

SUBJECT: Campaign reporting requirements

COMMITTEE: Elections — committee substitute recommended

VOTE: 7 ayes — Danburg, J. Jones, Denny, Gallego, Isett, Madden, Place

1 nay — Galloway

1 absent — Hodge

WITNESSES: For — Tom Smith, Public Citizen; Suzy Woodford, Common Cause

Against — None

On — Tom Harrison, Texas Ethics Commission

BACKGROUND : The financing of political campaigns in Texas is regulated primarily by means of reporting requirements. Candidates, office holders, political parties, and other political committees must report contributions from one person totalling more than \$50 along with the donor's name and address and the date of the contribution. There is no limit to the number of independent political committees that can receive contributions and make campaign expenditures on behalf of a candidate. These committees are required to file financial reports with the Texas Ethics Commission (TEC).

Political committees are designated as either general purpose or specific purpose. A general purpose committee supports or opposes a cause but does not identify specific candidates, e.g., a committee that pays for a television ad denouncing gambling without advocating the defeat of any one pro-gambling candidate. A specific purpose committee, on the other hand, supports or opposes identified candidates or measures to be voted on. Such a committee may make expenditures on behalf of, but not coordinated with, a candidate's campaign. These "direct expenditures" are not considered campaign contributions for reporting purposes.

DIGEST: CSHB 3332 would change reporting requirements for candidates, officeholders, and political committees and parties, and extend registration and reporting requirements to previously unregulated individuals and

activities. The bill also would amend various other parts of the Election Code dealing with political campaigns.

The bill would expand the definition of a general purpose committee to include committees that deliver political communications through automated phone messages or make expenditures on an issue before it legally becomes a proposition to be voted on in an election. These expenditures would be subject to reporting requirements under the bill.

CSHB 3332 would prohibit individuals from making contributions or expenditures in another's name or on their behalf unless the name and address of the person actually making the contribution was disclosed in writing to the recipient.

State-level elections. CSHB 3332 would apply certain requirements to state legislative and Board of Education elections and campaigns for all statewide offices except the judiciary. These provisions would involve:

- **Designating committees** — Each candidate or officeholder would have to designate in writing a specific-purpose principal campaign committee, whose name must include their own name, and file that designation with TEC 15 days after they became a candidate or officeholder. Current candidates or officeholders would have to file their designation by September 15, 1997. A person could have only one principal campaign committee at a time. Candidates could not knowingly accept a contribution in connection with their own campaign except on behalf of their principal campaign committee. They could not accept a contribution that their committee would be prohibited from accepting.
- **Reporting expenditures** — Committees would have to notify candidates' principal campaign committees and the TEC at least 72 hours before making a direct expenditure supporting or opposing one or more candidates. If a committee made an expenditure benefitting more than one candidate, it would have to allocate a portion of the expenditure to each candidate in proportion to the benefit received. The TEC would file copies of these declarations, including the amount of each contribution or expenditure made, with the committees of candidates opposing one benefitted by a direct expenditure.

State and local elections. CSHB 3332 also would establish other reporting and registration requirements for statewide, state and local races.

- **Reporting requirements** — Campaign finance reports would have to provide identifying data, including occupation and employer, on each person from whom a candidate or political committee received aggregate contributions of over \$100 during the reporting period. A candidate would be considered in compliance with these rules if the campaign treasurer showed that the best efforts had been used to obtain, maintain, and report the required information. State party committees would have to report on separate schedules contributions and expenditures made for each candidate. The reports would include both the total amount of political contributions made during the calendar year to the principal campaign committee of the candidate and those made for the benefit of the candidate. National general purpose committees registered with the federal government would have to provide detailed information on aggregate contributions or expenditures or aggregate loans over \$200, the total amount or a specific listing of the contributions or expenditures of \$200 or less made during the reporting period, and the aggregate principal amount of all outstanding loans at the end of the reporting period. A committee could report this information on forms meeting Federal Election Commission approval.
- **Registration for political consultants** — Persons receiving more than \$200 in a calendar quarter from a candidate, officeholder, political committee, or political party to provide political services in connection with a campaign would be required to register with the TEC as political consultants and submit a registration fee. Registrations would expire each January 1, unless renewed. Consultants would have to file activities reports twice a year on services provided and compensation received. Violations of registration and reporting requirements would constitute a Class A misdemeanor, punishable by a maximum penalty of one year in jail and a \$4,000 fine. Consultants also would be subject to recordkeeping and reporting provisions of the Election Code.

Other provisions. The bill would prohibit a child from making political contributions exceeding \$50 in the aggregate.

A financial institution could not open an account in the name of a candidate for the purpose of accepting political contributions without the candidate's signature.

Individuals would be civilly liable for acts or omissions by their principal campaign committees. The bill would provide for collection of delinquent civil penalties. Candidates delinquent in payment of civil penalties would be required to note their delinquency in their political advertising; violators would commit a Class A misdemeanor.

CSHB 3332 would establish the Fair Campaign Spending Fund as a special account in general revenue. The fund could contain damages and civil penalties recovered for ethics violations; any gifts or grants received by the TEC; and political contributions unexpended six years after being remitted by candidates. The fund could be used for voter education projects and payments of costs incurred in imposing civil penalties for ethics violations. If adequate funds were available, the Fair Campaign Spending Fund could also be used to produce a voter's guide listing candidates, their backgrounds, and similar information. The TEC would adopt rules concerning the voter's guide, which would be available in newspapers, on the Internet, and on the comptroller's state government electronic bulletin board.

