

1 HOUSE BILL 491

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Joseph Cervantes

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10 AN ACT

11 RELATING TO ELECTIONS; REQUIRING PERSONS WHO MAKE
12 ELECTIONEERING COMMUNICATIONS TO REPORT CERTAIN CONTRIBUTIONS
13 AND EXPENDITURES; INCREASING THE AMOUNT OF CONTRIBUTIONS AND
14 EXPENDITURES A POLITICAL COMMITTEE MAY RECEIVE OR EXPEND BEFORE
15 BEING REQUIRED TO REGISTER AND REPORT; INCREASING PENALTIES FOR
16 MAKING OR RECEIVING CONTRIBUTIONS MADE BY ONE PERSON IN THE
17 NAME OF ANOTHER PERSON; PROHIBITING THE ACCEPTANCE OF
18 CONTRIBUTIONS FROM PERSONS WHO MAKE ELECTIONEERING
19 COMMUNICATIONS THAT DO NOT DISCLOSE THE SOURCE OF
20 CONTRIBUTIONS; PROHIBITING FINANCIAL TRANSACTIONS DESIGNED TO
21 CONCEAL THE SOURCE OF CERTAIN CONTRIBUTIONS; PROVIDING FOR
22 PENALTIES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION
23 OF LAW IN LAWS 2009; AMENDING, REPEALING AND ENACTING SECTIONS
24 OF THE NMSA 1978.

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1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

2 SECTION 1. A new section of the Campaign Reporting Act is
3 enacted to read:

4 "[NEW MATERIAL] ELECTIONEERING COMMUNICATIONS--REPORTING
5 REQUIREMENTS.--A person who makes a payment for or a promise to
6 pay for any electioneering communication of two thousand three
7 hundred dollars (\$2,300) or more that is not otherwise required
8 to be reported as an expenditure by a candidate, campaign
9 committee or political committee shall:

10 A. establish a bank account consisting only of
11 money used for or contributed to the person for the purpose of
12 making electioneering communications;

13 B. only use money from the bank account established
14 pursuant to this section to pay for electioneering
15 communications;

16 C. be considered a reporting individual for the
17 purposes of the Campaign Reporting Act and provide all
18 information required of reporting individuals by that act,
19 except that:

20 (1) only contributions deposited in and
21 expenditures made from the bank account established pursuant to
22 this section are subject to the reporting requirements of the
23 Campaign Reporting Act; provided that if an organization uses
24 general treasury funds for the communication, that entity shall
25 report the name and address of any person who has donated one

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1 thousand dollars (\$1,000) or more to the organization, and for
2 donors who are individuals, that entity shall report the
3 occupation and employer of the donor; and

4 (2) the person may file a statement of no
5 activity instead of a full report if there is less than five
6 hundred dollars (\$500) contributed to or expended from the bank
7 account since the last report was filed;

8 D. not accept a contribution from an entity that
9 does not publicly disclose the source of its contributions that
10 are used to make an electioneering communication; and

11 E. be subject to all civil and criminal penalties
12 of the Campaign Reporting Act for violating the reporting
13 requirements of that act."

14 SECTION 2. A new section of the Campaign Reporting Act is
15 enacted to read:

16 "[NEW MATERIAL] CONCEALING THE SOURCE OF CONTRIBUTIONS
17 PROHIBITED--CRIMINAL PENALTY--CIVIL PENALTY.--

18 A. It is unlawful for a person to intentionally
19 conduct, structure, engage in or participate in a financial
20 transaction that involves a contribution if the person knows
21 that the financial transaction is designed in whole or in part
22 to:

23 (1) avoid or evade the contribution
24 limitations in the Campaign Reporting Act; or

25 (2) conceal or disguise the source of the

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1 contribution to avoid a reporting requirement under the
2 Campaign Reporting Act.

3 B. It is unlawful for any person to create,
4 establish or organize more than one organization with the
5 intent to:

6 (1) avoid or evade the contribution
7 limitations in the Campaign Reporting Act; or

8 (2) conceal or disguise the source of the
9 contribution to avoid a reporting requirement under the
10 Campaign Reporting Act.

11 C. A person who violates any provision of
12 Subsection A or B of this section is guilty of a:

13 (1) second degree felony if the total
14 contribution involves more than one hundred thousand dollars
15 (\$100,000);

16 (2) third degree felony if the total
17 contribution involves more than fifty thousand dollars
18 (\$50,000) but not more than one hundred thousand dollars
19 (\$100,000);

20 (3) fourth degree felony if the total
21 contribution involves more than ten thousand dollars (\$10,000)
22 but not more than fifty thousand dollars (\$50,000); or

23 (4) misdemeanor if the total contribution
24 involves ten thousand dollars (\$10,000) or less.

