

March 16, 2023

Chairman Christopher A. Coons
Vice Chairman James Lankford
U.S. Senate Select Committee on Ethics
220 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Coons and Vice Chairman Lankford,

Americans for Public Trust, a nonprofit, nonpartisan organization dedicated to restoring trust in government by holding politicians and political groups accountable, respectfully requests that the Senate Select Committee on Ethics (“Ethics Committee”) investigate Senator Jon Tester for using his official Senate webpage as a platform to amplify the launch of his 2024 reelection campaign.

I. Background

On February 22, 2023, Senator Tester posted an article in the “Newsroom” section of his official U.S. Senate webpage entitled, “Helena Independent Record: Tester Announces 2024 Re-election Bid.” The posted article, which focuses almost exclusively on his reelection, includes an interview with Senator Tester himself and is rife with campaign rhetoric.

Topics included in the article range from the amount of campaign cash he has raised for his reelection to political consultants opining on his reelection chances, and even includes a history of his previous campaigns and how the GOP primary might impact his ability to be reelected. Examples of the politicized text in the posted article include, but are not limited to:

- “Tester on the ballot, along with new legislative districts and the still-fresh western U.S. House seat, could mean a strong year for Democrats showing up at the polls...”
- “You’ll have to slug it out to get to the starting line to run against what will be a well-funded, well-organized and, if history has any indication, well-run campaign by Jon Tester...”
- “Tester’s campaign donations heading into the 2024 election cycle total \$4.5 million, including \$1.2 million in donations from political action committees. He has been raising money for re-election since January 2019.”
- “And that’s how you win the elections.”¹

¹ Exhibit A; U.S. Senator Jon Tester, Newsroom, [Helena Independent Record: Tester Announces 2024 Re-election Bid](#) (Feb. 22, 2023).

II. Law

Pursuant to 31 U.S.C. § 1301(a) and provisions of the U.S. Senate Ethics Manual, appropriations may only be used for the purposes for which they were appropriated, and it is therefore inappropriate for official resources to be used to conduct campaign activity.²

Furthermore, members should make every effort to avoid any appearance that they would either provide or deny constituent service based on political affiliation or campaign contributions.³

III. Analysis

The Senate has long recognized that a “public office is a public trust.”⁴ In adhering to this well-founded principle, it is incumbent upon members of the Senate to ensure that the line between official Senate duties and campaign activity remains clear and unbreached.⁵ By posting a full-on campaign announcement to his official Senate webpage, Senator Jon Tester has failed to meet the high standard expected of the office of a United States Senator, and jeopardized the public trust that the Senate as an institution has pledged to protect.⁶

The deployment of hyper-political material on an official Senate webpage is not only clearly at odds with federal law and Senate Ethics’ own provisions, it offends the most basic of public policies—that every constituent in Montana should feel like they can come to their United States Senator should they have an issue with a federal agency.⁷ That is hardly the case when the member’s official webpage includes campaign statements from the Montana Democratic Party.⁸

IV. Request for Action

In a vacuum, the use of official staff time and resources to post campaign material on Senator Tester’s official webpage is clearly violative of the relevant governing provisions. However, it is not just his present conduct that warrants concern, it is what could possibly follow-on should this behavior not be curtailed. How long before Montanans are subjected to partisan fundraising updates on Senator Tester’s official website, disguised as a simple “reposting” of a news article? The need for immediate action by the Select Committee is apparent and welcomed. Americans for Public Trust implores the Senate Select Committee on Ethics—as it is best positioned to investigate and enforce violations of the standards of the Senate—to undertake an immediate investigation to guarantee the public trust, halt any present violations, and move to safeguard against future instances of the use of public office for campaign purposes.

Sincerely,



Caitlin Sutherland
Executive Director

² Select Committee on Ethics, [Senate Ethics Manual](#), 153 (2003).

³ Select Committee on Ethics, [Senate Ethics Manual](#), 177-178 (2003); *See* Select Committee on Ethics, [The Senate Code of Official Conduct](#), Rule 43 (Oct. 2021).

⁴ Select Committee on Ethics, [Senate Ethics Manual](#), 21 (2003).

⁵ 31 U.S.C. § 1301(a); *Supra* note 2.

⁶ *Supra* note 1.

