



**Testimony of Allen Dickerson before the
Pennsylvania Senate Democratic Policy Committee**

Policy Hearing on Campaign Finance Reform

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Center for Competitive Politics

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Introduction

Senator Costas, Senator Boscola, and members of the Democratic Policy Committee:

My name is Allen Dickerson. I am the Legal Director of the Center for Competitive Politics, a nonprofit educational organization based in Alexandria, Virginia.

Thank you for the opportunity to appear before you to discuss this draft legislation. Our national debate over campaign regulation and our First Amendment freedoms has become a contentious one, full of misinformation and posturing. Opponents rarely speak openly with one another, and the national debate suffers as a result.

The Bill begins: “The Commonwealth has a compelling governmental interest to protect the integrity of the government from actual corruption or the appearance of corruption.” That is a good beginning. It is important to remember that, because campaign speech regulations reach the heart of our First Amendment rights, the state may only limit political speech to prevent actual corruption or the appearance of corruption.

Certain elements of this bill, such as increasing the reporting requirement for independent expenditures from \$100 to \$1000, are welcome efforts to align Pennsylvania law with our constitutional liberties. Others are, to my mind, ill-advised. Several provisions appear likely to draw a legal challenge. Several more I find curious, as contribution limits generally benefit incumbents, and this Committee represents the Senate’s minority party.

For instance, the requirement that independent expenditure ads include a list of donors or a “stand-by-your-ad” message from the CEO strikes me as problematic. Such a system has existed at the federal level for over a decade with no measureable effect except to crowd out a better use of those five seconds. In that same time, an advertisement could say “now is the time to support a living wage,” or “let’s preserve the environment for the next generation.” Surely both statements are more useful to the voters of Pennsylvania than the name and title of an unknown person, information that can be easily found online by the curious.

Or consider the requirement that companies doing business with the Commonwealth, even involving very small contracts, must collect information concerning their employees’ political donations. Corporate and executive spending is already disclosed under existing laws. All this adds is a requirement that rank-and-file employees report their political activities to management, which may well have different political views and priorities?

But in the interest of time, I’d like to concentrate on one particular element of this bill – the burdensome approval and disclosure requirements imposed on Pennsylvania businesses.

The business provisions, which also impact unions and other associations, have two main flaws.

1. First, they call for substantial new disclosure of political spending that is, in most cases, either already required or functionally useless. They impose burdens that do nothing to prevent corruption in the Commonwealth.
2. Second, they require an affirmative and binding shareholder vote for any political activity, broadly defined, over \$10,000.

I believe both provisions are mistakes. Aside from making Pennsylvania a far less attractive place to incorporate, especially as Delaware lies nearby, these provisions fail to advance any anti-corruption purpose.

Disclosure

Commonwealth law already requires disclosure of independent expenditures over \$100 made by corporations. It specifically prohibits any corporate contributions to candidates or political committees. This includes, of course, corporations doing business with the Commonwealth. And existing law already requires corporations to report contributions made by the officers, directors, and employees of corporations.

What then, if anything, is being added by this new legislation?

The only substantive change provided by this law is the disclosure of spending by individuals and businesses to groups that then spend the money, often without the knowledge and almost always without the specific approval, of the donors.

But in the area of political law, disclosure must be justified by some government interest in fighting corruption, and carefully calibrated to actually discover information relevant to that aim. The Supreme Court has already struck down laws requiring civil rights groups to disclose their membership lists, laws requiring socialist groups to disclose their donors, and laws requiring union organizers and citizens passing door to door to disclose their identities where no anti-corruption or other compelling government interest was served.

Additionally, Commonwealth law already requires the disclosure of the party actually paying for, and controlling the content of, political speech. And if any portion of dues to a tax-exempt organization are earmarked for particular political spending, that payment must also be disclosed. But where dues or other funds are provided to a group with multiple purposes – such as a trade organization that also lobbies, educates, and provides services to its members – the

government has no legitimate interest in having access to that trade association's membership list.

Shareholder approval

This law would also require a binding shareholder vote to authorize any political spending by a corporation over \$10,000.

For most businesses, \$10,000 is not a significant, much less material, amount of money. There is no question that requiring shareholder approval for all \$10,000 expenditures – perhaps to give a raise to a promising employee – would be very poor corporate governance. The purpose of the corporate form is to provide limited liability for shareholders, separating them from day-to-day decision making, and also from unlimited liability for the debts and mistakes of their companies.

I suspect that this Committee would say there is something special about political spending. In a sense, that's undoubtedly true. But I suspect it is no more true for political spending than it is for corporate charity, which often goes to controversial projects in the arts or local communities. And, if we're honest, we may agree that some corporate decisions – where to locate a new plant or what contract to reach with a union for example – may involve astronomically more funding than \$10,000, and may be more political than dues payments to the Chamber of Commerce. And yet we have never required shareholder approval for those decisions.

To summarize, direct political spending is already disclosed and publicly available. Shareholders who disagree with corporate decisions, whether for business reasons or from a position of conscience, are, and have always been, free to sell their shares or vote for new management at the annual meeting. In extreme cases, they are free to sue the company's management for wasting corporate funds. These are not idle tools.

Conclusion

In conclusion, what is ultimately gained by the Bill's provisions concerning businesses' political activity? Shareholders will learn little they did not already know, and will vote on relatively-meaningless outlays in what is sure to be a hysterical and partisan environment. It is impossible to see how this state of affairs prevents corruption or the threat of corruption in Pennsylvania. It is, however, very likely to chill corporate speech in this state.

There are two reasons these provisions might be adopted. Perhaps they are intended to protect shareholders. But more than 30 corporations have had shareholder elections covering

such disclosure and approval requirements. Most of those proposals have been milder than this proposed law. And yet they have been, without exception, defeated. Actual shareholders do not want these provisions.

Or the intention may be to regulate corporate speakers differently, and more vigorously, than other speakers. But I would remind this Committee that “the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.” *Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976) (*per curium*).