

THE STATE OF MONTANA

Commissioner of Political Practices
1205 Eighth Avenue
Post Office Box 202401
Helena, MT 59620-2401
Phone: 406-444-2942
Fax : 406-444-1643
www.politicalpractices.mt.gov

Campaign Finance and Practices

Complaint Form (10/09)

FOR OFFICE USE ONLY

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2014 NOV -3 P 1:49

COMMISSIONER OF
POLITICAL PRACTICES

HAND DELIVERED

CERTIFIED MAIL

SIGNED/NOTARIZED

Type or print in ink all information on this form except for verification signature

Person bringing complaint (Complainant):

Complete Name Jeff Essmann
Complete Mailing Address P.O. Box 80945
Billings, MT 59108-0945
Phone Numbers: Work _____ Home _____

Person or organization against whom complaint is brought (Respondent):

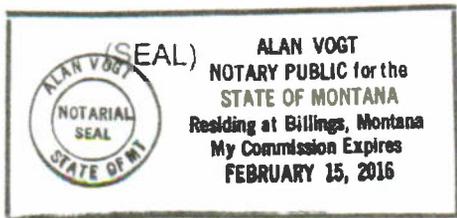
Complete Name Linda McCulloch, et al
Complete Mailing Address 1301 E 6TH Ave.
Helena, MT 59602
Phone Numbers: Work _____ Home _____

Please complete the second page of this form and describe in detail the facts of the alleged violation.

Verification by oath or affirmation

State of Montana, County of Yellowstone

I, Jeff Essmann, being duly sworn, state that the information in this Complaint is complete, true, and correct, to the best of my knowledge and belief.



[Signature]
Signature of Complainant

Subscribed and sworn to before me this 3rd day of November, 2014.

[Signature]
Notary Public

My Commission Expires: 2-15-16

Statement of facts:

Describe in detail the alleged violation(s) and cite the statute or statutes you believe have been violated. Please attach copies of documentary evidence to support the facts alleged in your statement.

If the space provided below is insufficient, you may attach additional pages as necessary.

See Attached: Complaint and Exhibits

Complaints must be:

- signed
- notarized
- delivered in person or by certified mail.

COMPLAINT OF CAMPAIGN PRACTICES VIOLATION
TO THE MONTANA OFFICE OF POLITICAL PRACTICES,
JONATHAN MOTL, COMMISSSIONER

No. _____

JEFF ESSMANN, Individually,

Complainant,

v.

SECRETARY OF STATE LINDA
McCULLOCH, and alternatively or in
conjunction there with JOHN or JANE
DOE EMPLOYEES in the OFFICE OF
THE SECRETARY OF STATE,

Respondent.

Case no. _____

COMPLAINT
VIOLATION OF MCA § 13-35-
226(4) and OTHER
PROVISIONS.

COMES NOW the Complaint Jeff Essmann, P.O. Box 80945, Billings, MT 59108-0945, in his individual capacity, and files this complaint pursuant to MCA § 13-37-111 and ARM 44.10.307, together with evidentiary material, against Secretary of State Linda McCulloch, and/or any employees responsible for the email/newsletter attached hereto. The address of the alleged violator, Linda McCulloch, Respondent(s), is Office of the Montana Secretary of State, Capitol Station, 1301 E. 6th Avenue, Helena, MT 59620.

ISSUE PRESENTED

Secretary of State Linda McCulloch's office, through an email/newsletter, advocated a position with respect to a 2014 ballot issue in violation of Montana law which prohibits public entities from influencing elections by supporting or opposing ballot issues.

FACTS

1) SOS Email/Newsletter [Exhibit 1] and Letter from SOS [Exhibit 2].

In her “2014 Summer Edition” of the Montana Secretary of State’s email/newsletter, Linda McCulloch was prominently featured and made statements advocating a position on a pending ballot issue which is qualified for the 2014 ballot. (See Attached Email/Newsletter, Exhibit 1). In the section “Election Day Voter Registration, Linda McCulloch, and her office, through use of state resources, makes the following statement which went out to, 100,081 Montanans [See Exhibit 2] advocating for continued same-day voter registration:

“We are lucky to live in a state that allows folks to register to vote right up through the close of polls on Election Day. It’s a smart law that guarantees no voter is denied their right to cast a ballot.

Since 2006, more than 29,000 Montanans have registered and voted on Election Day. We added nearly 1,000 voters to the list this year. If you move, or need to update your voter registration for any reason, know that your right to vote is protected under current law.”

Immediately below that statement, on the very same page is the section “2014 State Ballot Issues” which includes the following language:

“LR-126: Referendum to end Election Day voter registration”

2) 2014 Montana Voter Information Pamphlet and Other Neutral Government Descriptions of LR-126 [Exhibits 3, 4, and 5]:

The Montana Voter Information Pamphlet, published by SOS Linda McCulloch, for 2014 shows LR-126 is a “Referendum to revise close of late voter registration.” The legislation placing LR-126 on the ballot describes the measure as “An Act protecting the integrity of Montana elections by ending late voter registration on the Friday before Election Day and eliminating Election Day voter registration.” The statement describing LR-126, prepared for the ballot and VIP, reads “LR-126 changes the deadline for late voter registration from the close of polls on election day to 5:00 p.m. on the Friday before the election.” (See also, Exhibit 4, BALLOT LANGUAGE FOR LEGISLATIVE REFERENDUM NO. 126 from SOS official site).

The Secretary’s official page for 2014 Proposed Ballot Issues, likewise, describes LR-126 as a “Referendum to revise close of late voter registration.” (See Exhibit 5).

3) Advocacy Statements by Proponents and Opponents of LR-126 [Exhibits 3 and 6].

a. From 2014 Montana VIP [Exhibit 3]

Proponents of LR-126 describe it as “[e]nding voter registration prior to election day” and take the position that passage will allow election administrators to focus on administering fair and transparent elections.

Opponents describe the measure as “a bad idea” that takes away [ends or eliminates] the right to register” [and vote] on Election Day. Opponents describe the current law as “work[ing] well for nearly a decade [2006 to 2014], “with 28,000 [plus 1,000 from primary] eligible Montana voters using it to cast a ballot.” The Opponent’s rebuttal continues to describe significant impacts from “eliminating” the “law”

allowing “Election Day voter registration” for” over “28,000” voters.

b. From Other Advocates (Opponents) [Exhibit 6]

All of the Opponents’ advocacy statements follow a similar pattern. The primary ballot committee for the Opponents of LR-126 describes. Montana Conservation Voters describes Montana’s current election system as work[ing] well, but that LR-126 “ends....Election Day voter registration” and that it was used by 29,000 Montanans for “nearly 10 years.” MontPIRG maintains that LR-126 seeks to “eliminate (end) Election Day voter registration,” that “28,000 voters have taken advantage of same day registration,” and that Montana’s [current] elections system [law] works well. The Montana ACLU provides information that “[s]ince Election Day voter registration passed a decade ago, thousands of Montanans have taken this opportunity” to register and vote, that “[o]ver 28,000 eligible Montana voters have used Election Day voter registration,” and that “[i]t’s worked well and we must make sure it continues.

The primary political committee, Montanans for Free and Fair Elections, carries the same messages, using the same words, and includes participation by “Linda McCulloch, Montana Secretary of State.” (See Exhibit 7).

DISCUSSION

The Secretary can voice her opinion and participate in such the campaign, [MCA § 13-35-226(4)] but she cannot carry that message forward to voters using the valuable resources of her office and staff [MCA § 2-2-121]. The Secretary leaves the protections afforded to her free speech rights when she uses state resources, including mailing lists, staff and equipment to communicate a political message prior

to an election. Communicating her personal opinion in this manner, and via the use of state resources, available only to her, is, likewise, not excluded because she exceeds merely communicating the effects the measure might have on government operations.

LR-126 deals precisely with the issue of continuing voter registration through the close of the polls on Election Day. LR-126 Proponents characterize the measure as promoting integrity and moving the close of registration and they support changing the law. Opponents characterize the measure as ending or eliminating Election Day voter registration and that the current law is working well.

When the Secretary calls the current statute a “smart law,” she obviously takes a position regarding the issue, and favors protecting current law which certainly advocates a position and provides direction on LR-126. This is especially true when you read the two email/newsletter sections together, “Election Day Voter Registration” and immediately following, “2014 State Ballot Issues....” LR-126: Referendum to end Election Day voter registration.

The advocacy could not be more obvious. The positioning and references are unmistakable. Her choice of words is identical, or nearly identical, to the words used by LR-126 opponents in the 2014 Voter Information Pamphlet, and on their websites.

While conducting other functions of her office, the Secretary and her staff, were able to avoid using language adopted by proponents and opponents involved in an ongoing political debate. (See Exhibit 3 and 4). But when it counted most, and in close proximity to the election, the Secretary and her staff emailed a newsletter to 100,081 Montanans clearly supporting continuation of the current law, and therefor

advocating against LR-126, and replicating the message being promoted by Opponents.

