

- SUBJECT:** Political contribution reporting requirements of certain persons
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 12 ayes — Cook, Giddings, Craddick, Farrar, Frullo, Geren, Harless, Huberty, Menéndez, Oliveira, Smithee, Sylvester Turner
- 0 nays
- 1 absent — Hilderbran
- SENATE VOTE:** On final passage, April 16 — 23 - 6 (Birdwell, Campbell, Estes, Fraser, Nelson, Paxton)
- WITNESSES:** For — Steve Bresnen; Fred Lewis; Craig McDonald, Texas for Public Justice; (*Registered, but did not testify:* Trigg Edwards and Tom Smith, Public Citizen; Jack Gullahorn, Professional Advocacy Organization of Texas)
- Against — (*Registered, but did not testify:* Veronica Arnold, James Graham, and John Seago, Texas Right to Life; Bob Bagley, Montgomery County Eagle Forum; Tama Chunn and Margaret Hotze, Life Advocates; Elizabeth Davidson and Carol Everett, Women’s Wellness Coalition of Texas; Julie Drenner, R Street Institute; Martha Foerster, Francis Morrison, Patricia Schulze, Siedhoff, and Teresa Strack, Montgomery County Right to Life; Paul Hastings, Texas Home School Coalition; John Horton, Young Conservatives of Texas; Annie Mahoney, Texas Conservative Coalition; Dustin Matocha, Texans for Fiscal Responsibility; Jonathan Saenz, Texas Values; Dennis Scharp and Ronald Woodruff, North Texas Citizen’s Lobby; Peggy Venable, Americans for Prosperity; and 7 individuals)
- On — Natalia Luna Ashley, Texas Ethics Commission
- BACKGROUND:** Title 15 of the Election Code 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.

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

DIGEST: SB 346 would create political contribution reporting requirements for a person or group of persons that:

- did not meet the definition of a political committee;
- accepted political contributions; and
- made one or more political expenditures, with certain exceptions, that exceeded \$25,000 during a calendar year.

The bill would not apply to labor organizations or their subordinate entities.

Under the bill, a person or group would be considered to have accepted political contributions if its members or donors made payments, including dues, that the members or donors had a reason to know at the time of payment could be used or commingled with other funds used to make political contributions or political expenditures.

A person or group of persons 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 to whom the bill applied would not be required to file a campaign treasurer appointment unless they were otherwise required to do so.

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 required under Title 15 within the same time frame; or
- no reportable activity occurred during the reporting period.

Itemization of contributions required under the existing reporting provisions would be required only if the contribution exceeded \$1,000 during the reporting period.

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.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS  
SAY:

SB 346 would close a loophole in existing political contribution reporting requirements and ensure that all entities spending money to influence elections were treated the same. Currently, certain nonprofit 501(c)(4) organizations that spend more than \$25,000 in political expenditures every year, but don't qualify as a PAC, don't have to report their political expenditures. These organizations have become increasingly powerful and have begun spending more 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. The organizations that would be affected by the bill make large campaign contributions and have 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.

The decision in *Citizens United v. Federal Election Commission* upheld certain requirements for public disclosure and made it clear that disclosure of campaign contributions was important. The pro-disclosure decision in *Citizens United* could not reasonably be interpreted to have held that these organizations have 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 are misguided.

The bill would not discourage honest political spending. In the case of *Buckley v. Valeo*, 421 U.S. 1 (1976), the Supreme Court explained that disclosure was an essential means of gathering data to detect violations in campaign finance regulations and deter corruption. Persons who are in compliance with the law should have no reason to stop contributing merely because they would be required to disclose their political donations.

The bill would not violate the Equal Protection Clause. Labor unions and other 501(c)(5) organizations accept contributions only from their

members and thus do not have the same transparency concerns as the organizations affected by the bill. The exception for labor unions would be a natural extension of the bill's purpose and a reasonable and fair exception.

Claims that involved and charitable citizens may not have a reason to know their donations could go toward political activity are unfounded. People who make charitable contributions to political organizations generally make those contributions with knowledge and understanding of what the organization does and the kinds of activities their contributions could fund. The bill's language would cover the organizations that most need to report their political contributions.

OPPONENTS  
SAY:

SB 346, 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* that citizens have a right to engage in anonymous political speech and, in *Citizens United v. Federal Election Commission*, it upheld the First Amendment Rights of corporations as associations of individuals. Accordingly, this bill could violate a right to engage in anonymous political speech for some organizations.

SB 346 could discourage political giving. By requiring reporting of any donation more than \$1,000, the bill would open up to disclosure donors who were well below the \$2,600 federal limit. Donors who did not want to be scrutinized or harassed or who feared an effect on their personal or professional business would have to be more circumspect with their political donations.

The bill would require reporting from several types of entities, but would carve out exemptions for labor unions. There is no reason for labor organizations to be treated differently under the bill. The bill should apply to both corporations and labor unions or to neither, but to treat the two differently would not ensure the equal protection of the law and could be a violation of the Equal Protection Clause.

SB 346 is unclear and could leave some individuals and groups uncertain of their status under the law. The requirement that donors to affected entities "have reason to know" what their funds would be used for is vague. This could not reasonably be understood in the case of every entity to whom the bill could reasonably apply. Some of the qualifiers in the law

could require reporting from groups that actually had little connection to the political process.