

SUBJECT: Political contribution reporting requirements of certain persons or groups

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 8 ayes — Cook, Giddings, Farrar, Geren, Harless, Huberty, Kuempel,
Sylvester Turner

2 nays — Craddick, Smithee

2 absent — Farney, Oliveira

WITNESSES: For — Rick Levy, Texas AFL-CIO; Joe Pojman, Texas Alliance for Life, Inc.; Steve Bresnen; Tom “Smitty” Smith; (*Registered, but did not testify*: Jesse Romero, Common Cause Texas; David Power, Public Citizen; Kyleen Wright, Texans for Life; Ruth Allwein and Erin Groff, Texas Alliance for Life; Paul Silver, Texas Anti-Corruption Campaign; Donnis Baggett, Texas Press Association; Jeffrey Knoll)

Against — Kristen McDonald, Empower Texans; Dalton Oldham, Empower Texans, Texas Right to Life; Joe Nixon, Empower Texans, Texas Right to Life, Texas Home School Coalition; Trey Trainor, Empower Texans, Texas Right to Life, Texas Home School Coalition; Tony McDonald, Empower Texans; Law Offices of Tony McDonald; (*Registered, but did not testify*: Ann Hettinger, Concerned Women for America of Texas; Michael Quinn Sullivan, Empower Texans; Dustin Matocha, Texans for Fiscal Responsibility; MerryLynn Gerstenschlager, Texas Eagle Forum; Jeremy Newman, Texas Home School Coalition; Emily Horne and Emily Kebodeaux, Texas Right to Life; Jonathan Saenz, Texas Values Action; and six individuals)

On — (*Registered, but did not testify*: Natalia Ashley, Texas Ethics Commission; Richard Meyer)

BACKGROUND: Election Code, Title 15 governs the regulation of political funds and campaigns, including requirements for financial reports by campaigns, candidates, officeholders, and political committees. These campaign

financial reports must be filed with the Texas Ethics Commission.

Election Code, sec. 251.001 defines a political committee as a group of persons that has as a principal purpose accepting political contributions or making political expenditures.

DIGEST:

CSHB 37 would create political contribution reporting requirements for a person or group that:

- was not a political committee;
- accepted contributions in connection with campaign activity in excess of \$2,000 from a person during a reporting period; and
- made one or more political expenditures, with certain exceptions, that exceeded \$25,000 during a calendar year.

The bill would define a “contribution in connection with campaign activity” as a contribution that the donor knows or has reason to know could be used or commingled with other funds that could be used to make political contributions or political expenditures.

A person or group to whom the bill applied would be required to report as if they were a general purpose committee that did not file monthly reports.

A person or group of persons would not be required to file a report under the bill if:

- they were required to disclose the expenditures or contributions in another report within the same time frame; or
- no reportable activity occurred during the reporting period.

Persons or groups would be required to disclose a contribution in the report only if the contribution was connected to a campaign activity and exceeded \$2,000 during the reporting period. A report would not be required to include:

- any contributions accepted by the person or group that were not connected with campaign activity;

- the total amount of unitemized political contributions accepted by the person or group;
- the total amount of political contributions maintained by the person or group;
- any expenditures made by the person or group that were not political in nature;
- the total amount of unitemized political expenditures made by the person or group; or
- the principal amount of all of the person's or group's outstanding loans.

The first report required to be filed in a calendar year in which the \$25,000 threshold was exceeded would need to include all political contributions accepted and all political expenditures made in that year.

A person or group would not be required to report contributions of personal travel expenses incurred by individuals or contributions consisting of an individual's personal service if the individual was not reimbursed or compensated.

This bill would take effect September 1, 2015, and would only apply to the reporting of contributions in connection with campaign activity or political expenditure made on or after that date.

**SUPPORTERS
SAY:**

CSHB 37 would close a loophole in existing political contribution reporting requirements and ensure that all entities spending money to influence elections were treated the same. Certain nonprofit 501(c)(4) organizations currently spend more than \$25,000 in political expenditures every year but do not qualify as a PAC and do not have to report political expenditures. These organizations have become more powerful and numerous since the decision in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010). They should be subject to the same reporting requirements as other political organizations.

The bill would provide transparency. Organizations that would be affected make large campaign contributions with no provisions for transparency.

Disclosing funding sources of major campaign efforts would create a more informed electorate and help voters weigh the importance of the source and discern the validity of information.

Citizens United upheld certain requirements for public disclosure and made clear that disclosure of campaign contributions is important. The decision could not reasonably be interpreted to have held that these organizations had a constitutional right to anonymous political speech. Concerns that the bill would infringe on the speech rights upheld by *McIntyre v. Ohio Election Commission*, 514 U.S. 334 (1995) are misguided.

The bill would not discourage honest political spending. The purpose of disclosure is to detect violations in campaign finance regulations and deter corruption. Those in compliance with the law should have no reason to stop contributing merely because they would have to disclose their political donations.

OPPONENTS
SAY:

CSHB 37, in trying to provide transparency, could have a detrimental effect on anonymous political speech and implicate the First Amendment. The Supreme Court held in *McIntyre v. Ohio Election Commission*, 514 U.S. 334 (1995) that citizens have a right to engage in anonymous political speech. This bill could infringe on that right by requiring disclosure of contributions to these groups.

By requiring this disclosure, the bill could discourage contributions. Donors who did not want to be scrutinized or harassed or who feared an effect on their personal or professional lives based on their contributions would have to be more circumspect and might be discouraged in some cases from donating.