LEGAL ANALYSIS

1) Prohibition on Advocacy by Secretary, MCA § 13-35-226

This advocacy is prohibited under Montana law. The relevant statute, MCA § 13-35-226(4), provides:

“Unlawful acts of employers and employees....(4) A public employee may not solicit support for or opposition to....the passage of any ballot issue while on the job or at the place of employment.

(5) A person who violates this section is liable in a civil action authorized by 13-37-128....”

2) Exemption provided in MCA § 13-35-226(4) for expression of personal political beliefs is subject to MCA § 2-2-121.

While MCA § 13-35-226(4) goes on to provide that the section does not restrict the rights of a public employee to perform activities incidental to or authorized by law, or to express personal political views, the section clearly makes exercising any such right conditioned on and “subject to” MCA § 2-2-121, which, in relevant part, provides:

2-2-121. Rules of conduct for public officers and public employees. (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:
(a) subject to subsection (7), use public time, facilities,

equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;.....

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) With respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

....

(b) A state officer may not use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to produce, print, or broadcast any advertisement or public service announcement in a newspaper, on

radio, or on television that contains the state officer's name, picture, or voice except in the case of a state or national emergency if the announcement is reasonably necessary to the state officer's official functions or in the case of an announcement directly related to a program or activity under the jurisdiction of the office or position to which the state officer was elected or appointed....

3) Failure results in other violations of reporting laws MCA §§ 13-37-201 and 225 through 231.

The provisions relate back to the violations of MCA § 13-35-226, and enforced pursuant to MCA § 13-37-128. The advocacy does not contain the necessary disclaimer which violates MCA § 13-35-225, and result in formation of a political committee which has not registered with your office. This is a violation of 13-37-201, and the Secretary of State's office has missed the filing deadline for at least one periodic report which violates the disclosure provisions contained in MCA §§ 13-37-225, 226, 228, 229, 230 and 231.

4) Additional consequences for Secretary of elected public official MCA § 13-35-106 [Removal] and §13-35-107 [Voiding election]; § 13-35-217 [Unlawfully influencing electors]; and §§ 13-35-204 and 45-7-401 [Official misconduct].

There are additional consequences for a public official, MCA § 13-35-106 provides that an officer will be unable to maintain her office as a result of a conviction, and MCA § 13-35-107 allows for the voiding of the election if her recklessness affects the outcome. Another provision provides that an officer, acting in their official capacity may not induce or attempt to induce any elector. (See, MCA § 13-35-217). Lastly, there are also consequences relating to official misconduct which include review pursuant to MCA §§ 13-35-204 and 45-7-401.

5) Penalty for violating campaign practices MCA § 13-37-128, and associated costs to taxpayers for apologies and potential for special election.

a. Lists have value and result in contributions and create committees.

In accordance with numerous COPP decisions, lists, such as the one used here by the Secretary, have significant value to campaigns. In fact, one could certainly argue that given the Secretary's position as Montana's chief election official [MCA § 13-1-201] a list maintained by her quite likely has a greater value than any other list. Anything of such considerable value is a contribution pursuant to Montana law, [MCA § 13-1-101(7)] and since it occurs because two or more people, or a person other than an individual, made it a political committee is created [MCA § 13-1-101(22)].

b. Calculating penalties for campaign practice violations

MCA § 13-37-128, provides that:

13-37-128. Cause of action created. (1) A person who intentionally or negligently violates any of the reporting provisions of this chapter.....is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in [13-37-124](#) and [13-37-125](#) for an amount up to \$500 or three times the amount of the unlawful contributions or expenditures, whichever is greater.

(2) A person who makes or receives a contribution or expenditure in violation.....or who violates [13-35-226](#) is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in [13-37-124](#) and [13-37-125](#) for an amount up to \$500 or three times the amount of the unlawful contribution or expenditure, whichever is greater.

the Commissioner order the Secretary of State and her office to issue to send an email today to all 100,000 plus recipients of the earlier “newsletter” that includes the following correction and apology:

Dear Montana voter,

You were a recipient of an email newsletter that was distributed to over 100,000 recipients during the holding of an election on a ballot issue named LR 126 which revises the close of voter registration to the Friday before election day.

In the email newsletter my office incorrectly included a statement that advocated for continuance of the current law which allows voter registration on election day. That advocacy is not permitted by Montana law with the use of state facilities and funds and I apologize for that violation.

Please understand that it is the official position of the office of the Secretary of State to neither support or oppose the ballot issue LR 126. I recommend to each and every voter to review the arguments contained in the Voter Information Pamphlet in order to decide for themselves how to vote on the issue.

Sincerely,

Linda McCulloch

Secretary of State

I have included copies of the various statutes cited in this complaint for the convenience of the reader [Exhibit 9].

Thank you for your time and prompt attention to this critical matter.

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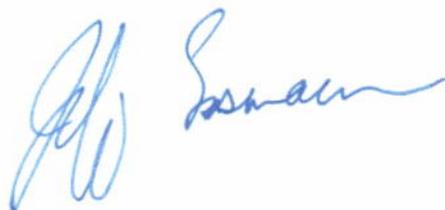
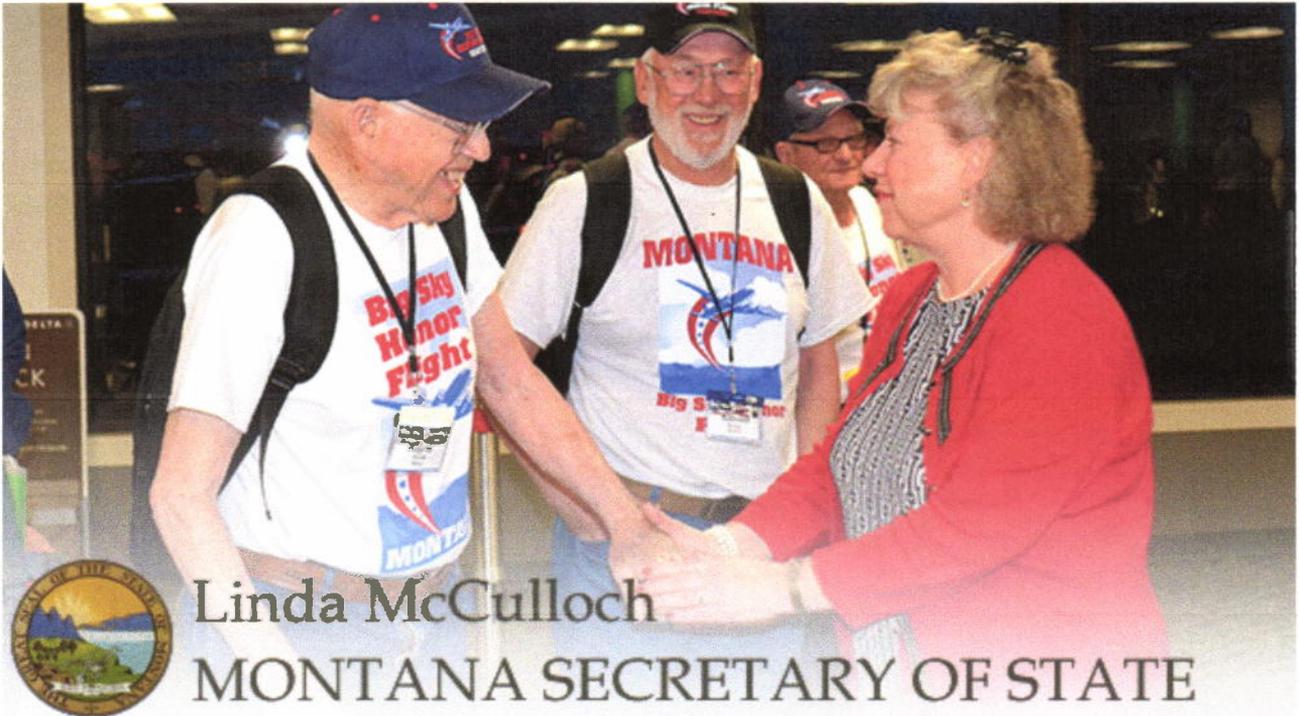
A handwritten signature in blue ink, appearing to read "Linda McCulloch".

EXHIBIT 1



2014 Summer Edition

In This Issue

- [Election Day Facts](#)
- [Get Registered](#)
- [Late Voter Registration](#)
- [State Ballot Issues](#)
- [My Voter Page](#)
- [Voting Options](#)
- [Election Judge Training](#)

Over the years, I have had the pleasure of welcoming home Montana veterans from a visit to their memorial in Washington, D.C. The trip is provided by Big Sky Honor Flight in recognition of their courage, sacrifice and commitment to our country.

