



Mary Lazich

State Senator - Senate District 28

Senate Committee on Elections and Urban Affairs March 5, 2014 Senate Bill 654

Good afternoon and thank you committee members and members of the public.

Senate Bill 654 (SB 654) updates Wisconsin law to comply with developments in Wisconsin and US Supreme Court case law, and incorporates sections of existing Government Accountability Board (GAB) regulations about campaign finance.

The bill seeks not to make substantive or policy changes to Wisconsin campaign finance law. Rather, it provides clear guidance and direction to exercising First Amendment speech rights.

First, SB 654 makes Wisconsin law consistent with U.S. Supreme Court law. The 1976 U.S. Supreme Court case of *Buckely v. Valeo* underscores the difference between express and issue advocacy. This bill ensures Wisconsin law provides distinction between express and issue advocacy.

SB 654 codifies parts of the Wisconsin Administrative Code adopted by the Government Accountability Board. (GAB 1.28(3)(a)). The bill jettisons parts of the GAB regulations (GAB 1.28(3)(b)) that are not enforced after a 2010 lawsuit by both conservative and liberal groups determined GAB regulations exceed the scope of GAB's authority and unduly burden First Amendment free speech rights. *Wisconsin Club for Growth & One Wisconsin Now v. Gordon Myse*.

SB 654 provides clear guidance and certainty to Wisconsin citizens. The bill codifies a definition of activity for a political purpose because it expressly advocates for or against a candidate. Express advocacy is subject to campaign finance registration and reporting requirements.

SB 654 draws a clear distinction about language that is not for a political purpose. The First Amendment protects communication and it is important Wisconsin law clearly protects free speech.

The bill does not make major changes to existing law or precedent. Updating and compiling the disparate sources of law into statute provides clear direction to individuals exercising First Amendment Rights of Free Speech.

SB 654 codifies a GAB rule and court decisions and I hope I have your support to approve this bill.

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**Testimony of Lisa Subeck
Executive Director, United Wisconsin
SB 654
Election and Urban Affairs Committee, 3/5/14**

Chair Lazich and Committee Members,

My name is Lisa Subeck, and I am the Executive Director of United Wisconsin, a grassroots organization of Wisconsin citizens committed to supporting Wisconsin's longstanding tradition of democracy in action. On behalf of our members, I am here today to urge you to oppose Senate Bill 654.

SB 654 loosens disclosure requirements regarding campaign spending by independent organizations – spending often referred to as “dark money.” This bill codifies into law enormous loopholes in campaign finance disclosure, further eroding the public's right to know who is spending money to influence their votes at election time.

What is clear from an extensive body of polling is that citizens, regardless of political party affiliation, support more disclosure of campaign spending. This bill takes Wisconsin in the opposite direction, leaving the public in the dark when it comes to knowing who is trying to influence their votes and who has influence over their elected officials.

Through its ruling on *Citizens United*, the Supreme Court opened the floodgates to unlimited political spending, and we have seen its impact during our last few election cycles. At very least, citizens should have the right to know who is spending money to affect our elections – and drown out the voices of ordinary citizens who cannot compete with hundreds of thousands or even millions of dollars in spending – and how much they are spending.

“Dark money” drowning out the voices of ordinary citizens is already a threat to the integrity of our elections and to the basic freedom of individuals who may still have the right to free speech but certainly do not have the ability to be heard. SB 654 will shield special interest groups from disclosing the identity of their donors to the public, making it nearly impossible for Wisconsin citizens to know who is behind campaign advertisements masquerading as so-called “issue ads.” Instead, we should be working to elevate the voices of our citizens, not the voices of big money special interests and corporations.

Most importantly, at a time when distrust of government is at an all-time high, this measure further erodes any shred of confidence we have left that our elected officials are representing us – not big money special interests – when making important decisions that affect our lives. At very least, we should strive for increased disclosure of campaign spending, not more opportunities for secret spending of large sums of money to influence our elections and our elected officials.

Thank you for your consideration of our position, and I urge you to reject Senate Bill 654 to preserve our democracy and the integrity of our political process.



