

**Special Session
of the
House
of
Representatives**

OF THE

**ONE HUNDRED TWENTY-FIFTH GENERAL
ASSEMBLY OF THE STATE OF OHIO**

FRIDAY, DECEMBER 17, 2004

SPECIAL SESSION

FOURTH DAY

Hall of the House of Representatives, Columbus, Ohio
Friday, December 17, 2004 at 1:00 o'clock p.m.

The House met pursuant to adjournment.

Prayer was offered by Representative Lynn Olman-46th district, followed by the Pledge of Allegiance to the Flag.

The journal of the previous legislative day was read and approved.

The following guests of the House of Representatives were recognized by Speaker Householder prior to the commencement of business:

Matthew Butcher and Andrea Cooper, guests of Representative Beatty-27th district.

Stacey Kennedy-Bocchieri, wife, Representative Bocchieri-61st district.

Message from the Senate

Mr. Speaker:

I am directed to inform the House of Representatives that the Senate has concurred in the passage of the following bill:

Am. Sub. H. B. No. 1 - Representatives DeWine, White Senators Randy Gardner, Jacobson, Harris, Hottinger, Mumper

To amend sections 102.03, 2921.01, 2921.43, 3501.38, 3503.14, 3513.07, 3513.10, 3513.261, 3517.01, 3517.08, 3517.082, 3517.09, 3517.092, 3517.10, 3517.102, 3517.103, 3517.104, 3517.105, 3517.106, 3517.108, 3517.109, 3517.11, 3517.13, 3517.151, 3517.152, 3517.154, 3517.155, 3517.16, 3517.17, 3517.20, 3517.23, 3517.992, and 3599.031, to enact new section 3599.03 and sections 3501.381, 3517.1011, 3517.1012, 3517.1013, and 3599.111, and to repeal section 3599.03 of the Revised Code to revise the Campaign Finance Law.

As a substitute bill with the following additional amendments, in which the concurrence of the House is requested:

In lines 13 and 6019, after "3517.08," insert "3517.082,"

Between lines 1163 and 1164, insert:

Delete lines 1527 and 1528

"Sec. 3517.082. (A) Any corporation, any nonprofit corporation, or any labor organization may establish, administer, and solicit contributions from the

persons listed in division (B) of this section, to either or both of the following:

(1) A political action committee of the corporation or labor organization with respect to state and local elections;

(2) A separate segregated fund pursuant to the Federal Election Campaign Act.

(B)(1) A corporation and a nonprofit corporation may solicit contributions from its stockholders, officers, directors, trustees that are not corporations or labor organizations, and employees.

(2) A nonprofit corporation also may solicit contributions from:

(a) Its members that are not corporations or labor organizations;

(b) Officers, directors, trustees that are not corporations or labor organizations, and employees of any members of the nonprofit corporation.

(3) A labor organization may solicit contributions from its members, officers, and employees.

(C) A corporation, nonprofit corporation, or labor organization shall report to a political action committee, or to a separate segregated fund with respect to state and local elections, the following costs expended by the corporation, nonprofit corporation, or labor organization that are associated with establishing, administering, and soliciting contributions to the political action committee or separate segregated fund pursuant to division (A) of this section:

(1) Mailing and printing expenses for direct solicitation of contributions pursuant to ~~division (D)~~ of this section;

(2) The portion of an employee's salary or wages attributable to time ~~he~~the employee spends in activities related to establishing, administering, and soliciting contributions to a political action committee or separate segregated fund, if that time exceeds during a reporting period fifty per cent of the time for which the employee is compensated by the corporation, nonprofit corporation, or labor organization;

(3) The cost associated with the purchase, lease, operation, and use of equipment for activities related to establishing, administering, and soliciting contributions to a political action committee or separate segregated fund if during a reporting period more than fifty per cent of the use of the equipment is for those activities;

(4) Professional fees paid by the corporation, nonprofit corporation, or labor organization for establishing, administering, and soliciting contributions to a political action committee or separate segregated fund.