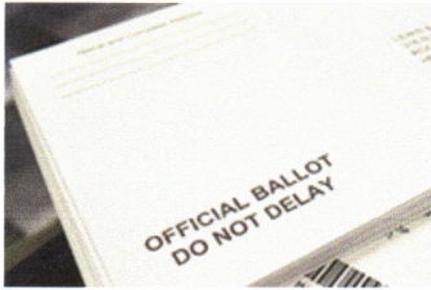
This Independence Day, let us honor our freedoms by honoring all those who work and have worked to make our way of life possible. Shake someone's hand, volunteer in your community, and celebrate your right to vote by preparing for the General Election on November 4th.



Follow SOS news on Facebook and Twitter!



Linda McCulloch



Election Day is November 4

The 2014 General Election will take place on Tuesday, November 4. The ballot will include races for United States Senator, United States Representative, Public Service Commission, and more. There will also be local races and ballot issues specific to your county. Don't miss the opportunity to vote and make a difference in your community.

[View 2014 Primary Election results >>](#)

Register to Vote - It's Easy!

There are many ways to register to vote in Montana. Anyone who meets the [eligibility requirements](#) may visit their county election office and complete a voter registration application. You may also [print an application](#) from our website and return it by mail or in person to the county election office.



Another option is to fill out a form when getting or renewing your Montana driver's license or state ID. Registrations must be done in person at the county election office or at the location designated by the county election administrator in the 30 days leading up to the election.

[Learn more about regular and late voter registration >>](#)



Election Day Voter Registration

We are lucky to live in a state that allows folks to register to vote right up through the close of polls on Election Day. It's a smart law that guarantees no voter is denied their right to cast a ballot.

Since 2006, more than 29,000 Montanans have registered and voted on Election Day. We added nearly 1,000 voters to the list this year. If you move, or need to update your voter registration for any reason, know that your right to vote is protected under current law.

[Check the status of your voter registration record with My Voter Page \(MVP\) >>](#)

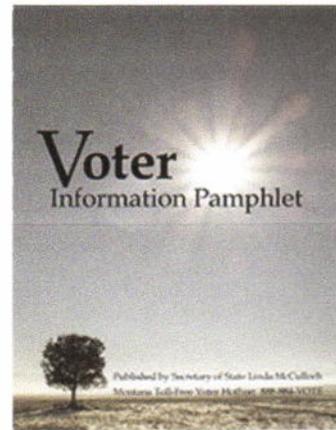
2014 State Ballot Issues

The Montana Legislature has referred two ballot issues to the November General Election ballot. Additional [citizen-proposed issues](#) may also appear on the ballot, if a sufficient number of certified signatures are filed with our office by July 18.

- [C-45](#): Constitutional amendment to rename the State Auditor
- [LR-126](#): Referendum to end Election Day voter registration 

Voter Information Pamphlet

As a resource to voters, the Secretary of State's Office publishes the Voter Information Pamphlet (VIP) which contains detailed information about each qualified ballot issue. The VIP will be mailed to every household with at least one registered voter, and will contain the ballot language, complete text and committee arguments "for" and "against" each issue. Additional copies of the VIP and accessible formats will be available by request.



Keep an eye on your mailbox for this photo in October! Jason O'Neil of Helena has won our 2014 Primary Election Photo Contest, which means his artwork titled "That Solo Tree" will appear on the cover of the VIP. Thank you to all those who took the time to enter the contest. We received many exceptional entries, but I could only choose one!



My Voter Page

My Voter Page is your one-stop shop for personal voting information. By entering your name and birth date, you can check your voter registration record, find the location of your polling place, track the status of your absentee ballot, view a precinct-specific sample ballot, and more. MVP is available online and as an App on select smartphones.

[Go to My Voter Page >>](#)

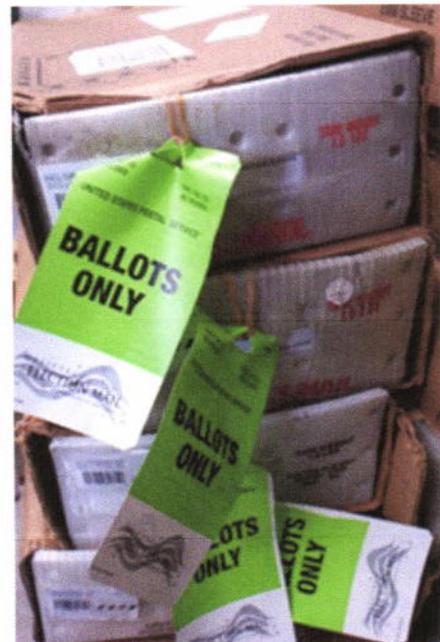
Voting Options

You may vote by absentee ballot, or in person at the polls. Absentee ballots for the General Election will be mailed to voters on the Absentee List on DATE. To sign up, fill out and return an [Absentee List Application](#) or [Application for Absentee Ballot](#).

Every polling place and county election office is equipped with an AutoMARK voting machine. The equipment is designed to assist voters with a visual or mobility impairment. [More >>](#)

Absent military and overseas citizen electors can register to vote, request an absentee ballot, and vote their ballot electronically. The state's Electronic Absentee System is for voters covered under the federal Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA). [More >>](#)

If you experience a sudden illness or emergency that falls between 5:00 p.m. on the Friday preceding the election and 8:00 p.m. on Election Day, you may contact your county election administrator to request that an absentee ballot be delivered to you. [Contact List >>](#)





Election Judge Training

As an election judge in Montana, you will help ensure the state's elections remain secure, fair, accurate and accessible to all voters. Your responsibilities would include supervising the conduct inside polling places and helping Montanans cast their ballot both privately and independently. If you would like to sign up to be part of the dedicated team that makes fair and accurate elections possible in Montana,

contact your [county election administrator](#). Training deadlines vary by county.

Mark Your Calendar and VOTE!

2014 Federal General Election: Tuesday, November 4

It's Your Vote. Your Voice. Your Montana.

You are subscribed as %%emailaddress%%

This newsletter is a service of Montana Secretary of State Linda McCulloch. Your email was obtained because you used a service provided by this office or you opted to subscribe to email.

Should you no longer wish to receive these messages please unsubscribe.

To ensure delivery of this newsletter to your Inbox and to enable images to load in future mailings, please add newsletter@montanasecretaryofstate.net to your email address book or safe senders list.

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State Capitol Building, 1301 E. 6th Avenue, Helena, MT 59620, Tel: 406.444.2034

[View our Privacy Policy.](#)

EXHIBIT 2



MONTANA SECRETARY OF STATE

LINDA McCULLOCH

October 30, 2014

DELIVERED VIA EMAIL

Dear Mr. Marbut:

Thank you for email concerning the use of email addresses found on registration applications and the Secretary's quarterly newsletter.

Under the Federal Help America Vote Act of 2002 (HAVA), each state was required to create and maintain a statewide voter registration system that can be accessed by county election officials on a real-time basis. See Mont. Code Ann. § 13-2-107. Montana's system is fully HAVA compliant, and is maintained and supported by the Secretary of State's office and by State ITSD.

While this office maintains the system with centralized IT hosting, county election officials are the users of the system and only they may enter or change data in the system. An advisory council made up of county election administrators from across the state is in charge of making all changes to the system and since 2005 has convened three to four times a year to make enhancements and changes and to test and approve them.

As far as the availability of email addresses, Missoula County officials are correct that an email address, if entered on the registration application by an applicant and then entered into the system, is not a field that is currently captured in any extracts or reports. And your concern that the Secretary is providing email addresses to your opponent is totally unwarranted. This office has not provided email addresses to any candidates.

Additionally, no data from the statewide voter registration system is used to develop the mailing list for the Secretary of State's newsletter. Specifically in response to your questions posed pursuant to Article II, Section 9 the newsletter was emailed to 100,081 email addresses. The newsletter is emailed to members of the public who use online services provided by the Secretary of State's Office--business services and notary--as well as those who subscribe specifically to receive our newsletter. We do not sell nor distribute any lists of email addresses provided to this office, and all recipients are may opt out if they so choose.

The Secretary, through her newsletter and many other public statements, has been informing the public about Montana's election laws for her entire tenure. This includes providing to voters information about the ability of a voter to register on election day. It is well within her job as Montana's chief elections officer to let the public know not only that we have election day

registration in Montana, but also that we are one of the few states that has such an opportunity for voters. And indeed, on many occasions dating back to when the Secretary first began publishing her newsletter in late 2009, the newsletter has apprised voters of their ability to register on election day.

Your reference to the prohibition on the use of state facilities can be found in Mont. Code Ann. § 2-1-101, and states that the Secretary “may not use state facilities or funds...to solicit support for, or opposition to, a ballot measure.” A positive mention in a newsletter of the range of election services available to the public, is not “soliciting support for, or opposition to a ballot measure.” It is simply the Secretary of State performing her duty.

