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HOUSE BILL 311

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO ELECTIONS; REQUIRING PERSONS WHO MAKE
ELECTIONEERING COMMUNICATIONS OR ENGAGE IN EXPRESS ADVOCACY TO
REPORT CERTAIN DONATIONS, CONTRIBUTIONS AND EXPENDITURES;
PROHIBITING THE ACCEPTANCE OF CONTRIBUTIONS FROM PERSONS THAT
DO NOT DISCLOSE THE SOURCE OF CONTRIBUTIONS; PROHIBITING
FINANCIAL TRANSACTIONS DESIGNED TO CONCEAL THE SOURCE OF
CERTAIN CONTRIBUTIONS; REDEFINING "POLITICAL COMMITTEE" IN THE
CAMPAIGN REPORTING ACT; INCREASING THE AMOUNT OF CONTRIBUTIONS
AND EXPENDITURES THAT A CANDIDATE OR POLITICAL COMMITTEE MAY
RECEIVE OR EXPEND BEFORE BEING REQUIRED TO REGISTER AND REPORT;
PROVIDING DEFINITIONS FOR "CONTRIBUTION", "ELECTIONEERING
COMMUNICATION", "EXPRESS ADVOCACY" AND "TAX-EXEMPT
ORGANIZATION"; PROVIDING CERTAIN CIVIL PENALTIES; REMOVING
CERTAIN CRIMINAL PENALTIES; IMPOSING CRIMINAL PENALTIES;
RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN

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1 LAWS 2009; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978;
2 DECLARING AN EMERGENCY.

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

7 "[NEW MATERIAL] ELECTIONEERING COMMUNICATIONS--REPORTING
8 REQUIREMENTS--PENALTY.--A person who makes a payment for or a
9 promise to pay for a communication that constitutes any
10 electioneering communication of two thousand five hundred
11 dollars (\$2,500) or more in the aggregate in a calendar year
12 that is not otherwise required to be reported as an expenditure
13 by a candidate, campaign committee or political committee
14 shall:

15 A. be considered a political committee for the
16 purposes of and shall comply with the provisions of Section
17 1-19-26.1 NMSA 1978;

18 B. be considered a reporting individual for the
19 purposes of the Campaign Reporting Act and provide all
20 information required of reporting individuals by that act,
21 provided that:

22 (1) only contributions deposited in and
23 expenditures made from the bank account established pursuant to
24 Section 1-19-26.1 NMSA 1978 are subject to the reporting
25 requirements of the Campaign Reporting Act; provided that if a

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1 tax-exempt organization uses general treasury funds for the
2 communication, that organization shall report the name and
3 address of any person who has donated five thousand dollars
4 (\$5,000) or more to the organization in a calendar year, and
5 for donors who are individuals, that organization shall also
6 report the occupation and employer of the donor;

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

11 (3) as used in this subsection, an
12 "electioneering communication expenditure" occurs when the
13 earliest of the following occurs:

14 (a) a person enters into a contract for
15 an electioneering communication;

16 (b) a person makes payment, in whole or
17 in part, for an electioneering communication; or

18 (c) the electioneering communication is
19 publicly disseminated;

20 C. not accept a contribution from a tax-exempt
21 organization that does not publicly disclose the source of its
22 contributions; and

23 D. if the person violates a provision of this
24 section, be subject to civil damages of up to ten times the
25 value of the contribution involved in the transaction. A

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1 district attorney or attorney general may institute a civil
2 action to enforce the civil damages provided for in this
3 section, which damages may be in addition to any penalties
4 provided for in the Campaign Reporting Act and may be pursued
5 regardless of whether other actions are taken pursuant to
6 Section 1-19-34.4, 1-19-34.6 or 1-19-35 NMSA 1978."

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

9 "[NEW MATERIAL] CONCEALING THE SOURCE OF CONTRIBUTIONS
10 PROHIBITED--CIVIL PENALTY.--

11 A. It is unlawful for a person to willfully
12 conduct, structure, engage in or participate in a financial
13 transaction that involves a contribution if the person knows,
14 or should have known, that the financial transaction is
15 designed deliberately in whole or in part to:

16 (1) avoid or evade the contribution limits in
17 the Campaign Reporting Act; or

18 (2) conceal or disguise the source of the
19 contribution to avoid a reporting requirement under the
20 Campaign Reporting Act.

