

2005-06 SESSION

COMMITTEE HEARING RECORDS

Assembly Committee on Campaigns & Elections (AC-CE)

Sample:

Record of Comm. Proceedings ... RCP

- 05hrAC-EdR_RCP_pt01a
- 05hrAC-EdR_RCP_pt01b
- 05hrAC-EdR_RCP_pt02

➤ Appointments ... Appt

➤ **

➤ Clearinghouse Rules ... CRule

➤ **

➤ Committee Hearings ... CH

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Hearing Records ... HR

➤ **

➤ Miscellaneous ... Misc

➤ **05hr_AC-CE_Misc_pt28**

➤ Record of Comm. Proceedings ... RCP

➤ **

WISCONSIN EDUCATION ASSOCIATION COUNCIL

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WEAC Statement in Opposition to Assembly Bill 392, the Black-Erpenbach Campaign Finance Reform Proposal

May 2005

The Wisconsin Education Association Council (WEAC) supports campaign finance reforms that are comprehensive, equitable and practical. WEAC further believes the reforms must respect the constitutional rights of Wisconsin citizens.

In recent years, WEAC has supported many campaign finance reform proposals that are consistent with these important principles. They include the recommendations of Governor Thompson's Blue Ribbon Commission on Campaign Finance Reform, also known as the Kettl Commission proposal; 2001 Assembly Bill 843, a comprehensive reform plan that passed the State Assembly on an 87-12 vote; the Impartial Justice bill, which would provide full public financing for Wisconsin Supreme Court candidates; and, most recently, 2005 Senate Bill 46, the bipartisan Ellis-Risser comprehensive reform plan.

Continuing our commitment to these principles, WEAC opposes Assembly Bill 392, authored by Representative Spencer Black and Senator Jon Erpenbach, because it fails to meet equitable and practical standards and is constitutionally unsound.

The 24-Hour Reporting Requirements Are Unworkable and Are Another Version of Prior Reporting

AB 392 would require all PACs to report within 24 hours, **at all times**, any contribution, disbursement or "obligation" relating to an independent disbursement. This approach is not only procedurally unworkable, vague and overly burdensome, but is unconstitutional because it requires pre-reporting of political activity.

The current requirement for 24-hour reporting of disbursements in the final weeks of a campaign is understandable; it allows for disclosure by all parties engaging in political speech so that the electorate can make informed decisions. Requiring year-round 24-hour reporting for every single contribution received or "obligation" incurred by a PAC cannot be so justified. In order to maintain the ability to use its funds for potential independent expenditures, a PAC would have to report every contribution and identify the candidate who theoretically would be supported or opposed by the potential expenditure at some point. Not only is this unduly burdensome, it is likely impossible, as PAC contributions are rarely if ever "earmarked" for a specific candidate or expenditure.

Stan Johnson, President
Dan Burkhalter, Executive Director

Requiring reporting of an "obligation" raises additional constitutional problems. 2001 Wisconsin Act 109 was struck down because it required pre-reporting by groups engaged in independent expenditures or issue ads. *Wisconsin Realtors Ass'n v. Ponto*, (W.D. Wis. Case No. 02-C-424). AB 392 attempts to indirectly achieve the same goal. PACs and other groups or individuals engaging in independent expenditures generally "incur obligations" relating to the expenditure before any communication is made to the public – including the production costs of literature or commercials, polling costs and the purchase of air time. While the bill does not define the term "obligation" (another constitutional concern when regulating free speech), it arguably would require a PAC to pre-report not only what it intended to say, but when and where it intends to make the communication.

Finally, even if "obligation" is defined as essentially the equivalent of a "disbursement," which under current law includes a "contract, promise, or agreement" to pay money, requiring reporting at all times from the date of disbursement rather than the date a communication is actually made is problematic. In addition to the constitutional problems of pre-reporting, this procedure could result in a "funding bump" to a candidate based upon a reported disbursement for a communication that is never executed. This is impractical due to the realities of purchasing broadcast media. Broadcast media outlets require pre-payment for airtime. Often the "disbursement" will be made long before any communication is aired. In many cases the airtime will not be used in the race for which it was originally purchased.

In sum, WEAC believes the bill's requirement that PACs must report on a 24-hour basis all contributions, disbursements and obligations related to a potential independent expenditure is impractical and unconstitutional

The Bill's Changes to Conduits Are Unnecessary and Problematic.

AB 392 would change the treatment of contributions made through a conduit. Currently, a contribution made through a conduit is treated and reported as a contribution from the contributor, and is also reported as made through the conduit. The bill would subject conduit committees to the PAC contribution limits of 11.26(2), severely limiting the amounts that could be contributed through such a committee. WEAC is not aware of any legitimate reason to place such a limit on conduits, and opposes this change. Conduits are a legitimate and effective mechanism for an individual to exercise their First Amendment rights, and the contributions are fully reported both as individual and conduit contributions.

The Bill Bans PAC-to-PAC Transfers

When WEAC was engaged in discussions with legislators on SB 46, the Ellis-Risser bill, some legislators expressed concern about the fact that the bill

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includes a ban on PAC-to-PAC transfers. AB 392 also includes a ban on PAC-to-PAC transfers.

The Bill Would Open Up the State's Checkbook for Political Campaigns and Lawsuits

WEAC does not need to remind you that the state continues to face a very serious budget deficit. Now is NOT the time for taxpayers to give the state an open checkbook for funding political campaigns. That's exactly what AB 392 would do. A major fiscal iceberg would be unleashed with this bill. With unlimited funding bumps financed with sum sufficient GPR, the total cost of this bill could be many, many millions of dollars per year

AB 392 also would lead to litigation similar to the lawsuit challenging the provisions in 2001 Wisconsin Act 109. In that case, the state ended up paying some \$200,000 in fees for private attorneys on BOTH SIDES of the lawsuit. Keep in mind that the state lost the lawsuit.

For all these reasons and more, WEAC encourages you to OPPOSE AB 392.

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