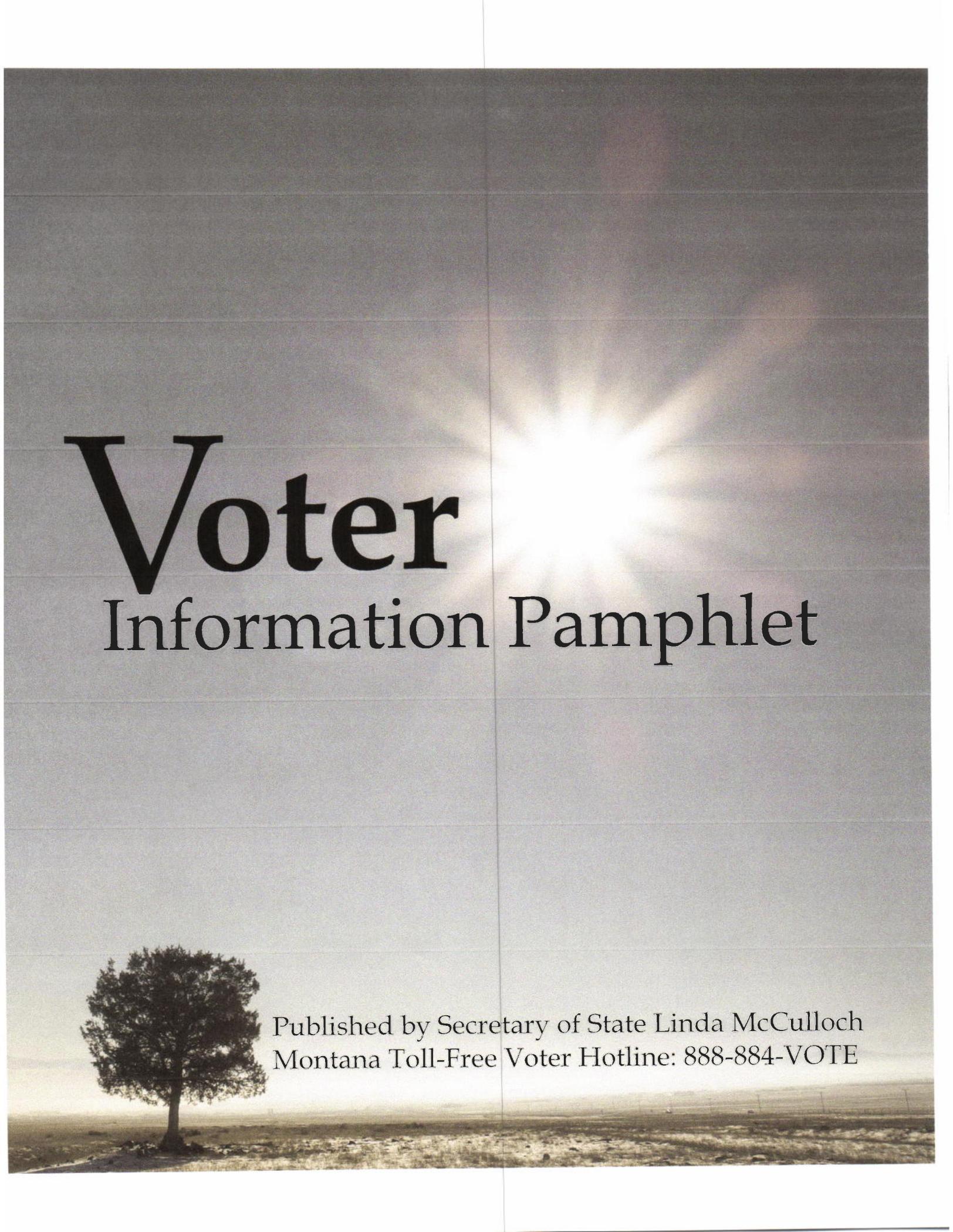
Sincerely,

A handwritten signature in black ink, appearing to read "Eric A. Stern". The signature is fluid and cursive, with a prominent initial "E" and "S".

Eric A. Stern

Chief Deputy Secretary of State

EXHIBIT 3

The background of the entire page is a photograph of a landscape. In the foreground, a single, dark, leafy tree stands on a small patch of ground. The ground is covered in dry grass and small rocks. In the background, a flat, open field extends to a distant horizon. The sky is a pale, hazy blue, and a bright sun is positioned in the upper right quadrant, creating a strong lens flare effect with rays of light spreading across the sky. The overall tone is warm and natural.

Voter

Information Pamphlet

Published by Secretary of State Linda McCulloch
Montana Toll-Free Voter Hotline: 888-884-VOTE

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Who writes the information in the VIP?

The Attorney General writes an explanatory statement for each ballot issue. The statement, which is not to exceed 100 words, is required to be a true and impartial explanation of the purpose of each issue. The Attorney General also prepares the fiscal statement, if necessary, for each citizen issue. The Legislature provides a title, and the "Yes" and "No" ballot language for each legislative referendum.

Proponent and opponent arguments and rebuttals are written by appointed committees. Arguments are limited to one page and rebuttals are limited to one-half page. All arguments and rebuttals are printed as filed by the committees and do not necessarily represent the views of the Secretary of State or the State of Montana.

Can I get the VIP in a different format?

If you would like to receive the Voter Information Pamphlet in an accessible format, including large print, Braille, audio CD, online, or electronically, contact the Secretary of State's Office by phone at (406) 444-4732, or by email at soselections@mt.gov.

The Secretary of State also has a text telephone (TTY) at (406) 444-9068. The device allows you to leave a message.

For information about registering and voting, contact the office's toll-free voter hotline at 1-888-884-VOTE (8683), or visit the Secretary of State's elections website at sos.mt.gov/Elections.

Disclaimer

The information included in the VIP for each ballot issue is the official ballot language, the text of each issue, and the arguments and rebuttals for and against each issue.

The opinions expressed therein do not necessarily represent the views of the Secretary of State or of the State of Montana. The Secretary of State does not guarantee the truth or accuracy of included statements.

★ In This Issue

2014 Ballot Issue Worksheet

Fill It Out, Tear It Out, Use It To VOTE!

(Located on inside back cover.)

Opponents' Rebuttal of Argument For C-45

Voters should reject C-45 for 2 important reasons.

This change would put a glaring contradiction into our State Constitution between the name of this office and the constitutional duties of this office. The Auditor's duties extend beyond securities and insurance. Montana state law already affords the Montana State Auditor the right to *additionally* represent the office as the Commissioner of Securities and Insurance and the office is already doing so on the state website and in printed documents. Since this has already been accomplished, no constitutional change is required.

Ballot Language for Legislative Referendum No. 126

LEGISLATIVE REFERENDUM NO. 126

AN ACT REFERRED BY THE LEGISLATURE.

AN ACT PROTECTING THE INTEGRITY OF MONTANA ELECTIONS BY ENDING LATE VOTER REGISTRATION ON THE FRIDAY BEFORE ELECTION DAY AND ELIMINATING ELECTION DAY REGISTRATION; ENSURING COMPLIANCE WITH THE NATIONAL VOTER REGISTRATION ACT; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA AT THE GENERAL ELECTION TO BE HELD IN NOVEMBER 2014; AMENDING SECTIONS 13-2-301, 13-2-304, 13-19-207, AND 61-5-107, MCA; AND PROVIDING AN EFFECTIVE DATE.

The 2013 Legislature submitted this proposal for a vote. LR-126 changes the deadline for late voter registration from the close of polls on election day to 5:00 p.m. on the Friday before the election. LR-126 also moves the deadline for changes to an elector's voter registration information from the close of polls on election day to 5:00 p.m. on the Friday before the election. The National Voter Registration Act referenced in the title of LR-126 does not require

More importantly, it is not possible to change the Constitution of the State of Montana without expense to citizens of the state.

Vote NO on C-45.

Credits

The PROPONENT argument and rebuttal were prepared by State Senator Ed Buttrey and State Representative Tom Berry.

The OPPONENT argument and rebuttal were prepared by State Senator Mitch Tropila and State Representative Nicholas Schwaderer.

elimination of election-day registration, and does not require moving the deadline for changes to an elector's voter registration information.

