

# Committee Report

**REGULAR CALENDAR**

**March 3, 2020**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Election Law to which was referred  
HB 1415,**

**AN ACT establishing a committee to study the Montana  
disclosure act and anonymous out-of-state  
contributions preceding an election. Having considered  
the same, report the same with the following  
amendment, and the recommendation that the bill  
OUGHT TO PASS WITH AMENDMENT.**

**Rep. Connie Lane**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	Election Law
Bill Number:	HB 1415
Title:	establishing a committee to study the Montana disclosure act and anonymous out-of-state contributions preceding an election.
Date:	March 3, 2020
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2020-0730h

### STATEMENT OF INTENT

Recognizing the increasing influence in elections played by negative campaign literature, emails, and other advertising directly paid for by PACs and other groups, this bill establishes a committee to study other states' campaign finance disclosure laws and laws regulating anonymous contributions, receipts and expenditures. The amendment changed the duties of the committee from a specific study of the Montana Disclosure Act and anonymous out-of-state contributions to a more broad charge.

Vote 16-4.

Rep. Connie Lane  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Election Law

**HB 1415**, establishing a committee to study the Montana disclosure act and anonymous out-of-state contributions preceding an election. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Connie Lane for Election Law. Recognizing the increasing influence in elections played by negative campaign literature, emails, and other advertising directly paid for by PACs and other groups, this bill establishes a committee to study other states' campaign finance disclosure laws and laws regulating anonymous contributions, receipts and expenditures. The amendment changed the duties of the committee from a specific study of the Montana Disclosure Act and anonymous out-of-state contributions to a more broad charge. **Vote 16-4.**

Original: House Clerk  
Cc: Committee Bill File

## Iris Altilio

---

**From:** David Cote  
**Sent:** Tuesday, March 03, 2020 3:17 PM  
**To:** Iris Altilio  
**Cc:** Connie Lane  
**Subject:** Fwd: HB 1415 Report

Approved.

Sent from my iPhone

Begin forwarded message:

**From:** Connie Lane <Connie.Lane@leg.state.nh.us>  
**Date:** March 3, 2020 at 3:05:20 PM EST  
**To:** David Cote <david.cote@leg.state.nh.us>, Iris Altilio <Iris.Altilio@leg.state.nh.us>  
**Subject:** Fwd: HB 1415 Report

One more time!

Thank you,  
Connie

Sent from my iPhone, so please forgive any typos and auto-corrections

Election Law Committee

HB-1415

Title: establishing a committee to study campaign finance disclosure laws and anonymous contributions, receipts, and expenditures

March 3, 2020

Consent Calendar: No

OTPA

Amendment # 2020-0730h

Statement of Intent:

Recognizing the increasing influence in elections played by negative campaign literature, emails, and other advertising directly paid for by PACs and other groups, this bill establishes a committee to study other states' campaign finance disclosure laws and laws regulating anonymous contributions, receipts and expenditures.

Committee vote: 16-4

Respectfully submitted,

Rep. Connie Lane

Rep. W. Pearson, Ches. 16  
February 18, 2020  
2020-0730h  
11/08

Amendment to HB 1415

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT            establishing a committee to study campaign finance disclosure laws and anonymous  
4                            contributions, receipts, and expenditures.

5

6 Amend the bill by replacing section 1 with the following:

7

8        1    Committee Established.    There is established a committee to study campaign finance  
9 disclosure laws and anonymous contributions, receipts, and expenditures.

10

11 Amend the bill by replacing section 3 with the following:

12

13        3    Duties.    The committee shall study the campaign finance disclosure laws, including the  
14 Montana Disclosure Act of 2015, and anonymous contributions, receipts, and expenditures to  
15 determine whether any New Hampshire laws can be amended or enacted to facilitate transparency.

2020-0730h

AMENDED ANALYSIS

This bill establishes a committee to study campaign finance disclosure laws and anonymous contributions, receipts, and expenditures.

# Voting Sheets



HOUSE COMMITTEE ON ELECTION LAW

EXECUTIVE SESSION on HB 1415

**BILL TITLE:** establishing a committee to study the Montana disclosure act and anonymous out-of-state contributions preceding an election.

**DATE:** March 3, 2020

**LOB ROOM:** 308

**MOTIONS: OUGHT TO PASS WITH AMENDMENT**

Moved by Rep. Moynihan                      Seconded by Rep. Gay                      AM Vote: 20-0

Amendment # 2020-0730h

Moved by Rep. Moynihan                      Seconded by Rep. Komi                      Vote: 16-4

**CONSENT CALENDAR: NO**

**Statement of Intent:**                      Refer to Committee Report

Respectfully submitted,

Rep Edith DesMarais, Clerk

HOUSE COMMITTEE ON ELECTION LAW

EXECUTIVE SESSION on HB 1415

BILL TITLE: establishing a committee to study the Montana disclosure act and anonymous out-of-state contributions preceding an election.

DATE:

LOB ROOM: 308

MOTION: (Please check one box)

- OTP                       ITL                       Retain (1<sup>st</sup> year)                       Adoption of Amendment # 2020-0730H (if offered)
- Interim Study (2nd year)

Moved by Rep. Magnihan                      Seconded by Rep. Gay                      Vote: voice vote unanimous

MOTION: (Please check one box)

- OTP                       OTP/A                       ITL                       Retain (1<sup>st</sup> year)                       Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. Magnihan                      Seconded by Rep. Koni                      Vote: 16-4

MOTION: (Please check one box)

- OTP                       OTP/A                       ITL                       Retain (1<sup>st</sup> year)                       Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. \_\_\_\_\_                      Seconded by Rep. \_\_\_\_\_                      Vote: \_\_\_\_\_

MOTION: (Please check one box)

- OTP                       OTP/A                       ITL                       Retain (1<sup>st</sup> year)                       Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. \_\_\_\_\_                      Seconded by Rep. \_\_\_\_\_                      Vote: \_\_\_\_\_

