



MEMORANDUM

TO: INTERESTED PARTIES

FROM: THE AMERICAN CENTER FOR LAW & JUSTICE

RE: MISSOURI SENATE BILL NO. 73 (S.B. 73)

DATE: MAY 5, 2017

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Two years ago, Missouri House Bill No. 222 (H.B. 222) was introduced and, if it had passed, would have altered current Missouri campaign finance law by redefining the term “committee.” Practically, the bill would have required certain corporations to register as committees, and further required them to comply with reporting and disclosure requirements. The First Amendment protects both political association and political expression. Missouri H.B. 222 would have placed an unconstitutional burden on these constitutionally protected freedoms. That bill failed to pass, but has been revived in the form of Missouri Senate Bill No. 73 (S.B. 73). Most of the language from House Bill 222 remains, and presents the same concerns regarding unconstitutional burdens. However, S.B. 73 includes additional language that is also concerning, and which may also present constitutional concerns.

SENATE BILL NO. 73

In December 2016, Senator Schaaf introduced Senate Bill 73, which would repeal section 130.041 and “enact in lieu thereof one new section relating to financial disclosure

under campaign finance laws.” S.B. 73, 99th Gen. Assemb. Reg. Sess. (Mo. 2016). In the previously proposed H.B. 222, § 130.041 required a continuing committee to file a full disclosure report of receipts and expenditures containing the total amount received from donors who contributed an aggregate amount exceeding \$100. The proposed replacement section of S.B. 73 not only retains the language of the previously discussed § 130.041, but adds nine numbered paragraphs and relative subsections detailing disclosure requirements for “continuing committee[s], political action committee[s], . . . and **any person who is not a committee**, which has made one or more expenditures or one or more *covered transfers*, aggregating two thousand dollars or more since the conclusion of the most recent general election, in support of or opposition to” a candidate or ballot measure. S.B. 73, 99th Gen. Assemb. Reg. Sess. § 130.041(6) (Mo. 2016).

The report must include the name and address of the person making the expenditure or covered transfer, the amount, the name and address of the recipient, the nature and purpose of the expenditure or covered transfer, and the name of the candidate or ballot measure supported or opposed. Furthermore, the report must include the person’s employer. A covered transfer is defined as (among other things)

any transfer or payment of funds to another person if the person making the transfer or payment: (a) Designates, requests, ***or suggests*** that the amounts be used for: a. Any expenditure; or b. Making a transfer to another person for the purpose of making or paying for an expenditure; (b) Made such a transfer or payment in response to a solicitation or other request for a donation or payment for: a. The making of or paying for expenditures; b. Making a transfer to another person for the purpose of making or paying for such expenditures; (c) ***Engaged in discussion with the recipient*** of the transfer or payment regarding: a. The making of or paying for expenditures; b. Donating or transferring any amount of such transfer or payment to another person for the purpose of making or paying for such expenditures.

Id. § 130.041(8)(1).

Thus, not only are defined committees required to submit expenditure reports, but *any person* who makes expenditures or transfers money that *may possibly* be used for expenditures is also required to file a report. Interestingly, a covered transfer does not include “[a] contribution to a campaign committee, political party committee, exploratory committee, candidate committee, or debt service committee.” *Id.* § 130.041(8)(2). Moreover, “expenditure” “shall not include contributions made to a committee, and does not include expenditures made in coordination or consultation with a committee, provided that any such expenditure is recorded as a contribution and so reported by the committee receiving support.” *Id.* § 130.041(9).

CONCLUSION

To the extent that S.B. 73 is identical to H.B. 222, the same concerns regarding infringement on the constitutionally protected rights of political association and political expression still exist. A quick review of the newly proposed sections of S.B. 73 raises further concerns that constitutional principles may be infringed upon. Not only does S.B. 73 raise concerns by proposing to restrict the constitutionally protected rights of corporations and business entities, but it also restricts natural persons. Caution should be exercised where the passage of this bill is concerned, as it appears to present numerous constitutional concerns.