YES on Legislative Referendum LR-126

NO on Legislative Referendum LR-126

Complete Text of Senate Bill No. 405, Referred by LR-126

AN ACT PROTECTING THE INTEGRITY OF MONTANA ELECTIONS BY ENDING LATE VOTER REGISTRATION ON THE FRIDAY BEFORE ELECTION DAY AND ELIMINATING ELECTION DAY REGISTRATION; ENSURING COMPLIANCE WITH THE NATIONAL VOTER REGISTRATION ACT; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA AT THE GENERAL ELECTION TO BE HELD IN NOVEMBER 2014; AMENDING SECTIONS 13-2-301, 13-2-304, 13-19-207, AND 61-5-107, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 13-2-301, MCA, is amended to read:

"13-2-301. Close of regular registration -- notice -- changes. (1) The election administrator shall:

(a) close regular registrations for 30 days before any election; and

(b) publish a notice specifying the day regular registrations will close and the availability of the late registration option provided for in 13-2-304 in a newspaper of general circulation in the county at least three times in the 4 weeks preceding the close of registration or broadcast a notice on radio or television as provided in 2-3-105 through 2-3-107, using the method the election administrator believes is best suited to reach the largest number of potential electors. The provisions of this subsection (1)(b) are fulfilled upon the third publication or broadcast of the notice.

(2) Information to be included in the notice must be prescribed by the secretary of state.

(3) An application for voter registration properly executed and postmarked on or before the day regular registration is closed must be accepted as a regular registration for 3 days after regular registration is closed under subsection (1)(a).

(4) An individual who submits a completed registration form to the election administrator before the deadlines provided in this section is allowed to correct a mistake on the completed registration form until 5 p.m. on the 10th day following the close of regular registration, and the qualified elector is then eligible to vote in the election.

(5) An elector who misses the deadlines provided for in this section may register to vote or change the elector's voter information and vote in the election, ~~except as otherwise~~ as provided in 13-2-304."

Section 2. Section 13-2-304, MCA, is amended to read:

"13-2-304. Late registration -- late changes -- nonapplicability for school elections. (1) Except as provided in subsections (2) and (3), the following provisions apply:

(a) An elector may register or change the elector's voter registration information after the close of regular registration in 13-2-301 and vote in the election if the election administrator in the county where the elector resides receives and verifies the

elector's voter registration information prior to ~~the close of the polls on election day.~~

~~(b) Late registration is closed from noon to 5 p.m. on the day Friday before the election.~~

~~(c)(b)~~ Except as provided in 13-2-514(2)(a), an elector who registers or changes the elector's voter information pursuant to this section may vote in the election only if the elector obtains the ballot from and returns it to the location designated by the county election administrator.

(2) If an elector has already been issued a ballot for the election, the elector may change the elector's voter registration information only if the original voted ballot has not been received at the county election office and if the original ballot that was issued is marked by the issuing county as void in the statewide voter registration database prior to the change.

(3) The provisions of subsection (1) do not apply with respect to an elector's registration to vote in a school election held pursuant to Title 20."

Section 3. Section 13-19-207, MCA, is amended to read:

"13-19-207. When materials to be mailed. (1) Except as provided in subsection (2), for any election conducted by mail, ballots must be mailed no sooner than the 25th day and no later than the 15th day before election day.

(2) (a) All ballots mailed to electors on the active list and provisionally registered list must be mailed the same day.

(b) At any time before noon on the day before election day, a ballot may be mailed or, upon request, provided in person at the election administrator's office to:

(i) an elector on the inactive list after the elector reactivates the elector's registration as provided in 13-2-222; or

(ii) an individual who registers under the late registration option provided for in 13-2-304.

(c) An elector on the inactive list shall vote at the election administrator's office on election day if the elector reactivates the elector's registration after noon on the day before election day.

~~(d) An elector who registers pursuant to 13-2-304 on election day or on the day before election day must receive the ballot and vote it at the election administrator's office."~~

Section 4. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver's license, commercial driver's license, or motorcycle endorsement must be made upon a form furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state and in compliance with the National Voter Registration Act of 1993, Public Law 103-31, 42 U.S.C. 1973gg, et seq., must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must include the full legal name, date of birth, sex, residence address of the applicant [and the applicant's social security number], must include a brief description of the applicant, and must provide the following additional information:

(a) the name of each jurisdiction in which the applicant has previously been licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the application;

(b) a certification from the applicant that the applicant is not currently subject to a suspension, revocation, cancellation, disqualification, or withdrawal of a previously issued driver's license or any driving privileges in another jurisdiction and that the applicant does not have a driver's license from another jurisdiction;

(c) a brief description of any physical or mental disability, limitation, or condition that impairs or may impair the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway;

(d) a brief description of any adaptive equipment or operational restrictions that the applicant relies upon or intends to rely upon to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on

the highway, including the nature of the equipment or restrictions; and

(e) if the applicant is a foreign national whose presence in the United States is temporarily authorized under federal law, the expiration date of the official document issued to the applicant by the bureau of citizenship and immigration services of the department of homeland security authorizing the applicant's presence in the United States.

[(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) (a) When an application is received from an applicant who is not ineligible for licensure under 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from each jurisdiction in which the applicant was licensed in the preceding 10-year period. The driving record may be transmitted manually or by electronic medium.

(b) When received, the driving records must be appended to the driver's record created and maintained in this state. The department may rely on information contained in driving records received under this section to determine the appropriate action to be taken against the applicant upon subsequent receipt of a report of a conviction or other conduct requiring suspension or revocation of a driver's license under state law.

(5) An individual who is under 26 years of age but at least 15 years of age and who is required to register in compliance with the federal Military Selective Service Act, 50 App. U.S.C. 453, must be provided an opportunity to fulfill those registration requirements in conjunction with an application for an instruction permit, driver's license, commercial driver's license, or state identification card. If under 18 years of age but at least 15 years of age, an individual must be provided an opportunity to be registered by the selective service system upon attaining 18 years of age. Any registration information supplied on the application must be transmitted by the department to the selective

service system. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 5. Effective date. [This act] is effective upon approval by the electorate.

Section 6. Submission to electorate. [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2014 by printing on the ballot the full title of [this act] and the following:

YES on Legislative Referendum No. ____

NO on Legislative Referendum No. ____

Section 7. Coordination instruction. If House Bill No. 30 is passed and approved, then [this act] is void.

Argument For LR-126

The arguments in favor of moving the close of voter registration to 5 pm on Friday before Election Day are straightforward. First, doing so will allow election administrators to focus on their primary responsibility which is administering a fair and transparent election. Second, it will ensure all eligible voters are able to exercise their right to vote with minimal delays. Finally, it will allow voters to get election results in a timely fashion.

Ending voter registration prior to Election Day will permit the election administrators to print accurate Official Registers to be taken to the polling places, making sure administrators know what ballots, supplies, and staff are necessary at the polling places. It will allow the election administrators to supervise the counting of votes by the Absentee Counting Board so that these votes are tabulated in a timely manner.

Elections are complicated affairs. In addition to the votes of properly registered voters, election administrators must administer provisional votes and votes by "provisionally" registered voters. That "provisional" process allows ANY voter to cast a ballot even if their name does not appear on the registration list for a number of reasons.

These complicated situations require the election administrator to advise the dedicated, but part time, election judges. Without having to handle the complicated and time consuming task of registering voters who wait until the last minute to register on election day, administrators will be able to concentrate on helping their election judges with the problems they encounter as they occur.

Finally, closing voter registration prior to Election Day will allow the voters of Montana to get election results in a more timely manner. In 2012 the lines of people who waited until the last minute to register and vote were long and stretched well outside the polling places in many larger counties when 8 PM arrived. The election administrators are ordered by 13-15-207(3)(e), MCA, not to report any election results until voting has ended. In many places the end of voting did not occur until after midnight, which delayed voter results until the middle of the night.

Ending voter registration at 5 PM the Friday before Election Day will not substantially burden any voter who really wishes to vote. Elections should be orderly, fair, and results should be timely reported. Vote YES on LR-126.

Argument Against LR-126

Vote "No" on LR-126

Montana has some of the best run elections in the country, and it's a system that should make us proud. A 2014 report from the non-partisan Pew Charitable Trusts rated Montana as the 11th best state in the country for efficient and well-run elections. One of the reasons Montana ranks so high is because we are a state that puts an emphasis on guaranteeing an elections process that is fair, honest, open, and accurate.

America is the world's leading democracy, and it's our responsibility as voters to make sure every eligible Montanan who wants to vote can cast a ballot. But LR-126 threatens our democracy by placing unfair hurdles in front of our freedom to vote, taking away our right to register and cast a ballot on Election Day. Simply put, LR-126 is a bad idea, and it should be defeated.

Election Day registration is a safeguard for democracy that has worked well for nearly a decade here in Montana, with over 28,000 eligible Montana voters using it to cast a ballot. In today's economy, accessibility to our elections process is critically important. More people than ever before have to work two or more jobs to make ends meet for themselves and their families. Same-day registration allows busy working people to register and vote in one trip – ensuring that responsible Montanans who are just trying to get by can have their voices heard. This is essential for recently returned military veterans, seniors, folks with disabilities, and young people exercising their right to vote for the first time. Same-day voter registration also provides a reprieve for any number of hard working citizens who have moved into Montana, or perhaps just across town in any given year ... without realizing the necessity to update their registration to coincide with their current address.