CONSENT CALENDAR:    \_\_\_ YES                      \_\_\_ NO

Minority Report? ~~\_\_\_~~ Yes    \_\_\_ No    If yes, author, Rep: H.H.                      Motion \_\_\_\_\_

Respectfully submitted: Edith DesMarais  
Rep Edith DesMarais, Clerk



## 2020 SESSION

## Election Law

 Bill #: HB 1415 Motion: OTPA AM #: 241-0730A Exec Session Date: 3-3-20

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Cote, David E. Chairman	16		
Moynihan, Wayne T. Vice Chairman	1		
Ward, Gerald W.R.	2		
Pearson, William A.	3		
DesMarais, Edith M. Clerk	4		
Komi, Richard N.	5		
Bergeron, Paul R.	6		
Sandler, Catt	7		
Hamer, Heidi M.	8		
Higgins, Peg	9		
Lane, Connie B.	10		
Morrill, David J.	11		
Hoelzel, Kathleen M.	12		
Gay, Betty I.	13		
<del>Lang, Timothy P.</del> <u>Hs 11</u>		1	
Prudhomme-O'Brien, Katherine J.	14		
<del>Hayward, Peter T.</del> <u>True</u>		2	
<del>Merlino, Timothy A.</del> <u>Boehm</u>		3	
<del>Owens, Becky A.</del> <u>Torosian</u>		4	
Griffin, Barbara J.	15		
<b>TOTAL VOTE:</b>	16	4	

Rep. W. Pearson, Ches. 16  
February 18, 2020  
2020-0730h  
11/08

Amendment to HB 1415

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT            establishing a committee to study campaign finance disclosure laws and anonymous  
4                            contributions, receipts, and expenditures.

5

6 Amend the bill by replacing section 1 with the following:

7

8        1    Committee Established.    There is established a committee to study campaign finance  
9 disclosure laws and anonymous contributions, receipts, and expenditures.

10

11 Amend the bill by replacing section 3 with the following:

12

13        3    Duties.    The committee shall study the campaign finance disclosure laws, including the  
14 Montana Disclosure Act of 2015, and anonymous contributions, receipts, and expenditures to  
15 determine whether any New Hampshire laws can be amended or enacted to facilitate transparency.

2020-0730h

AMENDED ANALYSIS

This bill establishes a committee to study campaign finance disclosure laws and anonymous contributions, receipts, and expenditures.

SUBCOMMITTEE  
WORK  
SESSION

HOUSE COMMITTEE ON ELECTION LAW

SUBCOMMITTEE WORK SESSION on HB 1415

BILL TITLE: establishing a committee to study the Montana disclosure act and anonymous out-of-state contributions preceding an election.

DATE: 2/20/2020

Subcommittee Members: Reps. Moynihan, W. Pearson, Lane, B. Griffin and Gay

Comments and Recommendations:

Three horizontal lines for writing comments and recommendations.

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ AM Vote: \_\_\_\_\_

Adoption of Amendment # \_\_\_\_\_

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

\_\_\_\_\_ Amendment Adopted \_\_\_\_\_ Amendment Failed

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ AM Vote: \_\_\_\_\_

Adoption of Amendment # \_\_\_\_\_

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

\_\_\_\_\_ Amendment Adopted \_\_\_\_\_ Amendment Failed

Respectfully submitted,

Rep. \_\_\_\_\_ Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON ELECTION LAW

**SUBCOMMITTEE WORK SESSION** on HB 1415

**BILL TITLE:** establishing a committee to study the Montana disclosure act and anonymous out-of-state contributions preceding an election.

**DATE:** February 18, 2020

**Subcommittee Members:** Reps. Moynihan, W. Pearson, Lane, B. Griffin and Gay

**Comments and Recommendations:** Amendment to be prepared by Rep. Pearson.

Respectfully submitted,

Rep. Wayne Moynihan  
Subcommittee Chairman



HOUSE COMMITTEE ON ELECTION LAW

SUBCOMMITTEE WORK SESSION on HB 1415

BILL TITLE: establishing a committee to study the Montana disclosure act and anonymous out-of-state contributions preceding an election.

DATE: 2/18/2020

Subcommittee Members: Reps. Moynihan, W. Pearson, Lane, B. Griffin and Gay

Comments and Recommendations:

Amendment to be prepared by Rep Pearson

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. \_\_\_\_\_ Secoded by Rep. \_\_\_\_\_ AM Vote: \_\_\_\_\_

Adoption of Amendment # \_\_\_\_\_

Moved by Rep. \_\_\_\_\_ Secoded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

\_\_\_\_\_ Amendment Adopted \_\_\_\_\_ Amendment Failed

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. \_\_\_\_\_ Secoded by Rep. \_\_\_\_\_ AM Vote: \_\_\_\_\_

Adoption of Amendment # \_\_\_\_\_

Moved by Rep. \_\_\_\_\_ Secoded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

\_\_\_\_\_ Amendment Adopted \_\_\_\_\_ Amendment Failed

Respectfully submitted,

Rep. \_\_\_\_\_ Subcommittee Chairman/Clerk

Amendment to HB 1415

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT prohibiting certain independent expenditures made within the 90 days immediately  
4 preceding certain elections.  
5

6 Amend the bill by replacing all after the enacting clause with the following:

7

8 1 New Section; Political Expenditures and Contributions; Prohibited Independent Expenditures.

9 Amend RSA 664 by inserting after section 5-c the following new section:

10 664:5-d Prohibited Independent Expenditures.

11 I. No independent expenditure shall be made by any person or political committee within  
12 the 90 days immediately preceding an election for state office unless the communication developed  
13 and distributed is identified and signed in substantially the same manner as political advertising  
14 pursuant to RSA 664:14 and RSA 664:16.