The political action committee shall itemize the amounts and purposes of those costs expended by the corporation, nonprofit corporation, or labor organization and file them as part of the statement required of political action committees under division (A) of section 3517.10 of the Revised Code ~~on a form~~

~~prescribed by the secretary of state. The separate segregated fund with respect to state and local elections shall file with the secretary of state a copy of the portion of each report and statement required under the Federal Election Campaign Act that applies to state and local elections at the same time that the entire original report is filed in accordance with that act.~~

~~(D) Solicitations of contributions pursuant to division (B) of this section from employees of a corporation or members and employees of a labor organization other than executive and administrative employees of a corporation or officers and executive and administrative employees of a labor organization shall be in writing and shall not be made more than four times during each calendar year. Any person who solicits any employee of a corporation or member or employee of a labor organization for a contribution to a political action committee established or administered by the corporation or labor organization under division (A)(1) of this section shall inform the employee or member at the time of the solicitation that he may refuse to make a contribution without suffering any reprisal.~~

~~(E) In addition to the laws listed in division (A) of section 4117.10 of the Revised Code that prevail over conflicting agreements between employee organizations and public employers, this section prevails over any conflicting provisions of agreements between labor organizations and public employers pursuant to Chapter 4117. of the Revised Code A corporation, nonprofit corporation, or labor organization may obtain contributions for a political action committee or a separate segregated fund under this section from an individual described in division (B) of this section from whom the corporation, nonprofit corporation, or labor organization was not obtaining contributions for that political action committee or separate segregated fund before the effective date of this amendment on an automatic basis pursuant to a payroll deduction plan only if the individual who is contributing to that political action committee or separate segregated fund affirmatively consents to the contribution in writing.~~

~~(E) In addition to the laws listed in division (A) of section 4117.10 of the Revised Code that prevail over conflicting agreements between employee organizations and public employers, this section prevails over any conflicting provisions of agreements between labor organizations and public employers that are entered into on or after the effective date of this amendment pursuant to Chapter 4117. of the Revised Code."~~

In line 1190, strike through "An employer or labor organization that, directly or"

Strike through lines 1191 through 1193

In line 1194, strike through "legislative campaign fund, political party, or"

In line 1195, delete "person making disbursements to pay the direct"

In line 1196, delete "costs of producing or airing electioneering communications"; strike through "shall"

Strike through lines 1197 through 1201

In line 1202, strike through "the employer or membership in the labor organization." and insert "An employer or labor organization, directly or through another person, may obtain contributions for a candidate, campaign committee, political action committee, legislative campaign fund, political party, or person making disbursements to pay the direct costs of producing or airing electioneering communications from an employee or member from whom the employer or labor organization was not obtaining contributions for that candidate, campaign committee, political action committee, legislative campaign fund, political party, or person making disbursements to pay the direct costs of producing or airing electioneering communications before the effective date of this amendment on an automatic basis pursuant to a payroll deduction plan only if the employee or member who is contributing to that candidate, campaign committee, political action committee, legislative campaign fund, political party, or person making disbursements to pay the direct costs of producing or airing electioneering communications affirmatively consents to the contribution in writing.

(D) In addition to the laws listed in division (A) of section 4117.10 of the Revised Code that prevail over conflicting agreements between employee organizations and public employers, this section prevails over any conflicting provisions of agreements between labor organizations and public employers that are entered into on or after the effective date of this amendment pursuant to Chapter 4117. of the Revised Code"

In line 1750, delete ", and to the political"

In line 1751, delete "fundraiser through which the contribution was raised, if any,"

In lines 2199, 2221, 2239, 2279, 2290, and 2330, strike through "accept"; after "a" insert "do"

In lines 2201, 2222, 2240, 2280, 2291, and 2331, delete "A" and insert "Knowingly accept a"

In lines 2203, 2209, 2224, 2242, 2282, 2293, and 2333, delete "A" and insert "Accept a"

In line 2257, after "shall" insert "knowingly"

In line 2259, after "or" insert "accept"

In line 5877, after "~~(H)~~" insert "division (C) of section 3517.09 of the Revised Code and"