When dealing with something as sensitive and important as our constitutional right to vote, it's necessary that both sides – Republican and Democrat – agree. Yet LR-126 was passed without one single bipartisan vote of support. It was a purely political attempt to deny some Montanans the right to vote or to try to fix something that isn't broken.

LR-126 is also filled with serious unintended consequences. Without the ability to register and vote on Election Day, a lot can go wrong. In other states, people have stood in line for hours only to learn that the politicians had unfairly purged thousands of eligible voters from the voter rolls, making it impossible for them to cast a ballot. Here in Montana, we don't have to worry about that sort of thing, nor do we have to worry about lost cards or misplaced records. You can still re-register and vote on Election Day. That is your right protected under the law – a right that LR-126 would take away forever.

If you believe in democracy and if you believe that every eligible voter in Montana should have the right to cast a ballot, then you should vote "No" on LR-126.

Proponents' Rebuttal of Argument Against LR-126

The opponents of LR-126 would like you to believe that it will interfere with the ability of people to vote and will end democracy as we know it. Neither of these charges is true.

Montanans have many opportunities to register to vote regardless of their economic circumstance or location. They can register when getting a driver's license, when at the county courthouse to buy a vehicle license plate, at the many voter registration drives organized by interest groups, and most importantly, by the mail, which can be done anytime and anywhere. Registering on Election Day is probably the most time consuming manner of accomplishing a task that can be done faster and easier before Election Day. Provisional voting is available to all voters for a variety of reasons. With the amount of political advertising being done, no one who is paying even a little attention can claim that they were unaware that Election Day was approaching.

The opponents argue that in other states voters have been unknowingly purged off the voter rolls, but Montana law prevents that by keeping a voter on the list until they have failed to vote in three consecutive federal elections. This fear is just another false alarm.

LR 126 will not remove anyone's "right to vote." It will simply require them to exercise a minimum of responsibility to register by 5 p.m. on the Friday before Election Day.

Opponents' Rebuttal of Argument For LR-126

Vote NO on LR-126 to protect our constitutional right to vote. Without Montana's Election Day voter registration law over 28,000 Montanans' freedom to vote could have been taken away over the last 10 years.

Here in Montana, we do things right. That's why

EXHIBIT 4



- Elections and Government Services
- Administrative Rules of Montana
- Business Services
- Notary and Certification Services
- Records and Information Management

Voter Resources

- [Register to Vote](#)
- [Registration Status/Polling Place](#)
- [Election Calendar](#)
- [Voting by Absentee Ballot](#)
- [Military and Overseas Voters](#)
- [Voters with Disabilities](#)
- [Serve as an Election Judge](#)
- [Frequently Asked Questions](#)

Candidate Resources

- [File for Office](#)
- [Offices on the Ballot](#)
- [Candidate Calendar](#)
- [Campaign Finance](#)

Ballot Measures

- [2014 Proposed Ballot Measures](#)
- [2012 Proposed Ballot Measures](#)
- [Past Ballot Measures](#)
- [Forms and Guidelines](#)
- [Voter Information Pamphlet](#)

Results and Statistics

- [Official Election Results](#)
- [Archived Election Results](#)
- [Voter Turnout](#)
- [Voter Registration by County](#)

Additional Resources

- [Election Laws and Rules](#)
- [Qualified Political Parties](#)
- [Term Limits](#)
- [Legislative Information](#)
 - [District Maps](#)
 - [Current Roster](#)
- [Montana Constitution](#)
- [Archive Publications](#)
- [Order the Centralized Voter File](#)
- [Voter FAQs](#)
- [County Election Administrators](#)
- [County Voting Systems](#)

Forms

For Elections Officials

Contact Us

Home > Elections > Proposed 2014 Ballot Issues



A citizen proposed ballot issue can only appear on the 2014 general election ballot once the proposed language has fulfilled three requirements. First, the language must be submitted to Montana's Legislative Services Division. Second, the Montana Attorney General must conduct a legal review. Finally, after the review process is complete, and the sponsor has been notified by the Secretary of State of the approval or rejection of the ballot issue, the sponsor must collect sufficient verified signatures from qualified voters in Montana.

Initiative or referendum for the ballot - Signatures must be obtained from 5 percent of the total number of qualified voters in Montana (based on the number of votes cast for the office of governor in the last general election), including 5 percent of the voters in each of 34 legislative house districts.

Constitutional amendment by initiative - Signatures must be obtained from 10 percent of the total number of qualified voters in Montana (based on the number of votes cast for the office of governor in the last general election), including 10 percent of the voters in each of 40 legislative house districts.

If you observe and have concerns about questionable signature gathering, you may file a [complaint](#) with the Secretary of State, who will forward each complaint to the appropriate county official. See signature gathering information at http://sos.mt.gov/Elections/Ballot_Issues/index.asp.

The 2014 Voter Information Pamphlet (VIP) is now available online at the following link: [2014 Voter Information Pamphlet](#).

The following issues were referred to the voters by the 2013 Legislature and will appear on the November 4, 2014 general election ballot:

C-45 (HB 79) (Status current as of 11/1/2014)
Subject: Constitutional amendment to rename the State Auditor.
Type: Constitutional Amendment
Status: Legislature referred HB 79 to the 2014 General Election Ballot.

LR-126 (SB 405) (Status current as of 11/1/2014)
Subject: Referendum to revise close of late voter registration.
Type: Legislative Referendum
Status: Legislature referred SB 405 to the 2014 General Election Ballot.

The following issue was referred to the voters by the 2013 Legislature, but the MT Supreme Court has [enjoined](#) the Secretary of State from placing it on the November 4, 2014 general election ballot:

LR-127 (SB 408) (Status current as of 11/1/2014)
Subject: Referendum to provide top two primary in certain elections.
Type: Legislative Referendum
Status: Legislature referred SB 408 to the 2014 General Election Ballot; MT Supreme Court has [enjoined](#) the Secretary of State from placing it on the ballot.

EXHIBIT 5

BALLOT LANGUAGE FOR LEGISLATIVE REFERENDUM NO. 126 (LR-126)

LEGISLATIVE REFERENDUM NO. 126

AN ACT REFERRED BY THE LEGISLATURE

AN ACT PROTECTING THE INTEGRITY OF MONTANA ELECTIONS BY ENDING LATE VOTER REGISTRATION ON THE FRIDAY BEFORE ELECTION DAY AND ELIMINATING ELECTION DAY REGISTRATION; ENSURING COMPLIANCE WITH THE NATIONAL VOTER REGISTRATION ACT; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA AT THE GENERAL ELECTION TO BE HELD IN NOVEMBER 2014; AMENDING SECTIONS 13-2-301, 13-2-304, 13-19-207, AND 61-5-107, MCA; AND PROVIDING AN EFFECTIVE DATE.

The 2013 Legislature submitted this proposal for a vote. LR-126 changes the deadline for late voter registration from the close of polls on election day to 5:00 p.m. on the Friday before the election. LR-126 also moves the deadline for changes to an elector's voter registration information from the close of polls on election day to 5:00 p.m. on the Friday before the election. The National Voter Registration Act referenced in the title of LR-126 does not require elimination of election-day registration, and does not require moving the deadline for changes to an elector's voter registration information.

- YES on Legislative Referendum LR-126
- NO on Legislative Referendum LR-126

EXHIBIT 6

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Calendar of Events

November 2014

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

- Recent News
- The real problem with transfer of land
 - Secretary McCulloch Announces New Way for Montanans to Register to Vote
 - Senator Ed Buttrey Named to LOV's "Dirty Dozen in the States"
 - MCV Endorses Amanda Curtis for U.S. Senate
 - MT Delegation Applauds Hearings on Public Land Development
- [View All...](#)

- Recent blog posts
- 2014 General Election Voter Guide
 - MCV/EE Conservation Issues Survey
 - Former Interior Secretary Slams GOP Effort To Seize And Sell America's Public Lands

Pledge to vote "no" on LR 126, a ballot measure that would repeal Montanans' right to register to vote on election day

Montana's election system is something we can be proud of. It works well, our registration process is easy and accessible and protects our right to vote and make our voice heard in this great democracy.

But LR-126 ends our system of Election Day voter registration, jeopardizing the right to vote of our seniors, recently returned military veterans, disabled people, family farmers and ranchers and Montanans from all walks of life. These are the people who have used election day voter registration to participate in our democracy. LR 126 puts up barriers to our time honored election system, making it tougher to register to vote by repealing this right on election day and the day before.

Over 29,000 Montanans have registered to vote on election day since the law first went into effect nearly 10 years ago. Montana's election day voter registration has significantly increased voter turnout. Voters are 10 to 17 percent more likely to cast a ballot in states with Election Day registration.