21 B. It is unlawful for any person to willfully
22 create, establish or organize more than one organization with
23 the intent to conceal or disguise the source of the
24 contribution to:

25 (1) avoid or evade the contribution limits in

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1 the Campaign Reporting Act; or

2 (2) avoid a reporting requirement under the
3 Campaign Reporting Act.

4 C. A person who violates any provision of
5 Subsection A or B of this section is subject to civil damages
6 of up to ten times the value of the contribution involved in
7 the transaction. A district attorney or attorney general may
8 institute a civil action to enforce the civil damages provided
9 for in this section, which damages may be in addition to any
10 penalties provided for in the Campaign Reporting Act and may be
11 pursued regardless of whether other actions are taken pursuant
12 to Section 1-19-34.4, 1-19-34.6 or 1-19-35 NMSA 1978.

13 D. Nothing in this section prohibits a contribution
14 from a spouse, a minor child or a bona fide corporation."

15 **SECTION 3.** Section 1-19-26 NMSA 1978 (being Laws 1979,
16 Chapter 360, Section 2, as amended by Laws 2009, Chapter 67,
17 Section 1 and by Laws 2009, Chapter 68, Section 2) is amended
18 to read:

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

21 A. "advertising campaign" means an advertisement or
22 series of advertisements used for a political purpose and
23 disseminated to the public either in print, by radio or
24 television broadcast or by any other electronic means,
25 including telephonic communications, and may include direct or

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1 bulk mailings of printed materials;

2 B. "anonymous contribution" means a contribution
3 the contributor of which is unknown to the candidate or the
4 candidate's agent or the political committee or its agent who
5 accepts the contribution;

6 C. "bank account" means an account in a financial
7 institution located in New Mexico;

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

12 E. "candidate" means an individual who seeks or
13 considers an office in an election covered by the Campaign
14 Reporting Act, including a public official, who either has
15 filed a declaration of candidacy or nominating petition or [~~(1)~~
16 ~~for a non-statewide office~~] has received contributions or made
17 expenditures of [~~one thousand dollars (\$1,000)~~] two thousand
18 five hundred dollars (\$2,500) or more or authorized another
19 person or campaign committee to receive contributions or make
20 expenditures of [~~one thousand dollars (\$1,000)~~] two thousand
21 five hundred dollars (\$2,500) or more for the purpose of
22 seeking election to the office; [~~or~~

23 ~~(2) for a statewide office, has received~~
24 ~~contributions or made expenditures of two thousand five hundred~~
25 ~~dollars (\$2,500) or more or authorized another person or~~

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1 ~~campaign committee to receive contributions or make~~
2 ~~expenditures of two thousand five hundred dollars (\$2,500) or~~
3 ~~more for the purpose of seeking election to the office or for~~
4 ~~candidacy exploration purposes in the years prior to the year~~
5 ~~of the election;]~~

6 F. "contribution":

7 (1) means:

8 (a) a gift, subscription, loan, advance
9 or deposit of money or other thing of value, including the
10 estimated value of an in-kind contribution [~~that is made or~~
11 ~~received for a political purpose, including]~~ or a payment of a
12 debt incurred in an election campaign; or

13 (b) expenditures made by any person in
14 cooperation, consultation or concert with, or at the request or
15 suggestion of, a candidate, a candidate committee or agents of
16 a candidate or candidate's committee, which expenditures shall
17 be considered to be a contribution to such candidate; but
18 [~~"contribution"~~]

19 (2) does not include the value of services
20 provided without compensation or unreimbursed travel or other
21 personal expenses of individuals who volunteer a portion or all
22 of their time on behalf of a candidate or political committee,
23 nor does it include the administrative or solicitation expenses
24 of a political committee that are paid by an organization that
25 sponsors the committee;

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1 G. "deliver" or "delivery" means to deliver by
2 certified or registered mail, telecopier, electronic
3 transmission or facsimile or by personal service;

