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PUBLIC NOTICE

CAMPAIGN FINANCE REFORM

TASK FORCE PUBLIC HEARING

Pursuant to Public Act 96-832 (SB 1466), the Campaign Finance Reform Special Task Force will conduct a public hearing on Thursday, January 10, 2013.

The Public Hearing is scheduled to begin at 2:00 p.m. in the State Board of Elections principal office located at 2329 S. MacArthur Blvd., Springfield, IL.

The Campaign Finance Reform Special Task Force will examine the feasibility of public financing of election campaigns and will examine the impact of the new contribution limits which went into effect January 1, 2011. The Task Force will make recommendations by December 31, 2011 and September 30, 2012 respectively and issue a final report by March 10, 2015. The Task Force will also file recommendations and a report by February 1, 2013 dealing with laws regarding independent expenditures and their effect on the 2012 primary and general elections.

DATED: January 8, 2013



Rupert T. Borgsmiller, Executive Director



Office of the Governor of Illinois

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Illinois Campaign Finance Reform Task Force

Draft Outline for Public Hearing of The Task Force's Working Draft Report on Independent Expenditures

I. Introduction

A. Acknowledge the Issue, the Governor, and the General Assembly

II. Background on Regulation of Independent Expenditures in Illinois

A. History of Independent Expenditure Regulations

1. *Personal PAC v. McGuffage*, 858 F. Supp. 2d 963 (N.D. Ill. 2012) strikes down limits on contributions to independent expenditure-only PACs.

B. Summary of Current Provisions

1. Definitions of independent expenditure and independent expenditure committees, 10 ILCS 5/9-1.8(f); 10 ILCS 5/9-1.15; 10 ILCS 5/9-8.6(a).
2. Entities that make independent expenditures over an annual threshold must organize as political committee, 10 ILCS 5/9-8.6(b).
3. No limits on contributions to independent expenditure committees, 10 ILCS 5/9-8.5(e-5).
4. If independent expenditures for or against particular candidate exceed statutory threshold, then contribution limits to candidate political committee lifted, 10 ILCS 5/9-8.5 (h-5).
5. Disclosures of contributions and independent expenditures, 10 ILCS 5/9-10.

C. Independent Expenditures in the 2012 Election

1. Illinois Expenditures in the 2012 General Election

- a. Total of \$1.8 million in independent expenditures (\$1.6 million by independent expenditure committees and \$221,000 by other committees).
- b. \$100,000 statutory threshold on contributions by independent expenditure committees in non-statewide elective offices exceeded in only one race in the 2012 general election—the Senate Race for District 31. In that district, the independent expenditure committee Personal PAC spent \$159,600 in opposition to Republican Joe Neal’s candidacy.

2. Illinois Expenditures in the 2012 Primary Election

III. Case Law on Independent Expenditures

A. Overview of Supreme Court’s Decision in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010)

B. Post-*Citizens United* Jurisprudence on Campaign Finance Restrictions

1. Recent decisions from the federal appellate courts uphold heightened restrictions on campaign contributions by state contractors, crediting detailed record of contractors’ large donations and other evidence supporting anti-corruption concern. *See Ognibene v. Parkes*, 671 F.3d 174, 179 (2d Cir. 2011) (upholding New York City’s limitations on campaign contributions by entities doing business with the City); *Green Party of Conn. v. Garfield*, 616 F.3d 189, 203 (2d Cir. 2010) (upholding Connecticut’s ban on direct contributions by state contractors).
2. Seventh Circuit interprets *Citizens United* to mean that “the government’s interest in preventing actual or apparent corruption . . . cannot be used to justify restrictions on independent expenditures.” *Wisconsin Right to Life State Political Action Comm. v. Barland*, 664 F.3d 139, 153 (7th Cir. 2011).

IV. Survey of Independent Expenditure Regulation Outside of Illinois

A. At the Federal Level

B. By other States

V. Independent Expenditures in the 2012 Election

A. Federal Expenditures in the 2012 General Election

1. \$1.28 billion in total independent expenditures.
2. Roughly half of all outside spending is by Super PACs—\$600,693,363 (47%). Of the money raised by Super PACs, 60.4% was raised by 132 donors contributing at least \$1 million or more.

3. One-quarter of independent expenditures is so-called “dark money” which cannot be traced to an original source.

B. Expenditures in Other States during the 2012 General Election

VI. Discussion

A. Permitting Candidate Political Committees to Accept Unlimited Contributions if Independent Expenditure Committees Exceed Statutory Thresholds (*i.e.* \$250,000 for statewide offices or \$100,000 for all other elective offices)

1. Statutory threshold exceeded once during 2012 General Election
2. Premature to assess the efficacy of this provision as we do not yet have data from statewide office or consolidated primary elections.
3. Counting independent expenditures made on behalf of or against multiple candidates.
 - a. Guidance on allocation of costs between candidates.

B. Disclosure Requirements

1. Illinois disclosure regime receives an “A” grade from the Corporate Reform Coalition.
2. Independent expenditures involving 501(c)(4) entities.
 - a. Current extensive disclosure regime does not extend to disclosure of the identity of individuals contributing to nonprofits which in turn contribute to independent expenditure committees.
 - b. New York Attorney General recommends that any organization doing business in New York State be required to file an annual report disclosing the amount and percentage of total expenses during the reporting period that are election-related expenditures. Organizations spending in excess of ten thousand dollars on election expenditures shall further be required to provide an itemized schedule disclosing information related to each New York election-related expenditure, including the identity of donors contributing in excess of one hundred dollars.
 - c. California state senators introduce a bill along similar lines which would require nonprofits that give at least \$100,000 to a political campaign over the course of a year to release the names of the donors behind the contribution.

C. Coordination Between Candidates and Independent Expenditure Committees

1. The Empowering Citizens Act, H.R. 6448, introduced in the House on September 20, 2012, attempts to limit coordination between candidates and Super PACs by defining a candidate and Super PAC to be coordinated where:
 - The Super PAC is directly or indirectly established by or at the request or suggestion of, or with the encouragement of, or with the approval of, the candidate or its agents; or
 - The candidate or its agents solicit funds or engage in other fundraising activity for the Super PAC; or
 - The Super PAC is established by former advisers to the candidate; or
 - The Super PAC has more than incidental communications with the candidate or its agents about the campaign's needs; or
 - The Super PAC has retained the services of any person who is also providing professional services to the campaign.
2. Expenditures that are deemed "coordinated" are subject to direct contribution limits.

VII. Conclusion