⁷ Select Committee on Ethics, [Senate Ethics Manual](#), 177-178 (2003); *See* Select Committee on Ethics, [The Senate Code of Official Conduct](#), Rule 43 (Oct. 2021).

⁸ *Supra* note 1.

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Helena Independent Record: Tester announces 2024 re-election bid - Senator Jon Tester



(<https://www.testersenate.gov>)

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02.22.2023

HELENA INDEPENDENT RECORD: TESTER ANNOUNCES 2024 RE- ELECTION BID

by Holly Michels

Democratic U.S. Sen. Jon Tester announced Wednesday he will run for re-election in 2024.

Nearing the end of last year, Tester said he would decide soon on if he'd run again. After taking time and talking with his wife, they decided it was important to try to keep a rural voice in the Senate.

"There needs to be a more rural perspective in Washington, D.C., dealing with everything from the Farm Bill to making sure that family farm operations continue to feed the world to our veterans, in a state where we're proud to serve in the military and 10% of our people are veterans, to the work that I do in national security on the Defense Appropriations Committee and the fact that we've got one of the biggest deterrents to war sitting right here in our state with 150 ICBMs," Tester said in an interview Wednesday. "I thought it was the right thing to do for Montana."

<https://www.testersenate.gov/newsroom/news-coverage/helena-independent-record-tester-announces-2024-re-election-bid/>

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Tester's race is expected to be one of the hardest-fought in the country as Democrats aim to hold a narrow majority in the U.S. Senate.

In 2018 Tester won re-election to his third term by defeating now-U.S. Rep. Matt Rosendale (https://helenair.com/news/government-and-politics/tester-overcame-trumps-attacks-with-help-from-moderates-women-and-younger-voters/article_d69a9e10-6633-5547-b260-77a71e333c36.html) by 3.5 percentage points. Two years later, Republicans swept every statewide office in Montana by large margins, leaving Tester the lone Democrat holding a statewide elected office. Rosendale is expected to run in the GOP Senate primary in 2024, along with newly elected U.S. Rep. Ryan Zinke, the former Secretary of the Interior.

The 2018 Senate race was the most expensive in Montana history, and held that title until the 2020 match between Republican Sen. Steve Daines, who beat former Democratic Gov. Steve Bullock. Late last year Daines was elected chair of the National Republican Senatorial Committee (https://billingsgazette.com/news/state-and-regional/daines-to-oversee-2024-senate-races-rosendale-in-leadership-battle/article_8d7a1e8e-6614-11ed-b824-d32a09902f3a.html), putting him squarely in charge of the effort to turn Montana's other Senate seat red.

GOP playbook

The NRSC was quick to release a statement following Tester's announcement Wednesday.

"The Tester-Biden agenda has given Montanans rising crime, higher taxes, and an open southern border that is flooding communities with deadly fentanyl. Montanans are going to send Joe Biden's favorite Senator packing in 2024," spokesperson Maggie Abboud said in a press release.

In an address to the state Legislature on Monday (https://helenair.com/news/state-and-regional/govt-and-politics/congressional-delegation-tribal-leader-speak-at-mt-legislature/article_1cf9fbd8-e725-5d26-87d1-57a8e689e669.html), Tester called for a more secure southern border while dinging the Biden administration's actions. And in the Wednesday interview, he said it's not surprising to see Republicans already working to tie him to national Democrats.

"We know what the other side is going to do. The other side's gonna try to make me into something I'm not and trying to run against that person. That's what they've done every single time I've run. But the bottom line is this is about Montana. It's about how we keep this place the last best place. And that's how you win the elections," Tester said.

Lee Banville, a political analyst and director of the University of Montana School of Journalism, said Montana voters can expect to hear the names of other elected national Democrats frequently in the Senate race.

"I expect that whoever runs against him is going to be running as much against Joe Biden and Chuck Schumer as they are Jon Tester," Banville said Wednesday.

Tester himself said he doesn't object to the characterization that D.C. has its problems.

"There's not a lot of debate here. All you have to do is look at the speakership race and you know how screwed up Washington, D.C., is but the bottom line is Montana has got to be above that," Tester said. "The representatives back there need to be above that. I need to be above that."

Tester spent Wednesday morning at a VA roundtable, so he hadn't seen the early digs at him, but said he knew what to expect and how he'd counter it.

