(5)(6)~~. For the purposes of this subsection, the reports required under [13-37-226\(1\)\(d\)](#), (2)(d), (3)(b), and (5)(b) are not periodic reports and must be filed as required by [13-37-226\(1\)\(d\)](#), (2)(d), (3)(b), or (5)(b), as applicable.

(3) Closing reports must cover the period of time from the last periodic report to the final closing of the books of the candidate or political committee. A candidate or political committee shall file a closing report following an election in which the candidate or political committee participates whenever all debts and obligations are satisfied and further contributions or expenditures will not be received or made that relate to the

campaign unless the election is a primary election and the candidate or political committee will participate in the general election.”

**NEW SECTION. Section 6. Disclosure requirements for incidental committees.** (1) An incidental committee making an expenditure or contribution, as defined in 13-1-101 shall file a statement of organization as required by 13-37-201 and reports as required by 13-37-225 and 13-37-226 disclosing the information required by 13-37-229 and 13-37-230.

(2) Incidental committees that maintain a separate, segregated fund for the purpose of making expenditures or receiving contributions in Montana, shall disclose in the reports required by subsection (1), all expenditures and contributions, donations, or funds received from a person prior to the reporting date that are maintained in the separate, segregated fund.

(3) Incidental committees that do not maintain a separate, segregated fund for the purpose of making expenditures or receiving contributions in Montana, shall disclose in the reports required by subsection (1), all expenditures made prior to the reporting date, and shall disclose:

(a) the ten persons who, during the one year period immediately preceding the reporting date, made the ten largest aggregate contributions or payments to the incidental committee; or

(b) all persons who, at any time during the one year period immediately preceding the reporting date:

(i) held a 10% or greater ownership interest in the incidental committee organized as a person other than an individual; or

(ii) if there are no persons with a 10% or greater ownership interest, the officers and members of the board of directors or members of the governing body of the incidental committee organized as a person other than an individual.

(c) The commissioner may promulgate rules and create reporting and disclosure forms in accordance with this chapter.

**NEW SECTION. Section 7. Reports to be filed regardless of tax status.** Reports required by this chapter must be filed by a person that makes an expenditure or contribution regardless of the person's tax status under state or federal law.

**NEW SECTION. Section 8. Codification instruction.** [Sections 6 and 7] are intended to be codified as an integral part of Title 13, chapter 37, part 2, and the provisions of Title 13, chapter 37, part 2, apply to [sections 6 and 7].

**NEW SECTION. Section 9. Saving clause.** [This Act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this Act].

NEW SECTION. **Section 10. Severability.** If a part of [this Act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this Act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 11. Effective date.** [This Act] is effective upon approval by the electorate.