4 H. "election" means any primary, general or
5 statewide special election in New Mexico and includes county
6 and judicial retention elections but excludes municipal, school
7 board and special district elections;

8 I. "electioneering communication":

9 (1) means any communication conveyed by the
10 internet, radio, television, telephone, cable, satellite or
11 electronic broadcast; any print advertisement, including direct
12 or bulk mailing; or any other means of mass communication that:

13 (a) refers to a candidate;

14 (b) is made during the seventy-five days
15 preceding a primary or seventy-five days before the general
16 election; and

17 (c) is targeted to voters residing in
18 the district of the candidate; but

19 (2) does not include:

20 (a) a voter guide allowed by the federal
21 Internal Revenue Code of 1986 for Section 501(c) organizations;

22 (b) a judicial performance evaluation by
23 the judicial performance evaluation commission concerning
24 candidates in a judicial retention election;

25 (c) a communication from an organization

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1 to its own members or to persons who have requested the
2 organization to send them information, or information conveyed
3 on an organization's web site;

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

9 (e) a communication made after the
10 proclamation has been issued for a special legislative session,
11 and ending on the twentieth day following the adjournment of
12 the special session; or

13 (f) a communication for candidate
14 debates or forums when the communication is paid for by or on
15 behalf of the debate or forum sponsor;

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 L. "express advocacy":

3 (1) means any communication that asks the
4 recipient to vote for or against a specific candidate and that
5 is distributed via broadcast, cable, telephone, satellite,
6 print or electronic media to voters living in the district that
7 the candidate seeks to represent; but

8 (2) does not include:

9 (a) a communication from an organization
10 to its own members or to persons who have requested the
11 organization to send them information, or information conveyed
12 on an organization's web site; or

13 (b) a communication appearing in a news
14 story, commentary or editorial distributed through the print
15 media or the facilities of any broadcasting station, unless
16 such facilities or print media are owned or controlled by any
17 political party, political committee or candidate;

18 ~~[K.] M. "person" means an individual or entity;~~

19 ~~[L.] N. "political committee" means [two or more~~
20 ~~persons, other than members of a candidate's immediate family~~
21 ~~or campaign committee or a husband and wife who make a~~
22 ~~contribution out of a joint account, who are selected,~~
23 ~~appointed, chosen, associated, organized or operated primarily~~
24 ~~for a political purpose; and "political committee" includes:~~

25 ~~(1) political parties, political action~~

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1 ~~committees or similar organizations composed of employees or~~
2 ~~members of any corporation, labor organization, trade or~~
3 ~~professional association or any other similar group that~~
4 ~~raises, collects, expends or contributes money or any other~~
5 ~~thing of value for a political purpose;~~

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

8 ~~(3) a person or an organization of two or more~~
9 ~~persons that within one calendar year expends funds in excess~~
10 ~~of five hundred dollars (\$500) to conduct an advertising~~
11 ~~campaign for a political purpose] an association of two or more~~
12 ~~persons, other than a candidate or campaign committee:~~

13 (1) a major purpose of which is to receive
14 contributions or make expenditures for the nomination, election
15 or defeat of a candidate;

16 (2) that accepts contributions for the purpose
17 of expressly advocating for the election or defeat of a
18 candidate; or

19 (3) that makes expenditures that expressly
20 advocate for the election or defeat of a candidate;

21 [M.] O. "political purpose" means influencing or
22 attempting to influence an election or pre-primary convention,
23 including a constitutional amendment or other question
24 submitted to the voters;

25 [N.] P. "prescribed form" means a form or

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1 electronic format prepared and prescribed by the secretary of
2 state;

3 [Θ-] Q. "proper filing officer" means either the
4 secretary of state or the county clerk as provided in Section
5 1-19-27 NMSA 1978;

6 [P-] R. "public official" means a person elected to
7 an office in an election covered by the Campaign Reporting Act
8 or a person appointed to an office that is subject to an
9 election covered by that act; [~~and~~

10 Q-] S. "reporting individual" means every public
11 official, candidate or treasurer of a campaign committee and
12 every treasurer of a political committee; and

13 T. "tax-exempt organization" means an organization
14 that has been granted exemption from the federal income tax as
15 an organization described in Section 501(c) of the Internal
16 Revenue Code of 1986, as amended or renumbered."

