

2011 HOUSE POLITICAL SUBDIVISIONS

HB 1414

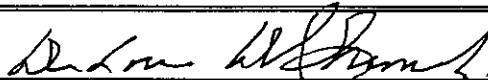
2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB1414
January 27, 2011
Job # 13585

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to campaign contributions and independent expenditures; and to provide a penalty.

Minutes:

Proposed Amendment #1

Chairman Johnson: opened the hearing on HB 1414.

Rep. Winrich: The bill is a respond to something that happened about a year ago on January 21, 2010 the US Supreme Court announced the decision in the Citizen's united case. What that decision did was to say that the provisions of the McCain Find gold campaign finance law did not apply to corporations. As long as corporations did not consult with specific candidates about the campaign they were free to spend as much of their resources as they wished on political campaigns. One of the first states to respond to that was Minnesota and they passed a law that said; we can't prohibit corporations from making political expenditures anymore, but the Supreme Court in fact in their decision has suggested that they should be required to report them and so they passed such a law. That is the law this bill is patterned after. Mr. Bjornson checked with other states when he drafted this bill. During the 2010 gubernatorial campaign at some point the news came out that Target Corporation has contributed to an organization called Minnesota Forward, which was supporting which was supporting the campaign of Mr. Emmer. There was criticism of Target because of that etc. The important thing was it became public knowledge. The public in Minnesota had the privilege of knowing what these corporations were doing. That is what I would like to see in ND and that is the purpose of this bill. It deals with several sections of election law and it changes something that has been in ND law for a long time; the prohibition on corporation contributions. I asked that Mr. Bjornson be here to explain the legal details of the law. Because the bill is so complex we overlook a few of the mistakes and typographical errors in drafting in so I will pass out these amendments. (See amendment #1).

John Bjornson, Legislative Council: Went over the bill section by section.

Rep. Koppelman: Who are these amendments from?

John Bjornson: They were prepared for Sen. Schneider after reviewing the bill since we saw we needed to make some technical corrections the bill appears long, but the first real change doesn't occur until the top of page 3 and that is part of the definition of a contribution. An independent expenditure is something that is done separately from your campaign. If I were Target and wanted somehow to inject myself into your race and did it independently of you; not with you asking me to do it; and not with the consulting your campaign, it is not a contribution to you, but an independent expenditure made within your race. Those will have to be reported by the person who makes the independent expenditure.

Rep. Klemin: We hear these TV ads and at the end they give some disclaimer at the end is that an independent expenditure that you are talking about?

John Bjornson: Yes that is. These groups might call and say you support him or something, but this case blew this open further where they can essentially go in and say vote for Rep. Klemin so we are trying to make it so the corporation's aren't allowed to make a direct contribution to you, but because they do have according to Supreme Court, this right freedom of speech they can do these things independently of your campaign. If they do that they are going to have to make some reports that are required in this chapter. File statements with the Secretary of State disclosing what type of money has been spent on this type of expenditure. In that amendment you see corrects some stuff. They can't make the direct contribution to you but will allow them to inject themselves into your race by running in ads that are independent of your campaign. Continued going through the bill.

Sen. Schneider, Citizen's United says under the first amendment a government cannot prohibit independent expenditures directly funded by campaign or union contributions. Dozens of states in reaction to that have introduced laws requiring disclosure and there is reasons why deeply red and deeply blue have required disclosure. The FCIU could come into ND; drop \$200,000 behind a 501 c 4 called Citizens For the Flag or something of that nature; buy a bunch of TV ads and no one would have any idea that it was a service employees international union doing that. This is a truth in advertising bill as much as it is anything else. I urge you to be especially careful of what we do in the wake of Citizen's United considering that our law which would otherwise prohibit independent expenditures is now void. What do we do to fill that void?

Rep. Klemin: With regard to federal candidates, are they governed by something similar under federal law?

Sen. Schneider: I wish. Congress cannot overturn that decision since it is based on the constitution and so disclosure is the only way to go. Congress for one reason or another has not gotten around to it.

Rep. Klemin: The Citizen's united case, did that involve federal campaigns?

Sen. Schneider: It did and it is a 195 page decision. It was an independent group that produced a movie about Hillary Clinton and wanted to run it over the public air waves within 60 day of election and the FEC said was impermissible under the Federal Election

Campaign Act and the Supreme Court said that portion of the federal election campaign act was unconstitutional under the first amendment.