"I'm going to combat it by talking about Montana," Tester said. "... This is about Montana, and this is about who best to take that rural message and drive it home back in Washington, D.C., when there's damn few people that know rural America back there."

Previous races

Tester first won the Senate seat in 2006 against incumbent Republican Sen. Conrad Burns, who was under fire for earmarks tied to lobbyist Jack Abramoff. He won his re-election bid against former U.S. Rep. Denny Rehberg in 2012, in a close race where Libertarian Dan Cox snagged a meaningful percentage of the vote. The 2018 victory was the first in which he captured more than 50% of the vote.

Since his last race, Montana Democrats faced a trouncing in the 2020 election (https://helenair.com/news/local/trounced-dems-lose-big-gop-rakes-in-wins/article_c54de6fc-fc17-50b4-8083-2b059dca03d9.html), and didn't fare well in the 2022 midterm.

While politics have only become more nationalized, something statewide Democrats cited as an insurmountable challenge in the last two cycles, Banville said Tester faced the mother of all nationalization from four visits to Montana from then-President Donald Trump to rally against Tester and for Rosendale in 2018 and Tester still overcame it.

"(Rosendale) had a very popular national figure (in Trump) throwing the kitchen sink at Tester and it didn't work," Banville said.

A question lingers about the electorate in Montana, however, Banville said, and if they've remained voters who buck the national trend of straight-ticket voting or are beginning to look more like other states. There's little question whomever the Republican presidential candidate is in 2024, he or she will win the state. The last time a Democrat running for president won here was 1992, though former Democratic President Barack Obama came within 2 percentage points in 2008. Otherwise, a Republican hasn't gotten less than 55% of the vote in two decades.

Sen. Jon Tester speaks at the Drive Out the Vote: Montana Made Tour event in Helena on Oct. 13, 2020. THOM BRIDGE, Independent Record

Presidential races draw more voters, and in the past that was thought to benefit Democrats, but anyone who paid attention to the 2020 election in Montana would question that logic now.

Even so, Banville said, "this race may be so significant it's the thing that drives voter turnout more than the presidential race."

It's been a long time since Montana Democrats had a good cycle, Banville said.

"They've had moderately bad cycles and really bad cycles and they've not had a lot of electoral traction since really, I would argue yes there was the Tester win in '18 but before that it's really 10 years they've been in the doldrums," Banville said. "Since 2012, that really was their last kind of solid performance."

But Banville described Tester as a “force in Montana politics that’s kind of unique — it seems that he gets people excited and interested.”

Tester on the ballot, along with new legislative districts and the still-fresh western U.S. House seat, could mean a strong year for Democrats showing up at the polls, Banville said, but it’s still far too early to tell. The 2024 ballot will feature the Senate race, in addition to both of the state’s U.S. House seats and the five statewide elected offices including governor. Legislative races will be the first held with new districts that Republicans have argued tilt too much toward Democrats (https://helenair.com/news/state-and-regional/govt-and-politics/redistricting-commission-finalizes-new-house-senate-districts/article_89d1d7c9-e7af-5fee-a5e7-640ff57b1fa3.html). Currently the GOP holds a supermajority in both chambers.

“It’s going to be a very hard-fought, probably brutal race, and so it will fire up just as many Republicans as it will Democrats,” Banville said.

The Montana Democratic Party also released a statement Wednesday.

“Unlike people in Washington, Jon understands the challenges working families are facing, and he’ll take on anyone in order to defend our great Montana values,” said Montana Democratic Party Chair Robyn Driscoll “... Jon is going to continue to focus on fighting for our veterans, lowering costs for Montana workers and families, and holding Washington accountable — and that’s exactly why voters will re-elect the Senate’s only working farmer in 2024.”

GOP primary

Given the incredibly slim majority Democrats hold in the Senate and Montana’s electoral hue, it’s obvious why Republicans are targeting the race.

“This is one of the top targets for Republicans to carve at the narrow majority Democrats have,” Banville said.

If both Zinke and Rosendale join the GOP primary, it could be a bloody battle — and that could benefit Tester, Banville said.

“Republicans could have a very damaging primary. That could be a key for Tester,” Banville said.

The ideal scenario for a candidate trying to unseat an incumbent is to face a token primary challenger that allows you to raise and spend money that's less about your primary race and more about your general election bid. That's not likely for whoever ends up facing Tester, Banville said.