If it's not broke, don't fix it! LR-126 was put on the ballot by legislators in Helena at the last minute during the 2013 session, and not one person testified in support of it. It's a solution looking for a problem.

When people register to vote and cast their ballot, conservation wins. [Pledge to vote "no" on LR 126 on this November general election ballot.](#)

Paid for by Montana Conservation Voters, Box 63, Billings, MT 59103, Liz Ametschler, Treasurer

MONTANA CONSERVATION VOTERS

- Home
- Elected Officials
- Legislature
- Scorecards
- Press & Media
- 2014 MCV Endorsed Candidates



[Our Work](#) [Voting & Consumer Guides](#) [Vote No on Voter Supression](#)

[Tenant/Landlord Guide](#)

VOTE NO ON VOTER SUPRESSION

Join MontPIRG in Voting NO on LR-126 this November.

LR-126 was put on the ballot by the 2013 legislature after earlier efforts to suppress the vote were vetoed by the governor. These attacks on our right to vote are just the most recently effort by politicians to make voting harder for Montanans.

What does LR-126 do?

This ballot referenda **seeks to eliminate Election Day voter registration** in Montana. **Since its passage in 2005, over 28,000 voters have taken advantage of Election Day voter registration to make sure their voice was heard on Election Day.** Eliminating same day voter registration means that veterans returning from deployment, single mothers working multiple jobs, or the rural voter who lives hundreds of miles from their county courthouse would see new hurdles created between them and their right to vote. Montanans believe that voting is a right and we should do everything we can to preserve it for everyone. LR-126 simply wants to do the opposite. **Vote No on LR-126.**

Montana's elections system works well. We have a system that is safe, secure, and dependable and ensures that every Montanan has a voice. Passing LR-126 would strongly hinder Montanans ability to participate in elections.

If you are interested in volunteering to defeat this referendum **CLICK HERE.** We need to spread our message to make sure that voter suppression is not the law of the land. We can win in November with your help!

You can find out more about the coalition of organizations working to preserve our right to vote at www.montanansforfreeandfairelections.com

[NOTE: LR-127, a referendum that MontPIRG had opposed was struck from the ballot by the Montana Supreme Court for violating the law.]

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Voting Rights



Voting rights are under attack in the country. As state legislatures attempt to pass laws that restrict the right of citizens to vote, the ACLU is working to ensure that every citizen has the right to vote. We are currently working on legislation that would require voters to show their ID at the polls. This is a direct violation of the Voting Rights Act of 1965. We are currently working on legislation that would require voters to show their ID at the polls. This is a direct violation of the Voting Rights Act of 1965.

Voting Rights in Montana

Montana is the only state in the country that has a constitutional guarantee of the right to vote. This guarantee is one of the most important parts of our state's constitution. We are currently working on legislation that would require voters to show their ID at the polls. This is a direct violation of the Voting Rights Act of 1965.



Montana is the only state in the country that has a constitutional guarantee of the right to vote. This guarantee is one of the most important parts of our state's constitution. We are currently working on legislation that would require voters to show their ID at the polls. This is a direct violation of the Voting Rights Act of 1965.

Montana is the only state in the country that has a constitutional guarantee of the right to vote. This guarantee is one of the most important parts of our state's constitution. We are currently working on legislation that would require voters to show their ID at the polls. This is a direct violation of the Voting Rights Act of 1965.

- FOR MORE INFO
- ACT UP!
- VOTE
- CONTACT US

RESULTS/PAGES
- ACLU Montana voting rights
- Vote No on LB-126 -
- Register Your Voting Rights

EXHIBIT 7

www.montanansforfreeandfairelections.com/?utm_source=google&utm_medium=gpc&utm_term=lr-126&utm_content=LR-126&utm_campaign=MTEFAF2014



What is Election Day Voter Registration?

Linda McCulloch
Montana Secretary of State



BILLINGS GAZETTE

LR-126 ISN'T IN LINE WITH DEMOCRACY, VOTE NO

Although there is a need for election-day registration, over the past decade more than 25,000 Montanans have registered to vote on election day. Those would rather than show 25,000 shouldn't be able to vote. I would urge all Montanans to vote with the highest ideals of our nation and vote "no" on LR-126.

Read More - Oct 29, 2014

VOTE NO ON LR-126

PROTECT ALL MONTANANS FREEDOM TO VOTE.

We can be proud that Montana is highly rated for its fair, honest, open and accurate elections—some of the best run in the country. LR-126 threatens our democracy by placing unfair hurdles in front of tens of thousands of qualified Montana citizens.

New tab	Ctrl+T
New window	Ctrl+N
New incognito window	Ctrl+Shift+N
Bookmarks	
Recent Tabs	
Edit	Cut Copy Paste
Save page as...	Ctrl+S
Find...	Ctrl+F
Print...	Ctrl+P
Zoom	- 67% +
History	Ctrl+H
Downloads	Ctrl+J
Sign in to Chrome...	
Settings	
About Google Chrome	
Help	
More tools	
Exit	Ctrl+Shift+Q

EXHIBIT 8

All your music sources.
One system.



BOSE Wave[®] SoundTouch[™] music system

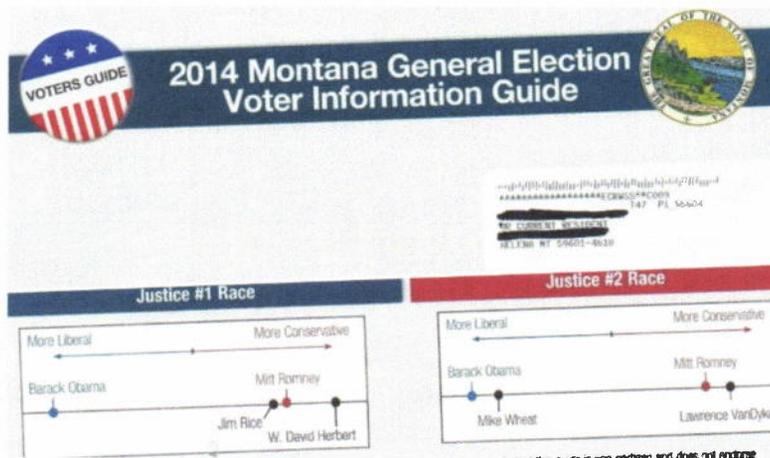


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Oct 29, 2014 12:20 PM by Sanjay Talwani (sanjay@kxlh.com)

(#)

Dartmouth and Stanford sending retraction to Montana political mailer

HELENA - The saga of a political mailer that hit some raw nerves in Montana took another unusual turn Tuesday with Stanford University and Dartmouth College sending a new mailer to retract and apologize for the one sent last week.

The original mailer, featuring the Great Seal of the State of Montana and a distinct "Voter Guide" label, used data created by political scientists to say where Montana's four candidates for its two Supreme Court races stood ideologically by placing them along a left-right continuum in relation to Barack Obama and Mitt Romney.

The mailer noted that it was part of a political science research project by the two schools. **But Montana Commissioner of Political Practices Jonathan Motl and Montana Secretary of State Linda McCulloch said Tuesday the colleges would send a letter to the same 100,000 Montana addresses asking them to disregard the mailer and backing off the mailer's assessment of the candidates.**

"The ranking was not based on the candidates' decisions or public positions, instead it relied on public information about who had donated to each of the campaigns," the new letter reads. "Unfortunately, even though the mailer contained a statement that it 'is non-partisan and does not endorse any candidate or party,' many people felt that the graph appeared to create a partisan alignment of the candidates. This was certainly not the intent."

McCulloch, a Democrat, filed a complaint Friday with Motl's office saying the mailer broke laws including use of the Great Seal of Montana, and groups that send political flyers are required to register with the Commissioner of Political Practices.

That investigation will continue, although state officials see the school's apology as a big step.

"This is the first time in history, Montana history, that a retraction of a political mailer has happened," McCulloch said.

"I think that the institutions of Dartmouth and Stanford saw that there was a legitimate concern about the election flyer they had sent out," Motl said.

The mailer came as outside groups pour money into the race between incumbent Justice Mike Wheat and challenger Lawrence VanDyke.

VanDyke has consistently tried to paint Wheat as a liberal, so the mailer - which also portrayed Wheat as such - is consistent with his message, and two of the professors involved are fellows at Stanford's conservative Hoover Institute.

Motl and McCulloch said the mailer injects partisanship into the non-partisan race by comparing the Montana candidates with Barack Obama on the left and Mitt Romney on the right.

When pressed, they both declined to say who they think the mailers benefit - although commentators on both sides have said flyer's message would help VanDyke. And that, Montana Republicans say, is Motl's real purpose in pushing back on the mailer.