15 II.(a) A violation of this section shall result in a civil penalty of \$5,000 per violation.

16 (b) Any person injured by another's violation of this section may bring an action for  
17 damages and for such equitable relief, including an injunction, as the court deems necessary and  
18 proper. If the court finds for the plaintiff, recovery shall be in the amount of actual damages or  
19 \$1,000, whichever is greater. If the court finds that the act or practice was a willful or knowing  
20 violation of this section, it shall award as much as 3 times, but not less than 2 times, such amount.  
21 In addition, a prevailing plaintiff shall be awarded the costs of the suit and reasonable attorney's  
22 fees, as determined by the court. Any attempted waiver of the right to the damages set forth in this  
23 paragraph shall be void and unenforceable. Injunctive relief shall be available to private individuals  
24 under this section without bond, subject to the discretion of the court. Upon commencement of any  
25 action brought under this section, the clerk of the court shall mail a copy of the complaint or other  
26 initial pleadings to the attorney general and, upon entry of any judgment or decree in the action,  
27 shall mail a copy of such judgment or decree to the attorney general.

28 2 Effective Date. This act shall take effect 60 days after its passage.

2020-0052h

AMENDED ANALYSIS

This bill prohibits certain independent expenditures made within the 90 days immediately preceding an election for any state office.

UNAPPROVED

Introduction of HB1415-2020-0052h to Election Law Cmte  
10:30 am Wednesday Jan 14, 2020 in LOB 308

Thank you Chairman Cote, ViceChair Moynihan and fellow Representatives for the opportunity to speak before you today. I thank you in advance for your kind attention.

For the record, I am Rep. Ken Wells of Andover, and I am here to introduce House Bill 1415. As introduced, this bill was to establish a committee to study the Montana Disclose Act of 2015, which prohibits anonymous out-of-state expenditures, including, for example "in kind" attack ad mailings, during the period 90 days preceding elections in Montana. The aim of the committee would have been to see if this Montana provision could be incorporated into NH election law.

The amendment before you, 0052h changes both the title and the body of the bill, and calls for the enactment of such a protection for NH elections, not for the establishment of a study committee.

NH elections should be decided by NH voters, after they have had an appropriate opportunity to discuss, fact-check and deliberate upon the information available to them before they go to the polls. All of us who have mailboxes or a phone line know that the pace of political messaging by junk mail, robocalling and other advertising media, accelerates as election day nears. Not infrequently, late messaging turns negative and destructive to the deliberative democratic process. Unfortunately, some of those last-minute messages may contain sensational and misleading misinformation, are funded by "dark money" originating outside of NH and seeking to manipulate the outcome of our elections by misleading NH voters. If the origin of the misinformation is an anonymous out-of-state entity, there is currently insufficient accountability or recourse to seek civil damages. I think we all agree that this is bad, regardless of our political affiliation.

The amendment before you seeks to amend RSA 664:6 by adding a prohibition on all such anonymous independent expenditures, and provides civil penalties for each violation. The mechanism for doing this demands explicitly that political organizations operating from outside NH be properly registered with the NH Secretary of State, and therefore be not anonymous, if they engage in political advertising in the last 90 days before NH elections. Secondly, it prescribes a civil penalty of \$5000 per occurrence, and awards double to triple damages to plaintiffs. (I believe these penalties are exactly the same penalties already existing in section 14a, as applied only to pre-recorded messaging.)

I'm proud to live in a state where there is such a high level of voter involvement and turnout, where there is reasoned political discourse about important topics perennially, and

where so many voters profess their independence from either party's ideologies and prefer to deliberate thoughtfully upon verifiable information, and carefully consider their own values, before heading to the polls.

Let's help keep our local NH state politics local!

By the way, the Montana Law upheld by the Ninth Circuit Court, and the Supreme Court declined to hear the appeal.

# Hearing Minutes



**FU.** Feel there are ways to hide funding now?

**A.** It helps create a consequence rather than a new prohibition. Current law requires reporting, but is not explicit and has no penalty.

**Q. Rep. Lang:** If understand correctly, if prior 90 days, no violation?

**A.** Doesn't come under this penalty, but court can address under current statute as this gives time to respond.

**FU** After 90 days, is still in our statute?

**A.** Yes, but not penalty.

**Olivia Zink.** Open democracy:

Montana Law is one way, but 1912 Corruptive Practice Act and robust campaign finance laws and penalties are others. It is a disclose act and more strict than ours. It has a Commissioner of Political Practices with more authority than SOS and is independent. Speaking to Rep. Lang's questions. Have worked for years to close the loopholes in NH law and have done across the board. HB 1525 plugs the disclosure rules and is coming up next week. It uses 60 days prior to election. It is important for groups to register and report to plug our loopholes.

Having a penalty is important so if break the law there are repercussions. Makes sure people will register and report. Use both electioneering communication and candidate knows or does not. May be seeing independent misleading calls and not really electioneering but advocacy.

**Q. Rep. Lang:** IE's – targeting candidate or policy mailer – political advocacy-Independent - must register for or against a policy – not coordinated with a candidate. Making expenditures/Political Advocacy. Tells to vote for or against makes it electioneering?

**A.** Committee to elect House Dems – Want to catch them: Call a candidate

**Rep. Gay:** Does an Independent expenditure if express advocacy for a cause – changes if names a candidate i.e. (PAC) political expenditure?

**A:** Different distinctions need to be clarified.

**FU:** If going to name an official in any way right before an election?

**A.** Yes. Our decision is to be how many days before an election. 1525 was passed last year unanimously in house and senate but the Gov. Vetoed!

**Rep. Moynihan:** Are the bills “blendable”?

**A.** Yes this bill adds a prohibition unless registered and reported and includes the penalty.

**Rep. Gay:** Independent expenditure if not express advocacy, this bill relates because a name is mentioned.

**A.** Will send AG interpretation of how it has been defined and how such mailers have been challenged and defended – and reasons why. It is not that black and white so both bills are necessary. It is a complex area of rules.