Rep. Klemin: So this came up because of a matter involving a federal campaign act Supreme Court decision making rulings on that and the Congress is not doing anything to change the federal law so why are we being asked to change all our state law?

Sen. Schneider: I don't think we want to copy Congress. I think we want to act on this. Congress has considered various approaches and for one reason or another there is no federal law that requires disclosure of campaign contributions.

Rep. Klemin: Should we wait and see what the federal law does just so we can copy it if we need to later if we need to rather than making some mistakes now.

Sen. Schneider: There are various pieces of legislature that we could look at for state law. I would say if we are waiting for Congress we might be waiting for ever.

Rep. Koppelman: Was there anything that might indicate that those direct contributions by the court might be unconstitutional?

Sen. Schneider: They did not receive that issue. I couldn't guess how the court would decide that. Certainly independent expenditures and directly funding candidates are fairly different so I could see the court potentially reaching a different result.

Rep. Hatelstad: Basically it is a truth in disclosure bill. Couldn't we do it easier with a one sentence versus eleven pages? Just tell everybody if you make a political contribution you have to disclose it.

Sen. Schneider: If you just had the one sentence disclaimer you would see a lot of advertisements by groups like the Association for Motherhood and Apple-pie funded by corporate or union interests. So that is where the disclosure for contributions to these political committees comes into play.

Rep. Hatelstad: But if they had to disclose whether it was a union or corporation or whatever; they had to disclose they made this contribution they created this ad; wouldn't that take care of it without going through eleven pages?

Sen. Schneider: I think that is what the legislation does. If there is a way to do it with fewer words I would like that. I don't think this is a perfect bill at this point. It is a 200 page decision involving complex constitutional issues and state laws that wasn't exactly like the federal law. I know this committee will make the right call.

Rep. Klemin: The definition of candidate seems to include federal candidates because it says not.

Sen. Schneider: I am not sure where federal preemption applies?

Rep. Klemin: How can we be preempted by nothing?

Sen. Schneider: If federal does occupy the field we may be prevented from stepping into it at all in terms of imposing this on congressional candidates in ND. I would assume federal campaign laws would apply to federal candidates.

Rep. Klemin: Right now there is no federal campaign law on this issue so there is nothing to preempt state law. Arguable state law would then apply to federal candidates in ND.

Sen. Schneider: We should resolve this before we go further one way or another.

Opposition:

Neutral:

Al Jaeger, Secretary of State: I have gone through this bill not knowing about the amendments and I could not figure it out so maybe the amendments will clarify what our concerns were or our questions. Our understanding Rep. Klemin ND law does not apply to federal candidates at all. I am sure anything that would be done on the state level would apply to federal candidates. As an agency bill we did introduce 2073 which responded in part to the Supreme Court decision and I believe it just passed the Senate a couple days ago. As we understand that Supreme Court decision, Attorney General Stenehjem convened a committee and went through it. ND prohibition against candidates receiving corporate funds, that stands. That can be decided to be kept. The one thing that seems to apply specifically to this kind of expenditure, which is independent, is that fact that there is a separate provision in terms of enforcement. It makes it a misdemeanor, which a prosecutor would have to pursue. For those who do not file their campaign reports it is so many dollars the first few days and so many dollars as you get later. The only alternative was prosecution. I think only one person had to pay \$100 fine so it seems to work better to have to pay a fine.

Rep. Mock: What happens if a candidate or campaign committee does not turn in its reports ever?

Al Jaeger: If you don't do it or pay the fine we do have a way of continuing that process. It is in the law. The court of public opinion and the court of the opposite party would take care of you real quick. Quoted the law on getting someone to pay. This is the first time we have had to look at that.

Rod St. Aubyn, BCBS of ND: I am not sure the effect one part of this is going to have. We have a political action committee and it is made up of the employees of the business and totally voluntary. The treasurer is the one that completes the statements and the concern I have, if you look at definition of political committee, they added person that receives contributions or makes expenditures for political purposes on page 3 and it says a person that. One of the concerns we have is our treasurer is the one that handles those funds and does expenditures when we do it. On page 10 lines 28 and again on page 11 and this talks about the audit and it said political committee or other person filing and it is talking about who is going to pay the fine. I don't think this is what is intended but does that mean our treasurer that could be fined in this case? We won't be able to find a treasurer because no

one wants to assume this responsibility. I would think that political action committee should have to pay for it. Not an individual volunteer that could maybe be included on that.