In line 6079, delete everything after "7." and insert "Notwithstanding any contrary provision of section 1.50 of the Revised Code:

(A) If a court of competent jurisdiction holds the application to any person or circumstance of any provision of division (B)(6) of section 3517.01 of

the Revised Code, as amended by this act, or of division (H) of section 3517.1011 of the Revised Code, as enacted by this act, pertaining to a broadcast, cable, or satellite communication that refers to a clearly identified candidate and that is made during the thirty days preceding a primary election or during the thirty days preceding a general election to be unconstitutional, then all provisions of this act pertaining to that subject matter are hereby deemed to be invalid and are severable from the remaining provisions of this act. As used in this division, "broadcast, cable, or satellite communication" and "refers to a clearly identified candidate" have the same meanings as in section 3517.1011 of the Revised Code.

(B) If a court of competent jurisdiction holds the application to any person or circumstance of any provision of section 3517.1011 of the Revised Code pertaining to electioneering communications that occur at least 30 days prior to a primary election or to a general election to be unconstitutional, then all of the provisions of that section and all related references to that section or to electioneering communications throughout the Revised Code are hereby declared to be invalid and severable from the remaining provisions of this act. As used in this division, "electioneering communication" has the same meaning as in section 3517.1011 of the Revised Code.

Delete lines 6080 through 6083

In line 3 of the title, after "3517.08," insert "3517.082,"

Attest:

Matthew T. Schuler,
Clerk.

Representative Cates moved that Joint Rule No. 16, be suspended and that the Senate amendments to **Am. Sub. H. B. No. 1**-Representative DeWine, et al., be taken up for immediate consideration.

The motion was agreed to without objection.

CONSIDERATION OF SENATE AMENDMENTS

The Senate amendments to **Am. Sub. H. B. No. 1**-Representative DeWine, et al., were taken up for consideration.

Am. Sub. H. B. No. 1-Representatives DeWine, White. -Senators Randy Gardner, Jacobson, Harris, Hottinger, Mumper.

To amend sections 102.03, 2921.01, 2921.43, 3501.38, 3503.14, 3513.07, 3513.10, 3513.261, 3517.01, 3517.08, 3517.082, 3517.09, 3517.092, 3517.10, 3517.102, 3517.103, 3517.104, 3517.105, 3517.106, 3517.108, 3517.109, 3517.11, 3517.13, 3517.151, 3517.152, 3517.154, 3517.155, 3517.16, 3517.17, 3517.20, 3517.23, 3517.992, and 3599.031, to enact new section 3599.03 and sections 3501.381, 3517.1011, 3517.1012, 3517.1013, and 3599.111, and to repeal section 3599.03 of the Revised Code to revise the

Campaign Finance Law.

The question being, "Shall the Senate amendments be concurred in?"

Representative Husted moved the previous question. This motion under House Rule 99 is supported by the following members:

THOM COLLIER
JOHN SCHLICHTER
ARLENE J. SETZER

JIM ASLANIDES
CHARLES R. BLASDEL

The question being, "Shall the debate now close?"

The yeas and nays were taken and resulted - yeas 55, nays 33, as follows:

Those who voted in the affirmative were: Representatives

Aslanides	Blasdel	Buehrer	Calvert
Carmichael	Cates	Clancy	Collier
Combs	Core	Daniels	DeWine
Evans C.	Evans D.	Faber	Fessler
Flowers	Gibbs	Gilb	Grendell
Hagan	Hollister	Hoops	Hughes
Husted	Kearns	Kilbane	Latta
Martin	McGregor	Niehaus	Oelslager
Olman	Peterson	Raga	Reidelbach
Reinhard	Schaffer	Schlichter	Schmidt
Schneider	Seaver	Seitz	Setzer
Smith G.	Taylor	Trakas	Wagner
Walcher	White	Widener	Widowfield
Willamowski	Wolpert		Householder-55.