25 D. In addition to any criminal penalty, a person

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1 who violates any provision of Subsection A or B of this section
2 is subject to a civil penalty of three times the value of the
3 contribution involved in the transaction."

4 SECTION 3. Section 1-19-26 NMSA 1978 (being Laws 1979,
5 Chapter 360, Section 2, as amended by Laws 2009, Chapter 67,
6 Section 1 and by Laws 2009, Chapter 68, Section 2) is amended
7 to read:

8 "1-19-26. DEFINITIONS.--As used in the Campaign Reporting
9 Act:

10 A. "advertising campaign" means an advertisement or
11 series of advertisements used for a political purpose and
12 disseminated to the public either in print, by radio or
13 television broadcast or by any other electronic means,
14 including telephonic communications, and may include direct or
15 bulk mailings of printed materials;

16 B. "anonymous contribution" means a contribution
17 the contributor of which is unknown to the candidate or the
18 candidate's agent or the political committee or its agent who
19 accepts the contribution;

20 C. "bank account" means an account in a financial
21 institution located in New Mexico;

22 D. "campaign committee" means [~~two~~] one or more
23 persons authorized by a candidate to raise, collect or expend
24 contributions on the candidate's behalf for the purpose of
25 electing the candidate to office;

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1 E. "candidate" means an individual who seeks or
2 considers an office in an election covered by the Campaign
3 Reporting Act, including a public official, who either has
4 filed a declaration of candidacy or nominating petition or:

5 (1) for a non-statewide office, has received
6 contributions or made expenditures of one thousand dollars
7 (\$1,000) or more or authorized another person or campaign
8 committee to receive contributions or make expenditures of one
9 thousand dollars (\$1,000) or more for the purpose of seeking
10 election to the office; or

11 (2) for a statewide office, has received
12 contributions or made expenditures of two thousand five hundred
13 dollars (\$2,500) or more or authorized another person or
14 campaign committee to receive contributions or make
15 expenditures of two thousand five hundred dollars (\$2,500) or
16 more for the purpose of seeking election to the office or for
17 candidacy exploration purposes in the years prior to the year
18 of the election;

19 F. "contribution" means a gift, subscription, loan,
20 advance or deposit of money or other thing of value, including
21 the estimated value of an in-kind contribution, ~~[that is made~~
22 ~~or received for a political purpose]~~ including payment of a
23 debt incurred in an election campaign, but "contribution" does
24 not include the value of services provided without compensation
25 or unreimbursed travel or other personal expenses of

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1 individuals who volunteer a portion or all of their time on
2 behalf of a candidate or political committee [~~nor does it~~
3 ~~include the administrative or solicitation expenses of a~~
4 ~~political committee that are paid by an organization that~~
5 ~~sponsors the committee~~];

6 G. "deliver" or "delivery" means to deliver by
7 certified or registered mail, telecopier, electronic
8 transmission or facsimile or by personal service;

9 H. "election" means any primary, general or
10 statewide special election in New Mexico and includes county
11 and judicial retention elections but excludes municipal, school
12 board and special district elections;

13 I. "electioneering communication":

14 (1) means any communication conveyed by radio,
15 television, cable, satellite or electronic broadcast; any print
16 advertisement, including direct or bulk mailing; or any other
17 means of mass communication that:

18 (a) refers to a candidate;

19 (b) is made during an election year for
20 the office sought by the candidate; and

21 (c) is targeted to the voters residing
22 in the district of the candidate; but

23 (2) does not include:

24 (a) a voter guide allowed by the federal
25 Internal Revenue Code of 1986 for Section 501(c)(3)

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1 organizations;

2 (b) a communication from an organization
3 to its own members or to persons who have requested the
4 organization to send them information, including information
5 conveyed on an organization's web site;

6 (c) a communication appearing in a news
7 story, commentary or editorial distributed through the print
8 media or the facilities of any broadcasting station, unless
9 such facilities or print media are owned or controlled by any
10 political party, political committee or candidate; or

11 (d) a communication made during the
12 period beginning January 1 prior to any regular session of the
13 legislature or, in the case of a special session, after the
14 proclamation has been issued, and ending on the twentieth day
15 following the adjournment of the regular or special session;

16 [~~F.~~] J. "election year" means an even-numbered year
17 in which an election covered by the Campaign Reporting Act is
18 held;

19 [~~J.~~] K. "expenditure" means a payment, transfer or
20 distribution or obligation or promise to pay, transfer or
21 distribute any money or other thing of value [~~for a political~~
22 ~~purpose~~], including payment of a debt incurred in an election
23 campaign or pre-primary convention; [~~but does not include the~~
24 ~~administrative or solicitation expenses of a political~~
25 ~~committee that are paid by an organization that sponsors the~~

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1 committee;

2 ~~K.~~ L. "person" means an individual or entity;