**Rep. Lang:** 664:21 under section 7 clarifies requirements of registering. Does this just silence someone?

**A.** Like the 25% rule so penalty is more meaningful for big donors. Current law has a loophole so doesn't capture all actors. We need to look at both laws. Prohibition on unions and LLP's but this adds to the prohibited so different penalty for disclosure law.



**FU.** Does it cause a conflict in law with the other saying 5,000 and the other 25%?

**A.** Would have to look at it to be able to answer clearly. We can drive a truck through the current loophole.

Respectfully submitted,

Rep. Edith M. DesMarais  
Clerk



**HB 1415**

**Establishing a committee to study the Montana disclosure act and anonymous out-of-state contributions preceding an election.**

Hearing opened at: 10:30

**Presenting: Rep. Ken Wells**

Handed out a two page amendment. **Wells Amendment 2020-0052h**

Original intent was to establish a committee to study attack ad mailings and see if Montana law could be utilized. The amendment changes the original bill in full. NH elections should be decided by NH voters with correct information. Messaging by junk mail and negative late information may be misinformation from dark money. If anonymous, there is no way to seek damages. 664:6 to add to options to stop and set up a recourse through the Secretary of state registration. Civil penalty \$5,000 per violation and double & triple to injured candidates. Current law only applies to pre-recorded information. Need a discourse, but must be verifiable information. We need to keep our local elections local.

**Q. Rep. Lang:** Are we talking about named or unnamed sources?

**A.** Not all of such mailings come from organization on file with SOS.

**FU.** Isn't it already a violation of law if non-conforming anyway.

**A.** Not sure a penalty so no disincentive.

**Q. Rep. Moynahan:** Can this fully eliminate original bill – 664:5-D?

**A.** Yes. Additional in 664:14 & 664:16 penalties for pre-recorded messaging \_ under Political advertising – 1616 requires identification of political advertising.

**FU:** Why decide to change from study committee to actual law change?

**A.** In talking with others, felt it could be accomplished and not delayed by study.

**Q. Rep. Gay:** Does this apply to people out of state or does it just add them to make them follow the law we must follow?

**A.** Would apply equally in and out of state.

**FU.** Feel there are ways to hide funding now?

**A.** It helps create a consequence rather than a new prohibition. Current law requires reporting, but is not explicit and has no penalty.

**Q. Rep. Lang:** If understand correctly, if prior 90 days, no violation?

A. Doesn't come under this penalty, but court can address under current statute as this gives time to respond.

**FU** After 90 days, is still in our statute?

A. Yes, but not penalty.

**Olivia Zink.** Open democracy

Montana Law is one way, but 1912 Corruptive Practice Act and robust campaign finance laws and penalties are others. It is a disclose act and more strict than ours. It has a Commissioner of Political Practices with more authority than SOS and is independent. Speaking to Rep. Lang's questions. Have worked for years to close the loopholes in NH law and have done across the board. HB 1525 plugs the disclosure rules and is coming up next week. It uses 60 days prior to election. It is important for groups to register and report to plug our loopholes.

Having a penalty is important so if break the law there are repercussions. Makes sure people will register and report. Use both electioneering communication and candidate knows or does not. May be seeing independent misleading calls and not really electioneering but advocacy.

**Q. Rep. Lang:** IE's – targeting candidate or policy mailer – political advocacy-Independent - must register for or against a policy – not coordinated with a candidate. Making expenditures/Political Advocacy. Tells to vote for or against makes it electioneering?

A. Committee to elect House Dems – Want to catch them: Call a candidate

**Rep. Gay:** Does an Independent expenditure if express advocacy for a cause – changes if names a candidate i.e. (PAC) political expenditure?

A: Different distinctions need to be clarified.

**FU:** If going to name an official in any way right before an election?

A. Yes. Our decision is to be how many days before an election. 1525 was passed last year unanimously in house and senate but the Gov. Vetoed!

**Rep. Moynihan:** Are the bills "blendable"?

A. Yes this bill adds a prohibition unless registered and reported and includes the penalty.

**Rep. Gay:** Independent expenditure if not express advocacy, this bill relates because a name is mentioned.

A. Will send AG interpretation of how it has been defined and how such mailers have been challenged and defended – and reasons why. It is not that black and white so both bills are necessary. It is a complex area of rules.

**Rep. Lang:** 664:21 under section 7 clarifies requirements of registering. Does this just silence someone?

**A.** Like the 25% rule so penalty is more meaningful for big donors. Current law has a loophole so doesn't capture all actors. We need to look at both laws. Prohibition on unions and LLP's but this adds to the prohibited so different penalty for disclosure law.

**FU.** Does it cause a conflict in law with the other saying 5,000 and the other 25%?

**A.** Would have to look at it to be able to answer clearly. We can drive a truck through the current loophole.

**Hearing closed 11:00AM**



# Testimony

ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD  
ATTORNEY GENERAL



JANE E. YOUNG  
DEPUTY ATTORNEY GENERAL

July 26, 2018

The Honorable Matthew Scruton  
195 Ten Rod Road  
Rochester, NH 03867

The Honorable Philip Bean  
PO Box 660  
Hampton, NH 03842

The Honorable Sean Morrison  
98 Hamilton Drive  
Epping, NH 03042

The Honorable Mark Proulx  
76 Janet Court  
Manchester, NH 03103

The Honorable Michael McCarthy  
34 Terry Street  
Nashua, NH 03064

The Honorable Marty Bove  
3 Tinkham Lane  
Londonderry, NH 03053

The Honorable Jason Janvrin  
PO Box 462  
Seabrook, NH 03874

Re: Americans for Prosperity Complaint  
RSA 664:3

Dear Representatives Scruton, Morrison, McCarty, Janvrin, Bean, Proulx, & Bove:

Our office has carefully reviewed your complaint dated June 25, 2018, which alleged that Americans for Prosperity Foundation ("AFP") violated state and federal laws when it issued flyers to many of your constituents in May and June of 2018. The flyers at issue are attached as Exhibit 1. By way of background, when our office receives a complaint, we first review it in order to determine whether the allegations, if true, would constitute a violation of state law. We note that our office does not have jurisdiction to address the alleged federal law violations in your complaint.

