

## Illinois Campaign Finance Disclosure

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## ILLINOIS CAMPAIGN FINANCE DISCLOSURE

With the country facing an increasing number of political scandals, both on the national and state levels, campaign disclosure laws have never been more appropriate or necessary. Due to the excessive cost of staging an effective campaign,<sup>1</sup> politicians are susceptible to possible corrupting influences. Admittedly our system of campaign financing is a source of corruption. The influence of large contributors has destroyed the credibility of our political leaders. Despite this, Illinois has maintained its distinction as one of the few states which does not have a comprehensive campaign finance disclosure law.<sup>2</sup> In an effort to remedy this situation, House Speaker Robert Blair introduced the Illinois Election Campaign Act<sup>3</sup> in the General Assembly in April, 1973. The Act would have required public disclosure of all contributions and expenditures of \$100 or more in contests for major state offices.<sup>4</sup> While the proposal received overwhelming support from the House, it died in the Senate Exec-

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1. Campaign costs have risen sharply in recent years due to the enlargement of the electorate, extensive use of radio and television, increased use of public opinion surveys, and the advent of the political management consultant. In the 1972 Illinois gubernatorial race, Governor Daniel Walker spent \$528,633 and Richard Ogilvie \$702,293 on radio and television time alone. In the senatorial race, Senator Charles Percy reported, to the FCC, spending in excess of \$284,000. *Broadcast Spending*, 31 CONG. Q. WEEKLY REP. 1134-37 (1973).

2. One widely acclaimed full disclosure statute was passed in Florida in 1951. It imposed a limit of \$1000 on individual gifts and required the filing of reports revealing the names of contributors. FLA. STAT. ANN. § 99.161 (1973). The Florida press has given wide coverage to the contents of the reports filed by candidates; therefore, Florida voters are well-informed about the true costs of running for office in their state.

The Massachusetts election statute also contains a comprehensive disclosure provision, MASS. GEN. LAWS ANN. ch. 55, § 16 (1973), yet the Massachusetts Crime Commission has reported almost universal noncompliance with the statute in the reporting of contributions and expenditures. See D. ADAMANY, *CAMPAIGN FINANCE IN AMERICA* (1972). See also Note, *Report on Regulation, Limitation and Minimization of Campaign Finance*, 8 GA. ST. B.J. 339 (1972).

3. House Bill 1620, 78th Ill. Gen. Assembly (1973) [hereinafter cited as H.B. 1620]. The stated purpose of the Act was to "promote fair practices in the conduct of election campaigns for political offices in the State of Illinois." *Id.*

4. State elective office is defined by the Bill to include the offices of Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller, Treasurer, State Senator, State Representative, and Supreme, Appellate and Circuit Judge. H.B. 1620, art. I, § 1-8.

utive Committee.<sup>5</sup>

Election campaign disclosure laws must balance the public's interest in knowing the source of campaign contributions with the desire of politicians to protect the identity of their contributors. To be effective, the law must clearly identify to whom it applies and the monetary limitations involved. It must also be tightly drafted to eliminate loopholes and affect all candidates in a similar manner. Most importantly, it must provide for adequate enforcement procedures and not seriously infringe the freedom of expression as guaranteed by the first amendment.<sup>6</sup>

House Bill 1620 would have required any candidate seeking nomination for election, or election, to state office to report, in detail, contributions and expenditures made to his or her campaign. Contributions were defined to include:

- (1) a gift, subscription, loan, advance, or deposit of money or anything of value . . . ;
- (2) a transfer of funds between political committees;
- (3) the payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or political committee without charge. . . .<sup>7</sup>

The Bill was comprehensive enough to include the purchase of tickets for fund-raising events such as dinners, luncheons and rallies within its definition of contribution.<sup>8</sup> The Bill provided that expenditures included:

- (1) a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to State office; and
- (2) a transfer of funds between political committees.<sup>9</sup>

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5. The Bill was introduced in the House on April 26, 1973, amended and favorably reported by the House Elections Committee on May 3, 1973. The House passed the Bill on June 5th, by a 134-11 margin, but a "do-pass" motion failed on June 14, 1973, in the Senate Executive Committee sounding the death knell for the Bill. See 22 LEG. SYNOPSIS & DIG. Vol. II, 78th Ill. Gen. Assembly 832 (1973); Chicago Tribune, June 15, 1973, § 1a, at 9, col. 1.

6. For a comprehensive discussion of the considerations and problems involved in campaign financing using the 1970 elections as an analytical base, see CONGRESSIONAL QUARTERLY SERVICE, GUIDE TO THE CONGRESS OF THE UNITED STATES 471-98 (1971).

7. H.B. 1620, art. I, § 1-4. Contributions were not to include "services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee." *Id.*

8. H.B. 1620, art. I, § 1-4.

9. H.B. 1620, art. I, § 1-5.

The Bill clearly covered all expenditures made by or on behalf of a candidate.