The bill would prohibit the use of an early voting ballot form as part of or included with a political advertising, unless the ballot was provided by a single individual or a committee of a political party. It also would require that any political advertising include the full name and address of the individual who caused the advertising to be printed, copied, published, or broadcast, or the names and addresses of the campaign treasurer or political committee and the candidate.

The bill would take effect September 1, 1997. Candidates who left office or candidacy before September 1, 1991, without filing a final report would have until January 1, 1998, to dispose of unexpended political contributions, interest, or other assets in compliance with the Election Code.

SUPPORTERS
SAY:

CSHB 3332 would revise and enhance the current campaign reporting laws. In Texas, the integrity of the campaign is maintained not by regulating freedom of political speech or expression through campaign finance limitations but through a thorough reporting system that allows citizens to be fully informed about who is funding political campaigns and how candidates are spending their money. The system requires disclosure of both those who give and receive political contributions, acting as a double entry accounting system to ensure the accuracy of the information submitted.

CSHB 3332 would centralize campaign fundraising under principal political committees so that contributions and expenditures could be more easily identified and tracked. In many campaigns, candidates have several committees working on their behalf, making it difficult to trace the receipt and expenditure of campaign dollars. Allowing only one committee to be established for each candidate would create mini-clearinghouses for campaigning funds, simplifying the reporting process and the monitoring of campaign finance for candidates, TEC, and concerned citizens alike.

The bill would also address the problem of “bundling” campaign contributions, whereby several small contributions are collected and delivered to a candidate together. For aggregate contributions of more than \$100 from a single individual, candidates would have to report the individual's occupation and employer. This would allow easier identification of which groups or corporations may be concentrating donations in a given campaign.

CSHB 3332's additional reporting requirements for direct expenditures made by persons unaffiliated with a campaign would increase their level of accountability and prevent candidates from being blind-sided by unexpected or unwelcome ad campaigns. The requirements would not harm the independence of those making direct expenditures; candidates would not be given veto authority over any independent direct expenditure, simply made aware of it.

Registering political consultants would further enhance the level of accountability in the campaign finance system and allow their activities reports to be compared against those of the candidates they serve. As

consultants gain greater influence over the content and form of political campaigns, it has become necessary for their participation to be acknowledged and documented. As is the case with lobbyists, consultants' influence on the political process is not inherently inappropriate, but should be conducted in an open, above-board manner. Consultants who have nothing to hide regarding their service to and compensation from candidates should not be threatened by CSHB 3332's minimal registration and reporting requirements.

Rigorous reporting requirements are the wave of the future in campaign finance reform and help protect the freedom of political speech and expression. As technology advances, campaign finance reports will become more accessible to all citizens. Campaign finance information transmitted electronically among candidates, TEC, private watchdog groups, and interested citizens will become easier and cheaper to disseminate and to present in a way that is cohesive and meaningful. The voluntary electronic filing now available through TEC is being used by a growing number of candidates and officeholders. CSHB 3332 would enhance the quality and depth of campaign finance information available, helping to clean up the system and improve the quality of electoral campaigns in Texas.

OPPONENTS
SAY:

CSHB 3332 would impose a number of constitutionally questionable restrictions on individual freedoms of speech and expression, and institute burdensome reporting requirements amounting to more red tape without improving the campaign finance system.

The bill's requirement that candidates be notified in advance of another person's plans to spend money to support their candidacy would be a restriction of free speech and most likely unconstitutional. This country has long valued the right of individuals to express themselves without the prior knowledge or consent of any other person. CSHB 3332 would make Texas the only state in the country with a requirement restricting the exercise of that right.

A related provision, requiring full identification of persons responsible for political advertising, is equally threatening and constitutionally indefensible. The viability of our democracy is contingent on the ability of citizens to express and persuade others of their political views without government-

imposed inhibitions. The widespread distribution of Thomas Paine's *Common Sense* throughout the American colonies, for example, could have been prohibited under CSHB 3332 if individuals had been required to append their names before circulating it.

The regulation of political consultants provided by CSHB 3332 would be unworkable, ineffective, and duplicative. Candidates already report expenditures paid to consultants, and there is no need for the mountains of paperwork that duplicating such reports would create. Furthermore, the definition of political consultant provided by the bill would be overly broad. A political consultant would be defined as someone who provided “political advice” and received compensation of at least \$200 quarterly. It is unclear whether, along with established consulting firms, individuals could be deemed consultants for placing yard signs, getting out the vote, or serving as coordinators of campaigns in local communities.

Lawyers would constitute another large group that could potentially be labelled as consultants, although the attorney-client privilege would inveigh against their registering as such. This could result in an unfair application of the law, as some would have to comply and others would not. The possibilities for evasion are many: Consultants could work through or with lawyers, using their immunity as a shield, or they could simply go on a candidate's payroll.

OTHER
OPPONENTS
SAY:

The real problem with political campaigns today is that they too often cost huge sums of money and campaign contributions translate into political influence; no amount of reporting requirements can change that fact. Those with money still have a larger say than those without it, a condition that has gravely endangered the integrity of our electoral system. Until a workable system of contribution and spending limits is enacted, the Legislature should not make piecemeal changes that would only paper over the fundamental flaws in system.

NOTES:

The original version of the bill would have set mandatory spending and contribution limits for statewide candidates for public office, prohibited certain types of telephone polling, and included a savings clause. The committee substitute deleted those provisions and added registration requirements for political consultants.

The companion bill, SB 1686 by Ellis et al., has been referred to the Senate State Affairs Committee.