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

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

21 A. It is unlawful for [~~any~~] a political committee
22 or any candidate that receives, contributes or expends in
23 excess of [~~five hundred dollars (\$500) in any calendar year~~]
24 two thousand five hundred dollars (\$2,500) during a calendar
25 year to continue to receive or make [~~any~~] a contribution or

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1 expenditure [~~for a political purpose~~] unless [~~that political~~
2 ~~committee appoints and maintains a treasurer and registers with~~
3 ~~the secretary of state~~]:

4 (1) a treasurer has been appointed and is
5 constantly maintained; provided, however, that when a duly
6 appointed treasurer is unable for any reason to continue as
7 treasurer, the candidate or political committee shall appoint a
8 successor; and provided further that a candidate may serve as
9 the candidate's own treasurer;

10 (2) all disbursements of money and receipts of
11 contributions are authorized by and through the candidate or
12 treasurer;

13 (3) a separate bank account has been
14 established and all receipts of money contributions and all
15 expenditures of money are deposited in and disbursed from the
16 one bank account maintained by the treasurer in the name of the
17 candidate or political committee; provided that nothing in this
18 section shall prohibit investments from the bank account to
19 earn interest as long as the investments and earnings are fully
20 reported. All disbursements, except for disbursements made
21 from a petty cash fund of one hundred dollars (\$100) or less,
22 shall be by check made payable to the person or entity
23 receiving the disbursement and not to "cash" or "bearer"; and

24 (4) the treasurer, upon disbursing or
25 receiving money or other things of value, immediately enters

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1 and thereafter keeps a proper record preserved by the
2 treasurer, including a full, true and itemized statement and
3 account of each sum disbursed or received; the date of such
4 disbursal or receipt; to whom disbursed or from whom received;
5 and the object or purpose for which it was disbursed or
6 received.

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

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

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

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

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

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

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1 C. The provisions of this section do not apply to a
2 political committee that is located in another state and is
3 registered with the federal election commission if the
4 political committee reports on federal reporting forms filed
5 with the federal election commission all expenditures for and
6 contributions made to reporting individuals in New Mexico and
7 files with the secretary of state, according to the schedule
8 required for the filing of forms with the federal election
9 commission, a copy of either the full report or the cover sheet
10 and the portions of the federal reporting forms that contain
11 the information on expenditures for and contributions made to
12 reporting individuals in New Mexico."

13 SECTION 5. Section 1-19-34 NMSA 1978 (being Laws 1979,
14 Chapter 360, Section 10, as amended) is amended to read:

15 "1-19-34. [~~CANDIDATES--POLITICAL COMMITTEES--TREASURER--~~
16 ~~BANK ACCOUNT~~] ANONYMOUS CONTRIBUTIONS--CONTRIBUTIONS FROM
17 SPECIAL EVENTS.--

18 ~~[A. It is unlawful for the members of any political~~
19 ~~committee or any candidate to make any expenditure or solicit~~
20 ~~or accept any contribution for a political purpose unless:~~

21 ~~(1) a treasurer has been appointed and is~~
22 ~~constantly maintained; provided, however, when a duly appointed~~
23 ~~treasurer is unable for any reason to continue as treasurer,~~
24 ~~the candidate or political committee shall appoint a successor;~~
25 ~~and provided further that a candidate may serve as his own~~

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1 ~~treasurer;~~

2 ~~(2) all disbursements of money and receipts of~~
3 ~~contributions are authorized by and through the candidate or~~
4 ~~treasurer;~~

5 ~~(3) a separate bank account has been~~
6 ~~established and all receipts of money contributions and all~~
7 ~~expenditures of money are deposited in and disbursed from the~~
8 ~~one bank account maintained by the treasurer in the name of the~~
9 ~~candidate or political committee; provided that nothing in this~~
10 ~~section shall prohibit investments from the bank account to~~
11 ~~earn interest as long as the investments and earnings are fully~~
12 ~~reported. All disbursements except for disbursements made from~~
13 ~~a petty cash fund of one hundred dollars (\$100) or less shall~~
14 ~~be by check made payable to the person or entity receiving the~~
15 ~~disbursement and not to "cash" or "bearer"; and~~