With respect to the state law allegations, your complaint alleges that AFP's flyers "promote the success or defeat of a candidate or candidates or measure or measures" and therefore AFP should be required to register as a political committee under New Hampshire law. See RSA 664:2, III; RSA 664:3, I and II. After receiving your complaint, we provided AFP with the opportunity to respond to your allegations. In its rebuttal letter, attached as Exhibit 2, AFP acknowledges that it is a 501(c)(4) organization established to "educate and mobilize the public



on the benefits of a free and open society” and that it is “permitted to engage in lobbying and grassroots lobbying to advance its non-profit mission.” AFP asserts that its actions do not constitute an “expenditure” under New Hampshire law because the mailers “do not promote the success or defeat of a candidate” and, further, that its activities constitute issue advocacy which is protected speech under the First Amendment of the United States Constitution, citing to *Buckley v. Valeo*, 424 US 1 (1976).

An organization is required to register as a political committee if it “promotes the success or defeat of a candidate or candidates or measure or measures.” RSA 664:2, III (a) through (c). Even if an organization is not predominately organized for this purpose, it must still register as a political committee if it “makes expenditures that total \$5,000 or more in a calendar year.” RSA 664:2, III (d) (emphasis added). “Expenditure” means the “distribution of money or thing of value...for the purpose of promoting the success of a candidate or candidates or measure or measures.” RSA 664:2, IX; *see also* RSA 664:2, XI (expenditures also include payments for “the development and distribution of a communication that expressly advocates the election or defeat of a clearly identified candidate or candidates or the success or defeat of a measure or measures”).

Similarly, an entity is required to register as a “political advocacy organization” if it “spends \$5,000 or more in a calendar year to pay for a communication that is functionally equivalent to express advocacy because...such communication is likely to be interpreted by a reasonable person only as advocating the election or defeat of a clearly identified candidate or candidates or the success or defeat of a measure or measures[.]” RSA 664:2, XXII; RSA 664:3-a.

Here, the flyers in question clearly do not qualify as independent expenditures since they do not “expressly advocate” for a candidate’s election or defeat. Moreover, the flyers do not advocate for or against any “measure” since SB 11 (2017), the so-called “Right to Work” bill referenced in the flyers, is not a constitutional amendment or question that will appear on the ballot for the upcoming elections. *See* RSA 664:2, XI (A “measure” is “any constitutional amendment or question which is submitted or intended to be submitted to a popular vote at an election.”) Thus, the critical question is whether the flyers advocate or promote “the success or defeat of a candidate or candidates.”

In 2015, our office previously addressed a complaint about AFP’s flyers which were similar to the ones at issue here. *See* Exhibit 3, AAG LaBonte letter dated November 12, 2015. The communication on the flyers in this instance are almost identical to the ones addressed in the prior complaint in that they discuss an elected official’s vote on a particular bill and instructed recipients to contact the representative. *Compare* Exhibits 1 & 3. In 2015, we concluded that the flyers were subject to varying interpretations and therefore AFP was not required to register as a “political advocacy organization.” RSA 664:2, III (a), (d), & IX.

In our 2015 letter, we noted three factors in determining whether a flyer could be construed as advocating for the success or defeat of a candidate. We found that where the flyer (1) discussed the voting record of an incumbent elected official, (2) did not identify the elected official as a candidate for re-election, and (3) did not reference either the primary or general

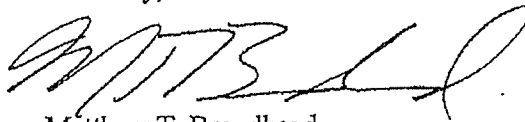
Representatives Scruton, Morrison, McCarty, Janvrin, Bean, Proulx, & Bove  
Page 3 of 3

election, the flyer would not constitute advocacy for or against a candidate under RSA 664. These factors are all present and applicable to the flyers at issue here.

We also note that since our office reached this conclusion in 2015, the Legislature has not amended RSA 664 to make it applicable to these types of communications. Therefore, we conclude here, as we did previously in 2015, that AFP is not required to register as a political committee under the circumstances presented here. Because we conclude that AFP is not required to register under the application of state law, we express no opinion on AFP's constitutional argument.

Based on the foregoing analysis, there is no basis to proceed with an investigation or enforcement action in this matter. If any of you have any questions please do not hesitate to contact me.

Sincerely,



Matthew T. Broadhead  
Assistant Attorney General  
Election Law Unit  
(603) 271-3650  
matthew.broadhead@doj.nh.gov

CC: Steven M. Mairella, Esq. (counsel for AFP)  
Enclosures



# WHY IS YOUR REPRESENTATIVE RESTRICTING WORKER FREEDOMS?

340 Granite St 1st Floor  
Manchester NH 03102

Matthew Scruton

## REP. MATTHEW SCRUTON VOTED AGAINST GIVING GRANITE STATE WORKERS OUR RIGHT-TO-WORK!



- Rep. Matthew Scruton voted against:
- Freedom to join a union or not
  - Freedom to refuse payment to a union
  - Saving more of our hard earned money

CALL REP. MATTHEW SCRUTON AT 603-941-4956 AND TELL HIM NEW HAMPSHIRE WORKERS DESERVE MORE FREEDOM, AND TO MAKE SURE HE SUPPORTS RIGHT-TO-WORK!

7501120127, P01151171

# EXHIBIT 1

**GOVERNOR  
STANLEY  
SUPPORTS  
WORKER RIGHTS  
IN THE  
GRANITE STATE.**

**CALL 603-271-2121 AND TELL  
GOVERNOR STANLEY YOU ARE  
FIGHTING FOR WORKER RIGHTS  
FOR ALL GRANITE STATES.**




**BUT WHAT HAS SEN. PHILIP WEAS  
DONE FOR US?**

Rep. Philip Weas voted to strip the  
protection of the National Labor Relations Act.