Those who voted in the negative were: Representatives

Barrett	Beatty	Boccieri	Book
Brinkman	Brown	Carano	Chandler
Cirelli	DeBose	DeGeeter	Domenick
Driehaus	Hartnett	Harwood	Jerse
Key	Mason	Miller	Otterman
Patton S.	Patton T.	Perry	Price
Redfern	Skindell	Smith S.	Stewart D.
Stewart J.	Sykes	Ujvagi	Wilson
			Yates-33.

The motion was agreed to and the debate closed.

The question being, "Shall the Senate amendments be concurred in?"

The yeas and nays were taken and resulted - yeas 55, nays 33, as follows:

Those who voted in the affirmative were: Representatives

Aslanides	Blasdel	Buehrer	Calvert
Carmichael	Cates	Clancy	Collier
Combs	Core	Daniels	DeWine
Evans C.	Evans D.	Faber	Fessler

Flowers	Gibbs	Gilb	Grendell
Hagan	Hollister	Hoops	Hughes
Husted	Kearns	Kilbane	Latta
Martin	McGregor	Niehaus	Oelslager
Oلمان	Peterson	Raga	Reidelbach
Reinhard	Schaffer	Schlichter	Schmidt
Schneider	Seaver	Seitz	Setzer
Smith G.	Taylor	Trakas	Wagner
Walcher	White	Widener	Widowfield
Willamowski	Wolpert		Householder-55.

Those who voted in the negative were: Representatives

Barrett	Beatty	Bocchieri	Book
Brinkman	Brown	Carano	Chandler
Cirelli	DeBose	DeGeeter	Domenick
Driehaus	Hartnett	Harwood	Jerse
Key	Mason	Miller	Otterman
Patton S.	Patton T.	Perry	Price
Redfern	Skindell	Smith S.	Stewart D.
Stewart J.	Sykes	Ujvagi	Wilson
			Yates-33.

The Senate amendments were concurred in.

MOTIONS AND RESOLUTIONS

Representative Trakas moved that majority party members asking leave to be absent or absent the week of Monday, December 13, 2004, be excused, so long as a written request is on file in the majority leadership offices.

The motion was agreed to.

Representative Miller moved that minority party members asking leave to be absent or absent the week of Monday, December 13, 2004, be excused, so long as a written request is on file in the minority leadership offices.

The motion was agreed to.

Pursuant to Article II, Section 10 of the Constitution of the State of Ohio, the following protest was filed:

December 17, 2004

Protest Pursuant to Article II Section 10

We protest and object to the consideration of Substitute House Bill 1 in this "special session" ordered by Governor Taft for the purpose of enacting campaign finance reform legislation. Pursuant to Article II, Section 10 of the Ohio Constitution, we request that this objection and protest be published in the House Journal.

We protest the consideration of Substitute House Bill 1 because this bill, in

its present form, violates various provisions of the United States and Ohio Constitutions. Each of us in this Chamber, and in this General Assembly, have taken an oath or affirmation to support the Constitution of the United States and the Constitution of the State of Ohio. Toward this end, we have an obligation to consider the constitutionality of the legislation before us, and we must make every effort not to enact such legislation when it is clearly unconstitutional, as is Substitute House Bill 1. "We must be especially vigilant when, as in this case, the [provisions of proposed legislation] implicate 'an area of the most fundamental First Amendment activities'-discourse about the merits of political candidates and public issues." *Toledo Area AFL-CIO Council v. Pizza* , 154 F.3d 307, 313 (6th Cir. 1998) (citation omitted).

Substitute House Bill 1 suffers from many constitutional deficiencies, only some of which we will briefly highlight in this Protest.

The First Amendment to the United States Constitution contains a prohibition on the enactment of laws abridging freedoms of speech or association. This prohibition is, on its face, absolute. Accordingly, the exceptions to these prohibitions are narrow, and must be supported by a substantial body of credible evidence.

Several provisions, particularly those raising campaign contribution limits, fail to provide sufficient protection against wealthy individuals and special interests who seek to dominate the political process. The increase in contribution limits dilutes the First Amendment rights of small donors and those who cannot afford to contribute large sums to campaign committees or the multitude of other entities Substitute House Bill 1 empowers to raise and spend money to elect candidates.