"You'll have to slug it out to get to the starting line to run against what will be a well-funded, well-organized and, if history has any indication, well-run campaign by Jon Tester," Banville said. "The more that primary fight sucks up time, energy and money and drags dirt and bad feelings between Republicans up, the more it might help Tester in the general election. ... Republicans spending several months taking pot shots at each other is helpful (for Tester)."

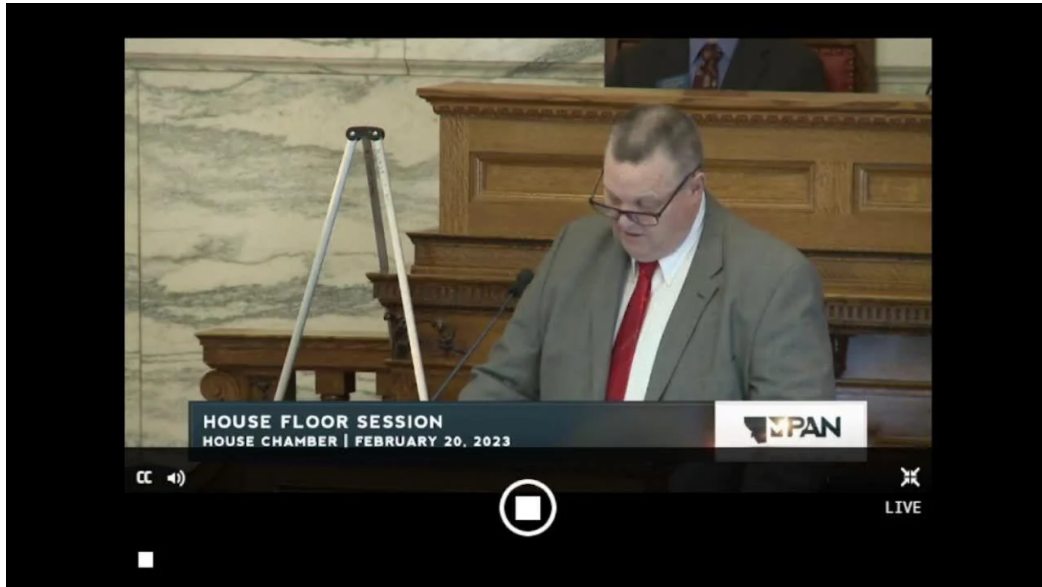
Tester's campaign donations heading into the 2024 election cycle total \$4.5 million, including \$1.2 million in donations from political action committees. He has been raising money for re-election since January 2019.

Rural focus

Tester said he aims to focus on elevating rural and veterans issues. Tester is the chair of the Senate Veterans Affairs Committee and has made veterans issues one of the main focuses of his time in office.

"I just don't think there's a full understanding of what it's like when you need a prescription and you have to drive 40, 50 miles one way to get it because TRICARE takes a pharmacy off of their list," Tester said. "It's not like you run out of milk, you walk around the corner and pick up a carton of milk at the corner store. It's a different world in rural America," Tester said.

Tester pointed to broadband as an issue that illustrates the challenges, where houses are spread far apart, which makes delivery of service more difficult, but that doesn't mean that those homes need fast internet any less than those in urban areas.



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"If you don't have folks like me back there ... saying we need the tech hub in rural America because quite frankly, it's Silicon Valley and the Northeast that gets all this tech attention when we're doing some pretty damn good work — our university system and in the private sector here in Montana, then we get forgotten about and so that's why that voice is so really, really important," Tester said.

He'll also try to stay above the fray of political knockout fights in the race.

"We're going to respect people's opinions. Compromise is not a bad thing. We're going to move this country forward, keep it the leading economic power and leading military power in the world, (which) is something that, by the way, is very much at risk. If we don't have people back there that understand that and understand you can't play politics with every damn thing that comes down the pipe, then we're in trouble. And I think Montanan's are smarter than that," Tester said.

"It's got to be about Montana. It's got to be about common sense. It's got to be about effectiveness. It's got to be about rural traditions, it's got to be about all those things."

https://helenair.com/news/state-and-regional/govt-and-politics/tester-announces-2024-re-election-bid/article_0fe7ed22-d036-5450-a448-088f3dae917a.html (<https://helenair.com/news/state-and-regional/govt->

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