Rep. Philip Weas voted against:

- Freedom to join a union or not
- Freedom to refuse payment to a union
- Saving more of our hard earned money

**CALL REP. PHILIP WEAS AT 603-502-7155  
TELEPHONE 274-2121 AND TELL US HOW YOU FEEL  
AND TO STAND WITH THE UNION AND SUPPORT YOUR RIGHTS.**





### NOT WHAT HAS REP. JASON JANVRIN DONE FOR US?

- Rep. Jason Janvrin voted to side with union bosses instead of with Governor Sununu.
- Rep. Jason Janvrin voted against:
  - Freedom to join a union or not
  - Freedom to refuse payment to a union
  - Saving more of our hard earned money

**CALL REP. JASON JANVRIN AT 603-885-7400  
TELL HIM NEW HAMPSHIRE WORKERS DESERVE MORE FREEDOM  
AND TO STAND WITH GOV. SUNUNU AND SUPPORTER RIGHTS OF WORKERS**

THE NEW HAMPSHIRE LABORERS' UNION IS AN EQUAL OPPORTUNITY ORGANIZATION. WE DO NOT DISCRIMINATE ON THE BASIS OF RACE, SEX, RELIGION, NATIONAL ORIGIN, ANCESTRY, AGE, OR HANDICAP.

### REP. JASON JANVRIN VOTED AGAINST GIVING GRANITE STATE WORKERS OUR RIGHT TO WORK!



- Rep. Jason Janvrin voted against:
- Freedom to join a union or not
  - Freedom to refuse payment to a union
  - Saving more of our hard earned money

**CALL REP. JASON JANVRIN AT 603-885-7400 AND TELL HIM  
NEW HAMPSHIRE WORKERS DESERVE MORE FREEDOM, AND  
DEMAND THAT HE SUPPORTS RIGHT TO WORK!**

© 2010 NLU

## BUT WHAT HAS REP. MARK PROULX DONE FOR US?

Rep. Mark Proulx voted to side with union  
buses instead of with Governor Sununu.

- Rep. Mark Proulx voted against:
- Freedom to join a union or not
- Freedom to refuse payment to a union
- Saving more of our hard earned money



CALL REP. MARK PROULX AT 603-688-7170  
TELL HIM NEW HAMPSHIRE WORKERS DESERVE MORE FREEDOM  
AND TO STAND WITH YOU SOUNDING AND SUPPORT RIGHT TO WORK

The above document has been paid for by Americans for Prosperity and has not been published by a candidate.

## REP. MARK PROULX VOTED AGAINST GIVING GRANITE STATE WORKERS OUR RIGHT TO WORK



- Rep. Mark Proulx voted against:
- Freedom to join a union or not
- Freedom to refuse payment to a union
- Saving more of our hard earned money

CALL REP. MARK PROULX AT 603-688-7170 AND TELL HIM  
NEW HAMPSHIRE WORKERS DESERVE MORE FREEDOM AND  
TO STAND WITH YOU SOUNDING AND SUPPORT RIGHT TO WORK

AMERICAN FOR PROSPERITY

# BUT WHAT HAS REP. SEAN MORRISON DONE FOR US?

Rep. Sean Morrison voted to side with union bosses instead of with Governor Sununu!

Rep. Sean Morrison voted against:

- ✗ Freedom to join a union or not
- ✗ Freedom to refuse payment to a union
- ✗ Saving more of our hard earned money

CALL REP. SEAN MORRISON AT 603-275-7494

TELL HIM NEW HAMPSHIRE WORKERS DESERVE MORE FREEDOM  
AND TO STAND WITH GOV. SUNUNU AND SUPPORT RIGHT-TO-WORK

This advertisement has been paid for by Americans for Prosperity and has not been authorized by a candidate.



**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOSEPH A. FOSTER  
ATTORNEY GENERAL



ANN M. RICE  
DEPUTY ATTORNEY GENERAL

November 12, 2015

W. Gordon Allen  
21 Summer Street  
Antrim N.H. 03440-3608

Re: Americans for Prosperity Complaint

Dear Mr. Allen:

The letter is in response to your complaint regarding certain mailings sponsored by Americans for Prosperity (hereinafter "AFP") sent in September of 2014. Your complaint alleges the following:

Based on cost estimates exceeding \$5,000, in the aggregate, for the electioneering mailings (two per candidate) that Americans for Prosperity sent to voters to defeat "clearly identified candidate(s)" (RSA 664:2, XX.) in the September 9, 2014 primary in three House Districts (opposing James E. Devine in Rockingham 4; opposing James C. Webb in Rockingham 6; and opposing Mark L. Proulx in Hillsborough 44) -- with these mailed communications being "functionally equivalent to express advocacy" (RSA 664:2, XXI.) -- it appears Americans for Prosperity (AFP) violated the following provisions of RSA 664:

The complaint then goes on to allege that AFP failed to register with the secretary of state as a "political advocacy organization" and subsequently failed to file "an itemized statement of receipts and expenditures" by the required deadlines.

Along with the complaint you provided copies of two mailings sent by AFP to what appears to be a residence in Sandown. The first mailing, attached here as Exhibit A-1 (front) and Exhibit A-2 (back), discusses what is alleged to be State Representative James Devine's position on the issue of "right to work." The mailing ultimately asks the reader to "[c]all State Representative James Devine at (603) 887-3569 and ask him why he supported the union bosses instead of bringing more jobs and higher wages to New Hampshire."

The second mailing, attached here as Exhibit B-1 (front) and Exhibit B-2 (back), alleges that Representative Devine will not sign AFP's pledge to oppose higher tax rates on working

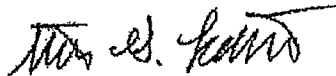
families. The mailing eventually asks the reader to "[c]all State Representative James Devine at (603) 887-3569 and ask him why he won't support lower taxes and less wasteful spending."