The major portion of the Bill focused on the establishment of a political committee, which was defined as

the candidate himself or any individual, committee, association, or organization which accepts contributions or makes expenditures on behalf of or in opposition to a candidate or candidates for a State elective office during a calendar year in an aggregate amount exceeding \$1000.<sup>10</sup>

The proposed committee would be required to register with the State Board of Elections, and the committee's treasurer would be required to file periodic reports with the Board disclosing the receipts and expenditures handled by the committee.<sup>11</sup> These reports were to include the total amount of contributions received and expenditures made by the committee from July 1st of the preceding calendar year through June 30th of the current year. In addition, reports would have to include the name, address, occupation and amount of contribution of any person contributing \$100 or more during the calendar year.<sup>12</sup> The State Board of Elections was to make these reports available for public inspection and copying and preserve them for a period of three years.<sup>13</sup>

The proposed legislation is similar to a provision of the Federal Election Campaign Act of 1971<sup>14</sup> which requires an itemized report of all contributions and expenditures in excess of \$100 of all candidates and political committees disbursing money to a candidate. Critics of the Act attack the lack of effective enforcement procedures.<sup>15</sup> No independent prosecutorial agency exists; all violations are referred to the Justice De-

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10. H.B. 1620, art. I, § 1-7.

11. H.B. 1620, art. IV, § 4-1.

12. H.B. 1620, art. IV, § 4-2. "Person" was defined by the Bill to include individuals, partnerships, corporations and other associations. H.B. 1620, art. I, § 1-5.

13. H.B. 1620, art. V, § 5-1.

14. 2 U.S.C.A. §§ 431-454 (Supp. 1973). Title III of the Act covers the disclosure of contributions and expenditures by candidates and campaign committees. See generally Comment, *Undisclosed Earmarking: Violation of the Federal Election Campaign Act of 1971*, 10 HARV. J. LEGIS. 175 (1973).

15. The Federal Election Campaign Act of 1971 provides for complaints to be filed with a supervisory officer who is responsible for referring the matter to the Justice Department for institution of a criminal action. Enforcement is accomplished through the Clerk of the House of Representatives, the Secretary of the Senate and the General Accounting Office. Berry and Goldman, *Congress and Public Policy: A Study of the Federal Election Campaign Act of 1971*, 10 HARV. J. LEGIS. 331, 357 (1973). See also Comment, *The Federal Election Campaign Act of 1971: Reform of the Political Process?*, 60 GEO. L.J. 1309 (1972).

partment for prosecution.<sup>16</sup> In contrast to the federal legislation, House Bill 1620 provided more effective enforcement measures by vesting subpoena power in the State Board of Elections. The Board was to have the power to hold investigations, inquiries and hearings concerning the Act.<sup>17</sup> Complaints would be made directly to the Board which would investigate them and render a final judgment within twenty-one days of the filing date.<sup>18</sup>

The Board would also have had the power to petition any circuit court with jurisdiction over the person for an injunction to restrain or prohibit violations of the Act.<sup>19</sup>

One of the main issues surrounding the proposed legislation is the effectiveness of the \$100 or \$1000 minimum. The \$100 minimum for disclosure of contributions seems practical although higher figures have also been considered.<sup>20</sup> The main objective of any minimum is to protect the small contributor from notoriety or exposure. Any disclosure legislation must be directed at the large contributor who hopes to influence policy decisions or receive other favors in return for his support. The small contributor may only be seeking a tax deduction or may feel a certain allegiance to a particular candidate. Since the purpose of disclosure is to minimize the possibility of corruption, the \$100 minimum is reasonable. While large contributors could channel their contributions through several individuals, thus avoiding disclosure, a great number of individuals would have to be utilized to contribute a large sum of money to one candidate.

The \$1000 minimum required of political committees has been validly criticized because, conceivably, a large number of committees could be established, each handling less than \$1000, thereby avoiding the requirement that records be kept and reports be filed. The Bill could have

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16. On July 30, 1973 the United States Senate passed a bill which would establish a Federal Election Campaign Commission to enforce the election laws and amend various other portions of the Federal Election Campaign Act. S.372, 93d Cong., 1st Sess., 119 CONG. REC. S15,088 (daily ed. July 30, 1973). The Bill was referred to the Subcommittee on Elections of the House Administration Committee. As this article went to print, hearings were being held on the Bill.

17. H.B. 1620, art. V, § 5-3.

18. H.B. 1620, art. V, § 5-5.

19. H.B. 1620, art. V, § 5-8. Willful violations of the provisions of the Act would have constituted a Class A misdemeanor. H.B. 1620, art. VII, § 7-1. A Class A misdemeanor is punishable by a term of imprisonment not to exceed one year. ILL. REV. STAT. ch. 38, § 1005-8-3 (Supp. 1972).

20. One possible explanation for the \$100 minimum is for the protection of the anonymity of persons attending fund-raising dinners which often cost \$100 per person.

been more restrictive, either by setting the minimum at \$500 or even by eliminating the minimum completely. A better proposal might have been to allow only one or two political committees for each candidate. The Bill was designed to facilitate public knowledge of campaign financing, and this intent should not be thwarted by manipulation of funds between many political committees.