Many of the provisions of Substitute House Bill 1 affect core political speech. For example, this bill's prohibition of unions' use of general funds for political activity "is the imposition of a restriction on core First Amendment speech." *United Autoworkers, Local Union 1112 v. Philomena* , 121 Ohio App.3d 760, 783 (Franklin App.), appeal denied, 82 Ohio St.3d 1450 (1998). The Court of Appeals for Franklin County, Tenth Appellate District, when it struck down Amended Substitute Senate Bill 8-legislation that contained this same restriction, stated in its 1998 opinion:

The General Assembly has deemed that unions may not directly express partisan political views, that they may engage in the political process only indirectly and after going to the extra effort of establishing and administering a PAC. The prohibition on use of union general funds that [the provisions of Senate Bill 8] impose burdens a union's exercise of political speech. Prohibitions such as this that are based both on the speaker's identity and content are "the rawest form of censorship."

Philomena, 121 Ohio App.3d at 783 (citations omitted).

Laws that restrict "core political speech," are subject to "strict" constitutional scrutiny. To survive strict scrutiny, a law must be "narrowly

tailored" to further a "compelling state interest." See generally, *Eu v. San Francisco County Democratic Cent. Comm.* , 489 U.S. 214, 222 (1989). See also *Pizza* , 154 F.3d at 314 (Content-based restrictions on speech "must be necessary to serve a compelling state interest and must be narrowly tailored to achieve that end.") (citation omitted); *Philomena* , 121 Ohio App.3d at 783 ("A statutory provision that burdens First Amendment rights must be justified by a compelling state interest.") (citation omitted). This bill neither furthers a compelling state interest nor is narrowly tailored. Accordingly, this body has a constitutional obligation to reject this legislation.

A compelling state interest cannot be established by "assertion and conjecture." *Republican Party of Minnesota v. White* , 536 U.S. 765 (2002). Many of the restrictions on political speech in this bill are, in fact, supported only by "assertion and conjecture." As with Senate Bill 8, there is "no inherent threat to a compelling state interest to be found in the expression of political views of unions." *Philomena* , 121 Ohio App.3d at 784. The sponsors of this bill have provided no evidence that unions' participation in the political process has corrupted or otherwise harmed the political process in this State. Unlike the extensive body of evidence before Congress when it enacted the Bipartisan Campaign Reform Act of 2002, and largely upheld by the United States Supreme Court, see *McConnell v. Federal Election Comm'n*, 124 S.Ct. 619 (2003), there is no evidence supporting the restrictions contained in Substitute House Bill 1. Indeed, recent reports compiled by the Secretary of State have indicated that the traditional allies of organized labor were outspent by a margin of more than 9-to-1 in the most recent election for seats in the General Assembly. As the court in *Philomena* recognized, "[a]lthough the concern of corruption may justify disclosure requirements and the imposition of a monetary limit on union partisan political contributions, it does not justify a complete ban on the use of union funds to engage in political expression." 121 Ohio App.3d at 786.

Nor does the oft-expressed concern for protecting the interests of potential dissenting union members justify the restriction contained in Substitute House Bill 1. First, it must be noted that federal and state labor law requires that union officers making decisions on the expenditure of union funds be elected by a vote of their members. See 29 U.S.C. Section 481; R.C. 4117.19(C). And second, the interests of dissenting members are adequately protected by federal statutory and constitutional law which permit union members who object to a portion of their union dues being used for political purposes to seek a refund of that portion of his or her dues. See generally *Communications Workers of Am. v. Beck* , 487 U.S. 735 (1988).

Finally, the complete prohibition on the use of general union funds cannot legitimately be considered "narrowly tailored." "A total ban on the ability of a union to expend its general funds to engage in partisan political expression 'is indeed burning down the house to roast the pig.'" *Philomena* , 121 Ohio App.3d at 785 (citation omitted).

We appreciate the opportunity to express our protest and objections.

/s/ Democratic Caucus
Ohio House of Representatives
125th General Assembly

On motion of Representative Cates, the House adjourned sine die.

Attest:

LAURA P. CLEMENS,
Clerk.