Pivotal the question of whether AFP is required to register with the secretary of state as a "political advocacy organization," and thereafter file itemized statements of receipts and expenditures," is whether either of the subject mailings is "functionally equivalent to express advocacy." The relevant statute, RSA 664:2, XII, states in pertinent part that a communication is "functionally equivalent to express advocacy because, when taken as a whole, such communication is likely to be interpreted by a reasonable person *only* as advocating the election or defeat of a clearly identified candidate or candidates or the success or defeat of a measure or measures, taking into account whether the communication involved mentions a candidacy or a political party, or takes a position on a candidate's character, qualifications, or fitness for office." (*Emphasis added*). Where the legislature included the term "only" within the statute, the subject mailings will be considered "functionally equivalent to express advocacy," if the substance of the mailings can be interpreted no other way than as advocating the election or defeat of Representative Devine.

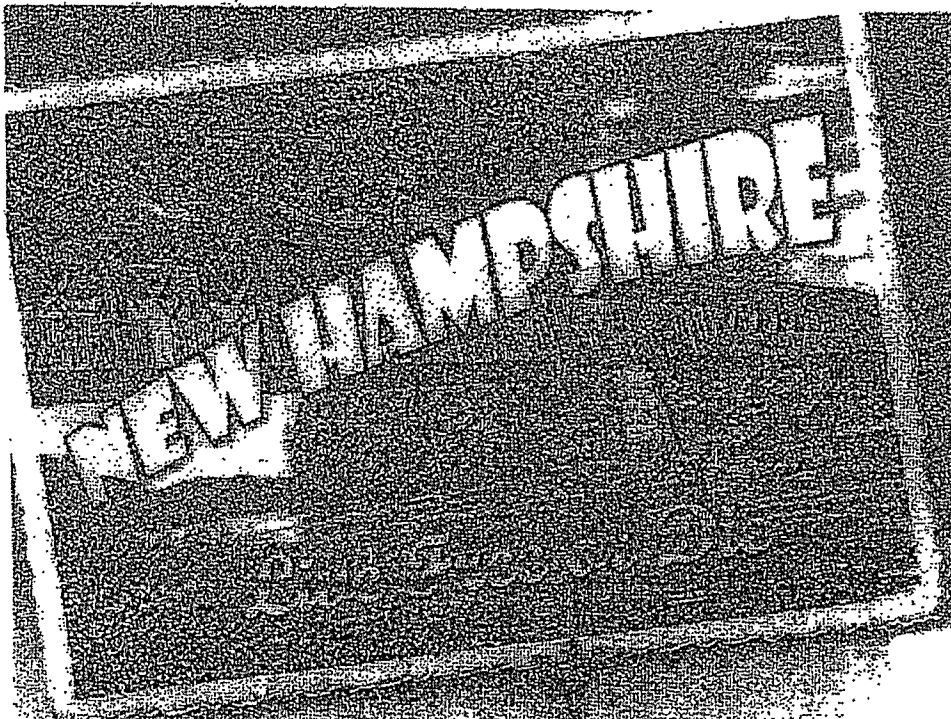
Neither mailing identifies Representative Devine as a candidate for re-election or his political party, nor do they mention either the state primary or general election. Although the mailings can be interpreted as an attack on Representative Devine's position on the specific issues of "right to work" and AFP's tax pledge to oppose higher tax rates on working families, they do not necessarily take a position as to his character, qualifications, or fitness for office. Where the mailings were received the day before the state primary election, it is possible that they could be interpreted as advocating the defeat of Representative Devine at that election, however, I do not believe that is the only likely interpretation. The mailings could just as likely be viewed as an attempt to pressure Representative Devine to bring his positions on those respective issues more in line with AFP's political ideals.

Based on the analysis above, we concluded that there is no cause to proceed with an enforcement action in this matter. If you have any questions please do not hesitate to call me at the number listed below.

Sincerely,



Stephen G. LaBonte  
Assistant Attorney General  
Civil Bureau  
(603) 271-3658  
Fax: (603) 223-6296

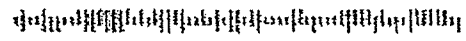


Join a Union of Servers.

New Hampshire  
is changing its  
state motto.

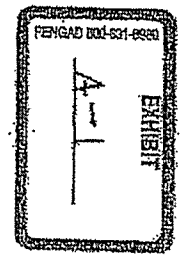
Americans for Prosperity  
2111 Wilson Blvd. Suite 350  
Arlington, VA 22201

Presort  
First Class  
U.S. Postage  
PAID  
Salt Lake City, UT  
Permit #554



AUTO-5-DIGIT 03873 30544

Georgia Devine  
54 Hampstead Rd  
Sandown, NH 03873-2413



# James Devine puts union bosses ahead of New Hampshire families.

## Forcing workers to join unions

State Representative James Devine sided with union bosses and special interests when he voted against the Right to Work bill.<sup>1</sup>

Instead of siding with working families and giving workers the freedom to choose to join a union or not, James Devine forced workers to pay union dues even if they don't agree with what the union bosses do with their money.