Searching for reasons behind the defeat of House Bill 1620 in the Senate Executive Committee is to speculate at best. Senate President William Harris opposed the Bill claiming he had received no indication of support from his constituents. Senate minority leader, Cecil Partee, suggested that the legislature wait until the Senate Watergate Committee made its recommendations in regard to campaign disclosure.<sup>21</sup> Other explanations for opposition might include a fear of antagonizing fellow politicians, a desire to cover up questionable campaign contributions, or a belief that such legislation really was not necessary.<sup>22</sup> The defeat of House Bill 1620 was actually political. While the public has the right to know about individuals attempting to influence the electoral process, this right must be balanced by the "chilling effect" such publicity might have on contributors to unpopular causes.<sup>23</sup> Favors and patronage are part of the politics involved in getting elected to public office in the State of Illinois. A prime example of the misuse of political influence is the large number of scandals involving the awarding of government contracts to supporters of particular candidates, and kickbacks to those elected officials after the contract is awarded.<sup>24</sup>

The General Assembly has a responsibility to rebuild public confidence in politicians and state government by requiring campaign finance disclosure, but it must also consider the protection of freedom of expression as guaranteed by the first amendment. It may be argued that an individual has the right to support the candidate of his or her choice without reprisal or notoriety; whether freedom of expression encompasses anonymity is a question of interpretation.<sup>25</sup>

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21. Chicago Tribune, June 15, 1973, § 1a, at 9, col. 1.

22. Chicago Tribune, June 16, 1973, § 1, at 10, col. 1.

23. See generally Sterling, *Control of Campaign Spending: The Reformers' Paradox*, 59 A.B.A.J. 1148 (1973).

24. See generally Note, *Campaign Finance Reform: Pollution Control for the Smoke-Filled Rooms?*, 23 CASE W. RES. L. REV. 631 (1972). The author contends that a contributor is motivated by a desire to influence public policy, to elect candidates who will be sympathetic to his viewpoint or to obtain a government appointment. *Id.* at 636.

25. Redish, *Campaign Spending Laws and the First Amendment*, 46 N.Y.U. L. REV. 900, 924-32 (1971). The author cites a series of cases dealing with the pro-

Another important consideration in the passage of any bill is whether the public interest will indeed be served. Full disclosure is primarily aimed at deterring those with *corrupt* interests from contributing to a candidate and thereby exerting undue influences on that candidate which are not in the best interest of the public. The Bill would, however, also sweep legitimate specific interest groups which are acting in the best interest of the public into the same broad category with *corrupt* parties. While the public might be willing to support secrecy in the case of contributions by legitimate specific interest groups, in light of recent political history their interest would still be best protected by *full* disclosure by *all* candidates of *all* political contributions.

In response to a growing demand for accountability, several campaign disclosure bills were introduced in the fall session of the General Assembly.<sup>26</sup> While the climate should be right for the passage of such bills in light of Watergate, the allegations surrounding the resignation of Vice-President Spiro Agnew, and the low esteem in which politicians are now held, the disclosure bills may be overshadowed by the regional mass transportation and tax relief proposals also under consideration.<sup>27</sup> Perhaps legislators should fear the non-passage of disclosure legislation more than they seem to fear its passage. Greater public pressure may be necessary, since it appears that politics rather than an actual concern for the public welfare will determine the action taken by the legislature.

House Bill 1620 and others like it are responsible attempts toward better government. Although the courts have liberally construed the first

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tection of membership lists and organizational affiliations to develop a first amendment right to anonymity of financial backers. He also suggests that by making the media more available to all candidates, the importance of financial contributions could be minimized and undue influence eliminated at least in part. Certainly his contention that contributors to minority parties would be discouraged by the possibility of notoriety is valid. Thus full disclosure might well work against third party candidates. See also Note, *The Constitutional Right to Anonymity: Free Speech, Disclosure and the Devil*, 70 YALE L.J. 1084 (1961).

26. Governor Walker proposed a package of bills to conform to his executive order regarding disclosure. House Speaker Robert Blair introduced bills similar to H.B. 1620. [H.B. 1 and H.B. 2, 78th Ill. Gen. Assembly, 1st Special Sess. (1973)]. Rep. Henry Hyde introduced a bill which would establish a rotating panel of law school deans to review disclosure material deemed too personal for publication. Chicago Sun Times, Nov. 4, 1973, § 1a, at 5, col. 1.

27. The Senate has traditionally put the damper on disclosure legislation, but on November 16, 1973 the Senate passed both strong and weak disclosure bills. The stronger of the bills was sponsored by Sen. John Roe and passed by a margin of 35-4. Senate President Harris' weaker bill also passed, and both were sent to the House. The House meanwhile rejected Governor Walker's package of bills as too broad and sweeping; the vote was 75-34, with 89 votes needed for passage. Chicago Sun Times, Nov. 16, 1973, at 28, col. 1.

amendment freedom of expression in recent years, the balance must now swing in favor of the full disclosure of the individuals behind the scenes in Illinois politics. This will contribute to the restoration of public confidence in our form of government. Legislation similar to House Bill 1620 must be adopted in Illinois to better protect the interests of the public by taking some of the politics out of politics.

*Clem Hyland*