Chairman Johnson: Person could mean anyone of those entities. So if a person is acting on behalf of a political action committee I would assume it is the committee that would be the one responsible for the audit fees and fines.

Neutral: None

Discussion:

Rep. Mock: Would it be in the interest of the committee to at least adopt the clerical changes and then work from there? To insure the intent of the bill and then discuss it from that point.

Rep. Kilichowski: Can you have legislative council draft them up so we could see how they would look?

Chairman Johnson: would it be alright if we just looked at it over night and then come back.

Rep. Mock: I would request we do the amendment so we could read it the way it should be.

Rep. Koppelman: I thought council made these just as a cleanup but sounds like maybe you are talking about intent?

Sen. Schneider: Specifically we would no longer band some practices do we want to keep banded and that is what those amendments do. You certainly can take all the time you want to but that the candid explanation.

Rep. Koppelman: Doesn't the bill go boarder than the decision would require us to go under the law.

Sen. Schneider: this would go farther than Citizen United and allow direct contributions to political parties or candidates.

Rep. Koppelman: Citizen United did not say you must disclose.

Sen. Schneider: Dozen of states have required disclosure but the rational that this was essentially not the best decision.

Chairman Johnson: Please take a good look at what the amendments are and we can make that decision when we start to talk about the bill if there is a motion to do that at that time.

Hearing closed.


2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1414
February 10, 2011
Job # 14343

☐ Conference Committee

Committee Clerk Signature



Minutes:

(Proposed amendment #1)

Chairman Johnson: reopened the hearing on HB 1414. There is one in the Senate that is similar.

Rep. Mock: Mr. Bjornson said that the amendment we have here is because in the drafting of the bill they made changes that were not suppose to be made with the bill. Can we get him to explain that amendment?

Chairman Johnson: I think he did explain. He said he did get a little heavy handed or something like that.

Rep. Mock: Made a Motion to Move the amendment .03001; Seconded by Rep. Maragos:

Discussion: None

Voice Vote Carried

Chairman Johnson: This is the one talking about campaign expenditures for allowing contributions for corporations. It would allow corporation contributions if the person that is the candidate didn't know that the corporation was doing it.

Do Not Pass As Amended Motion Made by Rep. Koppelman: Seconded by Rep. Hatelstad:

Vote: 11 Yes 3 No 0 Absent Carrier: Rep. Hatelstad:

Hearing closed.

VR
2/11/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1414

Page 5, remove the overstrike over lines 5 through 14

Page 5, line 15, remove the overstrike over "contributions to"

Page 5, line 15, remove "establish and administer"

Page 5, line 16, remove the overstrike over "a"

Page 5, line 16, remove "the"

Page 6, line 14, remove the overstrike over "3."

Page 6, line 14, remove "2."

Page 7, line 7, remove the overstrike over "4."

Page 7, line 7, remove "3."

Page 7, line 16, remove the overstrike over "5."

Page 7, line 16, remove "4."

Page 8, line 8, replace "5." with "6."

Page 8, line 10, replace "1" with "2"

Page 8, line 25, replace "6." with "7."

Page 9, line 5, replace "7." with "8."

Renumber accordingly

Date: 2-10-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1414

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number .03001

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Mock Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski		
Vice Chairman Hatelstad			Rep. Shirley Meyer		
Rep. Beadle			Rep. Mock		
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*Voice
Vote
carried 1*

Date: 2-10-11
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1414

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☒ Do Not Pass ☒ Amended ☐ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider _____

Motion Made By Rep. Koppelman Seconded By Rep. Hatelstad

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Kilichowski		✓
Vice Chairman Hatelstad	✓		Rep. Shirley Meyer		✓
Rep. Beadle	✓		Rep. Mock		✓
Rep. Devlin	✓		Rep. Zaiser	✓	
Rep. Heilman	✓				
Rep. Klemin	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Pietsch	✓				

Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep. Hatelstad

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1414: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1414 was placed on the Sixth order on the calendar.

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