## Costing New Hampshire thousands of jobs

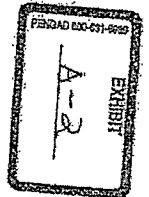
Politician James Devine doesn't understand that New Hampshire needs more well-paying jobs. That's why he blocked a law that would have created 4,000 to 6,000 new jobs over the next two years.<sup>2</sup>

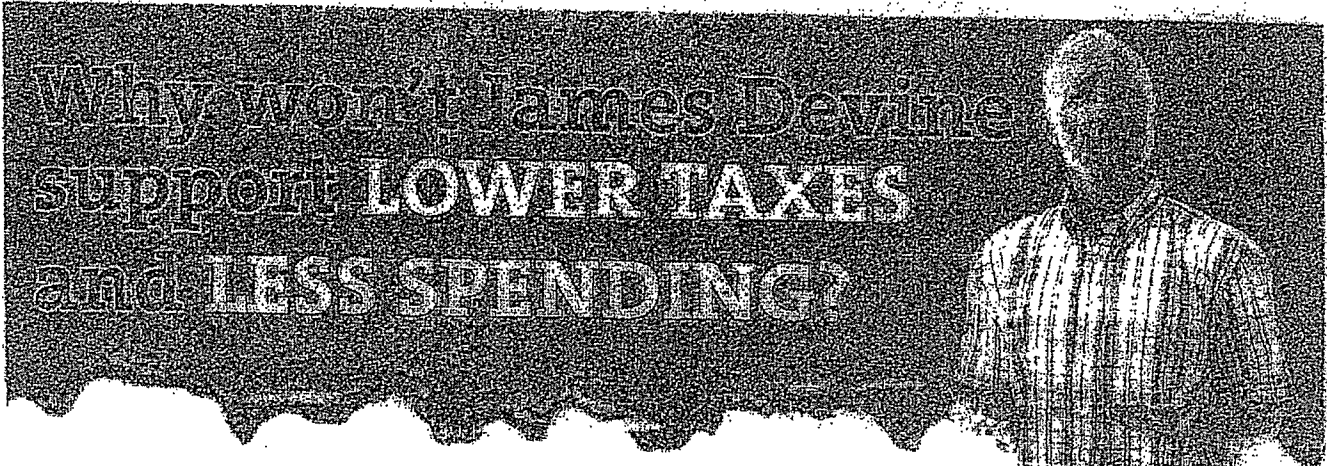
Instead of bringing thousands of jobs and increased wages to New Hampshire families, James Devine put union bosses and their political power first.

State Representative James Devine supports policies that harm union bosses and hurt working families.

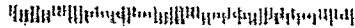
Can State Representative James Devine at 1000 607-2800 tell us why he supported the union dues law instead of bringing more jobs and higher wages to New Hampshire?

Supported by Americans for Prosperity  
www.affordable.org/candidate





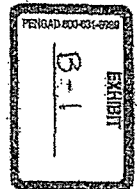
Americans for Prosperity  
2171 Wilson Blvd, Suite 350  
Arlington, VA 22201

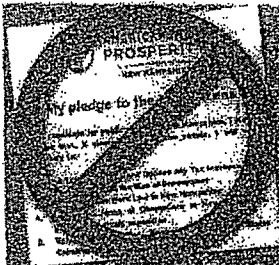


\*\*\*\*\*AUTO\*5-DIGIT 03873 36283

Georgia Devine  
54 Hampstead Rd  
Sandown, NH 03873-2413

Postnet  
First Class  
U.S. Postage  
PAID  
Salt Lake City, UT  
Permit #351





## James Devine **WON'T** support lower taxes.

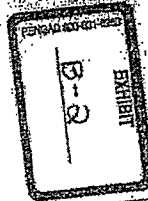
James Devine has not signed Americans for Prosperity's Taxpayer Protection Pledge, which promises to oppose higher tax rates on working families.

Politicians like James Devine should realize that high taxes hurt New Hampshire families and seniors on fixed incomes.

James Devine won't take a stand on lowering taxes and government spending. By not signing the pledge, James Devine opens the door to:

- ⊗ HIGHER taxes on working families
- ⊗ MORE government spending
- ⊗ EXPANSION of programs like Obamacare in New Hampshire
- ⊗ FORCING good jobs to leave our communities

Call State Representative James Devine at (603) 887-5569 and ask him why he won't support lower taxes and less wasteful spending.



Bill as  
Introduced

HB 1415 - AS INTRODUCED

2020 SESSION

20-2249

11/08

HOUSE BILL            **1415**

AN ACT                establishing a committee to study the Montana disclosure act and anonymous out-of-state contributions preceding an election.

SPONSORS:            Rep. Wells, Merr. 1; Rep. Balch, Hills. 38; Rep. McGhee, Hills. 40; Rep. Oxenham, Sull. 1; Rep. Saunderson, Merr. 9

COMMITTEE:          Election Law

---

ANALYSIS

This bill establishes a committee to study the Montana disclosure act and anonymous out-of-state contributions preceding an election.

---

Explanation:        Matter added to current law appears in *bold italics*.  
Matter removed from current law appears ~~[in brackets and struck through.]~~  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.



STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty*

AN ACT                    establishing a committee to study the Montana disclosure act and anonymous out-of-state contributions preceding an election.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1            1 Committee Established. There is established a committee to study the Montana disclosure act  
2 and anonymous out-of-state contributions preceding an election.

3            2 Membership and Compensation.

4            I. The members of the committee shall be as follows:

5            (a) Five members of the house of representatives, 2 of whom shall be from the election  
6 law committee, appointed by the speaker of the house of representatives.

7            (b) Two members of the senate, appointed by the president of the senate.

8            II. Members of the committee shall receive mileage at the legislative rate when attending to  
9 the duties of the committee.

10           3 Duties. The committee shall study the Montana Disclosure Act of 2015, including Montana's  
11 restriction on anonymous out-of-state contributions and in-kind contributions during the 90 days  
12 immediately preceding an election, to determine whether any of its provisions can be incorporated  
13 into New Hampshire law.

14           4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from  
15 among the members. The first meeting of the committee shall be called by the first-named house  
16 member. The first meeting of the committee shall be held within 45 days of the effective date of this  
17 section. Four members of the committee shall constitute a quorum.

18           5 Report. The committee shall report its findings and any recommendations for proposed  
19 legislation to the speaker of the house of representatives, the president of the senate, the house  
20 clerk, the senate clerk, the governor, and the state library on or before November 1, 2020.

21           6 Effective Date. This act shall take effect upon its passage.