16 ~~(4) the treasurer upon disbursing or receiving~~
17 ~~money or other things of value immediately enters and~~
18 ~~thereafter keeps a proper record preserved by him, including a~~
19 ~~full, true and itemized statement and account of each sum~~
20 ~~disbursed or received, the date of such disbursal or receipt,~~
21 ~~to whom disbursed or from whom received and the object or~~
22 ~~purpose for which it was disbursed or received.~~

23 ~~B.]~~ A. No anonymous contributions may be accepted
24 in excess of one hundred dollars (\$100). The aggregate amount
25 of anonymous contributions received by a reporting individual

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1 during a primary or general election or a statewide special
2 election shall not exceed two thousand dollars (\$2,000) for
3 statewide races and five hundred dollars (\$500) for all other
4 races.

5 ~~[G-]~~ B. Cash contributions received at special
6 events that are unidentifiable as to specific contributor but
7 identifiable as to the special event are not subject to the
8 anonymous contribution limits provided for in this section so
9 long as no single special event raises, after expenses, more
10 than one thousand dollars (\$1,000) in such cash contributions.
11 For those contributions, due diligence and best efforts shall
12 be made to disclose on a special prescribed form the sponsor,
13 date, place, total amount received, expenses incurred,
14 estimated number of persons in attendance and other
15 identifiable factors that describe the special event. For
16 purposes of this subsection, "special event" includes an event
17 such as a barbecue or similar fundraiser where tickets costing
18 fifteen dollars (\$15.00) or less are sold or an event such as a
19 coffee, tea or similar reception.

20 ~~[D-]~~ C. Any contributions received pursuant to this
21 section in excess of the limits established in Subsections ~~[B~~
22 ~~and C]~~ A and B of this section shall be donated to the state
23 general fund or an organization to which a federal income tax
24 deduction would be available under Subparagraph (A) of
25 Paragraph (1) of Subsection (b) of Section 170 of the Internal

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1 Revenue Code of 1986, as amended."

2 SECTION 6. Section 1-19-34.3 NMSA 1978 (being Laws 1993,
3 Chapter 46, Section 14, as amended) is amended to read:

4 "1-19-34.3. CONTRIBUTIONS IN ONE NAME GIVEN FOR ANOTHER
5 PROHIBITED--CRIMINAL PENALTY.--

6 A. It is unlawful for a person to knowingly make a
7 contribution in the name of another person, and no person shall
8 knowingly accept a contribution made by one person in the name
9 of another person.

10 B. A person who violates the provisions of this
11 section is guilty of a fourth degree felony. The attorney
12 general or district attorney may institute a criminal complaint
13 for a violation of the provisions of this section in district
14 court."

15 SECTION 7. Section 1-19-36 NMSA 1978 (being Laws 1979,
16 Chapter 360, Section 12, as amended) is amended to read:

17 "1-19-36. PENALTIES--~~[CRIMINAL ENFORCEMENT]~~ EXCEPTIONS.--

18 ~~[A. Any person who knowingly and willfully violates~~
19 ~~any provision of the Campaign Reporting Act is guilty of a~~
20 ~~misdemeanor and shall be punished by a fine of not more than~~
21 ~~one thousand dollars (\$1,000) or by imprisonment for not more~~
22 ~~than one year or both.~~

23 ~~B. The Campaign Reporting Act may be enforced by~~
24 ~~the attorney general or the district attorney in the county~~
25 ~~where the candidate resides, where a political committee has~~

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1 ~~its principal place of business or where the violation~~
2 ~~occurred.]~~ The penalties provided for in Section 1-20-22 NMSA
3 1978 shall not apply to violations of provisions of the
4 Campaign Reporting Act."

5 SECTION 8. EMERGENCY.--It is necessary for the public
6 peace, health and safety that this act take effect immediately.

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