

COMMISSIONER OF  
POLITICAL PRACTICES



STATE OF MONTANA

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February 20, 2018

Mr. Russ Doty  
[rd@mtcares.org](mailto:rd@mtcares.org)

Re: COPP-2018-CRL-001

Dear Mr. Doty;

We write in response to your recent inquiry on the following questions:

1. If an organization like the Montana Association of Christians, a local or state political party organization, or 350.org, etc. endorses or opposes, a ballot initiative, do they have to register as a ballot committee?
2. Does it make any difference if they do nothing more than send notice of their endorsement or opposition to members via email or their normal monthly publications?
3. Does it make any difference if they do not formally endorse, but recommend that their members:
  - a. sign to put the initiative on the ballot or vote for it;
  - b. do not sign to put the initiative on the ballot or vote for it; or
  - c. consider signing to put the initiative on the ballot or voting for it?
4. Is there any prohibition against disseminating false information about a ballot initiative?

It is not the endorsement of or opposition to a ballot issue which creates the obligation to report and disclose to Montanans. It is the acceptance of contributions and/or the making of expenditures in excess of \$250 that triggers the obligation, Mont. Code Ann. §13-1-101(31)(d).

A ballot issue committee is defined as "a political committee specifically organized to support or oppose a ballot issue", Mont. Code Ann. § 13-1-101(7). A political committee is defined as "a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure", Mont. Code Ann. § 13-1-101(31)(a). The type of political committee that is formed depends on the "primary purpose" of the organization which accepts the contribution or makes the expenditure(s).

Therefore, a political party organization would report any expenditures<sup>1</sup> on the ballot issue on their normal campaign finance reports. Membership organizations and corporations do have an exemption from reporting and disclosing the costs associated with a membership communication, Mont. Code Ann. § 13-1-101(14)(b)(iv) and (16)(b)(ii).

The examples you provided of an email or monthly newsletter notifying their membership of their endorsement or opposition to a ballot issue would most likely be exempt from reporting and disclosure. If that newsletter was pushed out to recipients beyond their membership, once the aggregate \$250 expenditure trigger was breached, the membership organization or corporation would be subject to reporting and disclosure under Montana law. See e.g. *Fitzpatrick v. Kantorowicz*, COPP-2016-CFP-019 and *McKamey v. Pinocci*, COPP-2016-CFP-020.

If the organization does not formally endorse or oppose a ballot initiative, the inquiry still centers on who the organization is communicating to. Activities communicating solely to their membership are likely exempt, but any amplification of that message beyond its membership may become subject to reporting and disclosure.

There is no law in the Commissioner's jurisdiction that prohibits disseminating false information about a ballot issue. Our right to freely speak out regarding political issues or candidates, even falsely, is at the very core of the First Amendment to the U.S. Constitution. The only solution that the Courts have come up with is with speech that response to the false information and sets the record straight.

"The remedy for speech that is false is speech that is true.... The response to the unreasoned is the rational; to the uninformed, the enlightened; to the straightout lie, the simple truth<sup>2</sup>.... Society has the right and civic duty to engage in open, dynamic, rational discourse. These ends are not well served when the government seeks to orchestrate public discussion through content-based mandates."

*United States v. Alvarez*, 567 U.S. 709,727-28, 135 S. Ct. 2537, 2550 (2012).

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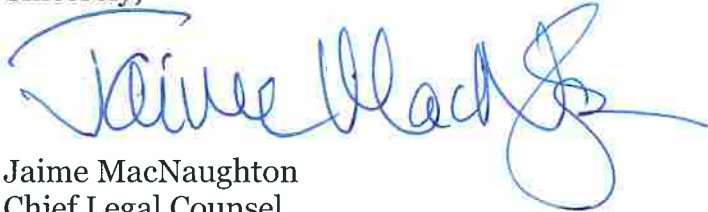
<sup>1</sup> Election communications support or oppose a candidate or ballot issue, Mont. Code Ann. § 13-1-101(14). Electioneering communications are a paid communication that does not support or oppose a candidate or ballot issue, but which refers to a clearly identified candidate or ballot issue, distributed in the days leading up to an election, and can be received by more than 100 voters in a district voting on the issue, Mont. Code Ann. § 13-1-101(16). The relevant dates for the 2018 election cycle are March 12 through June 5, 2018 and August 13 through November 6, 2018. Please see COPP-2016-AO-005 for a detailed discussion of electioneering communications.

<sup>2</sup> Citing *Whitney v. California*, 274 U.S. 357, 377, 47 S. Ct. 641, 71 L. Ed. 1095 (1927) (Brandeis, J., concurring).

The reason that our laws require an attribution on communications, coupled with reporting and disclosure of contributions received and expenditures made, is so that the public will have access to information about who is trying to influence their vote at the ballot box.

Thank you for your inquiry, and we hope this clarifies the issues for you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jaime MacNaughton". The signature is fluid and cursive, with a large, stylized initial "J" and "M".

Jaime MacNaughton  
Chief Legal Counsel,  
Office of the Commissioner of Political Practices