3 ~~[L. "political committee" means two or more~~
4 ~~persons, other than members of a candidate's immediate family~~
5 ~~or campaign committee or a husband and wife who make a~~
6 ~~contribution out of a joint account, who are selected,~~
7 ~~appointed, chosen, associated, organized or operated primarily~~
8 ~~for a political purpose; and "political committee" includes:~~

9 (1) ~~political parties, political action~~
10 ~~committees or similar organizations composed of employees or~~
11 ~~members of any corporation, labor organization, trade or~~
12 ~~professional association or any other similar group that~~
13 ~~raises, collects, expends or contributes money or any other~~
14 ~~thing of value for a political purpose;~~

15 (2) ~~a single individual whose actions~~
16 ~~represent that the individual is a political committee; and~~

17 (3) ~~a person or an organization of two or more~~
18 ~~persons that within one calendar year expends funds in excess~~
19 ~~of five hundred dollars (\$500) to conduct an advertising~~
20 ~~campaign for a political purpose;]~~

21 M. "political committee" means an association of
22 two or more persons, other than a candidate or campaign
23 committee, a major purpose of which is to receive contributions
24 or make expenditures for the nomination, election or defeat of
25 a candidate or the passage or defeat of a ballot measure;

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1 [M.] N. "political purpose" means influencing or
2 attempting to influence an election or pre-primary convention,
3 including a constitutional amendment or other question
4 submitted to the voters;

5 [N.] O. "prescribed form" means a form or
6 electronic format prepared and prescribed by the secretary of
7 state;

8 [Θ.] P. "proper filing officer" means either the
9 secretary of state or the county clerk as provided in Section
10 1-19-27 NMSA 1978;

11 [P.] Q. "public official" means a person elected to
12 an office in an election covered by the Campaign Reporting Act
13 or a person appointed to an office that is subject to an
14 election covered by that act; and

15 [Q.] R. "reporting individual" means every public
16 official, candidate or treasurer of a campaign committee and
17 every treasurer of a political committee."

18 **SECTION 4.** Section 1-19-26.1 NMSA 1978 (being Laws 1993,
19 Chapter 46, Section 2, as amended) is amended to read:

20 "1-19-26.1. POLITICAL COMMITTEES--REGISTRATION--
21 DISCLOSURES.--

22 A. It is unlawful for [~~any~~] a political committee
23 that receives, contributes or expends in excess of [~~five~~
24 ~~hundred dollars (\$500) in any calendar year] two thousand three
25 hundred dollars (\$2,300) during the primary election or two~~

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1 thousand three hundred dollars (\$2,300) during the general
2 election to continue to receive or make [~~any~~] a contribution or
3 expenditure [~~for a political purpose~~] unless that political
4 committee appoints and maintains a treasurer and registers with
5 the secretary of state.

6 B. A political committee shall register with the
7 secretary of state within ten days of receiving, contributing
8 or expending in excess of [~~five hundred dollars (\$500)~~] two
9 thousand three hundred dollars (\$2,300) by paying a filing fee
10 of fifty dollars (\$50.00) and filing a statement of
11 organization under oath on a prescribed form showing:

12 (1) the full name of the political committee,
13 which shall fairly and accurately reflect the identity of the
14 committee, including any sponsoring organization, and its
15 address;

16 (2) a statement of the purpose for which the
17 political committee was organized;

18 (3) the name, address and relationship of any
19 connected [~~or associated organization or entity~~] person;

20 (4) the names and addresses of the officers of
21 the committee; and

22 (5) an identification of the bank used by the
23 committee for all expenditures or contributions made or
24 received.

25 C. The provisions of this section do not apply to a

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1 political committee that is located in another state and is
2 registered with the federal election commission if the
3 political committee reports on federal reporting forms filed
4 with the federal election commission all expenditures for and
5 contributions made to reporting individuals in New Mexico and
6 files with the secretary of state, according to the schedule
7 required for the filing of forms with the federal election
8 commission, a copy of either the full report or the cover sheet
9 and the portions of the federal reporting forms that contain
10 the information on expenditures for and contributions made to
11 reporting individuals in New Mexico."

12 SECTION 5. Section 1-19-34.3 NMSA 1978 (being Laws 1993,
13 Chapter 46, Section 14, as amended) is amended to read:

14 "1-19-34.3. CONTRIBUTIONS IN ONE NAME GIVEN FOR ANOTHER
15 PROHIBITED--PENALTY.--

16 A. It is unlawful for a person to make a
17 contribution in the name of another person, and no person shall
18 knowingly accept a contribution made by one person in the name
19 of another person.

20 B. Any person violating the provisions of this
21 section is guilty of a fourth degree felony."

22 SECTION 6. REPEAL.--Section 1-19-36 NMSA 1978 (being Laws
23 1979, Chapter 360, Section 12, as amended) is repealed.

24 SECTION 7. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2011.

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