"Any neutral observer can see Mr. Motl is clearly utilizing his position to push Liberal partisan agenda on a non-partisan Supreme Court race," the Montana Republican Party said in a statement. "He is unhappy that this research project mailer points out the (sic) Mike Wheat is as Liberal as Barack Obama."

In fact, the mailer suggests Wheat is slightly less liberal than Obama.

U.S. Senator Jon Tester (D-MT) also weighed in Friday with a letter to both school's presidents, charging them with meddling in Montana's elections and using the state in a laboratory experiment.

David Parker, MTN political analyst and a political science professor at MSU, said the research project in some ways follows classic methodology. But he too questioned the accuracy of the partisanship measure which relies solely on campaign funds the candidates have received.

"That measure doesn't tell the whole story," he said last week. "And that's problematic."

Motl said the state settled with Dartmouth and Stanford on the exact text of the letter at about 8 p.m. Monday. The text was sent at about 11 p.m. to the printer in Salt Lake City that mailed the original item, so it could be in Montana mailboxes the next few days.

~~Stanford and Dartmouth are picking up the costs of the new mailer, about \$58,000, Motl said.~~

The first mailer was funded with a portion of a grant given to Stanford by the William and Flora Hewlett Foundation, along with a matching grant from Stanford.

Stanford has said the research project behind the mailer passed institutional review at Dartmouth, not Stanford.

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EXHIBIT 9

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13-35-226. Unlawful acts of employers and employees. (1) It is unlawful for any employer, in paying employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes, devices, or arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of the employees.

(2) It is unlawful for an employer to exhibit in a place where the employer's workers or employees may be working any handbill or placard containing:

(a) any threat, promise, notice, or information that, in case any particular ticket or political party, organization, or candidate is elected:

(i) work in the employer's place or establishment will cease, in whole or in part, or will be continued or increased;

(ii) the employer's place or establishment will be closed; or

(iii) the salaries or wages of the workers or employees will be reduced or increased; or

(b) other threats or promises, express or implied, intended or calculated to influence the political opinions or actions of the employer's workers or employees.

(3) A person may not coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment. However, subject to [2-2-121](#), this section does not restrict the right of a public employee to perform activities properly incidental to another activity required or authorized by law or to express personal political views.

A person who violates this section is liable in a civil action authorized by [13-37-128](#), brought by the commissioner of political practices or a county attorney pursuant to [13-37-124](#) and [13-37-125](#).

History: En. [23-47-134](#) by Sec. 34, Ch. 334, L. 1977; R.C.M. 1947, [23-47-134](#); amd. Sec. 222, Ch. 571, L. 1979; amd. Sec. 1, Ch. 655, L. 1983; amd. Sec. 13, Ch. 562, L. 1995; amd. Sec. 3, Ch. 401, L. 2001; amd. Sec. 18, Ch. 114, L. 2003; amd. Sec. 2, Ch. 437, L. 2005.

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13-35-204. Official misconduct. A person charged with performance of any duty under the provisions of the election laws of this state is guilty of official misconduct and is punishable as provided in [45-7-401](#) whenever the person:

- (1) knowingly neglects or refuses to perform that duty; or
- (2) knowingly and fraudulently acts, in the person's official capacity, in contravention or violation of any provision of the election laws.

History: En. [23-47-112](#) by Sec. 12, Ch. 334, L. 1977; R.C.M. 1947, [23-47-112](#); amd. Sec. 94, Ch. 56, L. 2009.

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45-7-401. Official misconduct. (1) A public servant commits the offense of official misconduct when in an official capacity the public servant commits any of the following acts:

(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;

(b) knowingly performs an act in an official capacity that the public servant knows is forbidden by law;

(c) with the purpose to obtain a personal advantage or an advantage for another, performs an act in excess of the public servant's lawful authority;

(d) solicits or knowingly accepts for the performance of any act a fee or reward that the public servant knows is not authorized by law; or

(e) knowingly conducts a meeting of a public agency in violation of [2-3-203](#).

(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The district court has exclusive jurisdiction in prosecutions under this section. Any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.

(4) A public servant who has been charged as provided in subsection (3) may be suspended from office without pay pending final judgment. Upon final judgment of conviction, the public servant shall permanently forfeit the public servant's office. Upon acquittal, the public servant must be reinstated in office and must receive all backpay.

(5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect an impeachment or removal.

History: En. [94-7-401](#) by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 474, L. 1975; R.C.M. 1947, [94-7-401](#); amd. Sec. 1691, Ch. 56, L. 2009.

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13-35-217. Officers not to influence voter. An officer, while acting in an official capacity, may not, by menace, reward, or promise of reward, induce or attempt to induce any elector to cast a vote contrary to the elector's original intention or desire.

History: En. [23-47-125](#) by Sec. 25, Ch. 334, L. 1977; R.C.M. 1947, [23-47-125](#); amd. Sec. 57, Ch. 575, L. 1981; amd. Sec. 98, Ch. 56, L. 2009.

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~~13-35-106. Ineligibility to hold office because of conviction.~~ In addition to all other penalties prescribed by law:

(1) a candidate who is convicted of violating any provision of this title, except [13-35-207\(9\)](#), is ineligible to be a candidate for any public office in the state of Montana until final discharge from state supervision;

(2) a campaign treasurer who is convicted of violating any provision of this title, except [13-35-207\(9\)](#), is ineligible to be a candidate for any public office or to hold the position of campaign treasurer in any campaign in the state of Montana until final discharge from state supervision;

(3) if an elected official or a candidate is adjudicated to have violated any provision of this title, except [13-35-207\(9\)](#), the individual must be removed from nomination or office, as the case may be, even though the individual was regularly nominated or elected.

History: En. [23-47-106](#) by Sec. 6, Ch. 334, L. 1977; R.C.M. 1947, [23-47-106](#); amd. Sec. 215, Ch. 571, L. 1979; amd. Sec. 92, Ch. 56, L. 2009.

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13-35-107. Voiding election. (1) (a) If a court finds that the violation of any provision of this title by any person probably affected the outcome of any election, the result of that election may be held void and a special election held:

(i) except as provided in subsection (1)(a)(ii), within 75 days of the finding; or

(ii) if the election was held pursuant to [13-1-104\(1\)\(a\)](#) or [13-1-107\(1\)](#), within 85 days of the finding.

(b) If the violation occurred during a primary election, the court may direct the selection of a new candidate according to the provisions of state law relating to the filling of vacancies on the general election ballot. Except as provided in subsection (2), an action to void an election must be commenced within 1 year of the date of the election in question.

(2) An action to void a bond election must be commenced within 60 days of the date of the election in question.

History: En. [23-47-107](#) by Sec. 7, Ch. 334, L. 1977; R.C.M. 1947, [23-47-107](#); amd. Sec. 216, Ch. 571, L. 1979; amd. Sec. 38, Ch. 250, L. 1985; amd. Sec. 14, Ch. 292, L. 2009.

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~~2-2-109~~ Rules of conduct for public officers and public employees. (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

~~(2)~~ A public officer or a public employee may not:

~~(a)~~ subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

~~(3)~~ ~~(a)~~ Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(d) (i) If the public officer or public employee is a Montana highway patrol chief or highway patrol officer appointed under Title 44, chapter 1, the term "equipment" as used in this subsection (3) includes the chief's or officer's official highway patrol uniform.

(ii) A Montana highway patrol chief's or highway patrol officer's title may not be referred to in the solicitation of support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(4) (a) A candidate, as defined in [13-1-101\(6\)\(a\)](#), may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

(b) A state officer may not use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to produce, print, or broadcast any advertisement or public service announcement in a newspaper, on radio, or on television that contains the state officer's name, picture, or voice except in the case of a state or national emergency if the announcement is reasonably necessary to the state officer's official functions or in the case of an announcement directly related to a program or activity under the jurisdiction of the office or position to which the state officer was elected or appointed.

(5) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(6) A public officer or public employee may not engage in any activity, including lobbying, as defined in [5-7-102](#), on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(7) A listing by a public officer or a public employee in the electronic directory provided for in [30-17-101](#) of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section. The public officer or public employee may not make arrangements for the listing in the electronic directory during work hours.

(8) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under [2-2-131](#).

(9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act.

History: En. 59-1706 by Sec. 6, Ch. 569, L. 1977; R.C.M. 1947, 59-1706; amd. Sec. 1, Ch. 59, L. 1991; amd. Sec. 7, Ch. 562, L. 1995; amd. Sec. 3, Ch. 42, L. 1997; amd. Sec. 3, Ch. 122, L. 2001; amd. Sec. 1, Ch. 58, L. 2003; amd. Sec. 1, Ch. 145, L. 2005; amd. Sec. 3, Ch. 173, L. 2005; amd. Sec. 1, Ch. 437, L. 2005; amd. Sec. 1, Ch. 386, L. 2011; amd. Sec. 1, Ch. 14, L. 2013.