TO: Members of the Senate Elections & Urban Affairs Committee

FROM: Scott Manley
Vice President of Government Relations
Wisconsin Manufacturers & Commerce

DATE: March 5, 2014

RE: Support for Senate Bill 654

Wisconsin Manufacturers & Commerce (WMC), the state's chamber of commerce, supports passage of Senate Bill 654, and its effort to statutorily codify the right to corporate free speech as affirmed by the state and federal Supreme Court. In particular, we urge you to support the bill's provisions that update the definition of "political purpose" for issue advocacy.

At the heart of Chapter 11 of state statutes is its definition of "political purpose" in Wis. Stat. § 11.01(16).

Activities that are for a political purpose are subject to campaign finance regulation. When an act is *not* for a political purpose, the act is *not* subject to state campaign finance laws.

To provide full protection for political speech and a speaker's First Amendment rights, it is very important for political purpose to be drafted and interpreted narrowly. Updating the statutory definition of political purpose will make it clear that only communications that are express advocacy are regulated under state campaign finance laws.

BACKGROUND

Express advocacy is a communication that expressly advocates the election or defeat of a clearly identified candidate. Support for or opposition to a specifically identified candidate often involves words such as "elect," "defeat," "vote for," "vote against."¹ Express advocacy is not literally limited to these "magic words" and includes the functional equivalent of express advocacy when a communication is susceptible of "no reasonable interpretation other than as an appeal to vote for or against a specific candidate."²

A communication that does *not* expressly advocate the election or defeat of a clearly identified candidate is "issue advocacy." By definition, issue advocacy communications avoid any explicit discussion of an identified candidate's election or defeat and, instead, provide information on an issue or policy question associated with a public official or candidate often, though not always, as part of a grassroots lobbying effort.

¹See *Buckley v. Valeo*, 424 U.S. 1, 44 n. 52 (1976); *Elections Board v. Wisconsin Manufacturers & Commerce*, 227 Wis. 2d 650, 669-71 (1999).

² See *Federal Election Commission v. Wisconsin Right to Life*, 551 U.S. 449, 469-70 (2007).

The express advocacy standard articulated in *Buckley*, has been adopted by the Wisconsin Legislature in the statutory definition of political purpose:

[a]cts which are for political purposes include . . . [t]he making of a communication which expressly advocates the election, defeat, recall or retention of a clearly identified candidate.

Wis. Stat. § 11.01(16)(a)1.

Absent from state campaign finance law is any regulation of issue advocacy – communications that do *not* expressly advocate the election or defeat of a clearly-identified candidate. Instead, Wisconsin only regulates the statutorily-defined category of political speech that is express advocacy. Unlike Congress, the Wisconsin Legislature has not adopted any limitation on, or registration or reporting obligation for, issue advocacy. While proposals have been introduced by state legislators to revise the definition of political purpose, expanding the scope of state campaign finance law to try to regulate issue advocacy, none of these legislative proposals has ever been adopted.

Notwithstanding the current political purpose statutory language and the Legislature's refusal to act on any proposed amendments, the Elections Board and now the G.A.B. have attempted during the last 17 years to regulate issue advocacy through enforcement actions and proposed administrative rules.

Most recently, with the language in Wis. Admin. Code § GAB 1.28(3)(b), the G.A.B. expanded the scope of communications considered to be for a political purpose and attempted to regulate individuals other than candidates and organizations other than political committees when they are *not* engaged in express advocacy. In promulgating the revised GAB 1.28, the G.A.B. exceeded its statutory authority by broadening the definition of political purpose beyond that mandated by the State Legislature.

While the organizations who support limited regulation have consistently prevailed in these matters, it is time consuming and expensive to defend against the G.A.B.'s efforts to broadly interpret political purpose and expand the scope of regulation. Accordingly, to prevent any further efforts by the G.A.B. to regulate activities under Chapter 11 that are not express advocacy, the statutory definition of political purpose should be modified so that it is even more clear in its narrow scope.

CURRENT LAW

As described above, current Wis. Stat. § 11.01(16)(a)1. introduces the express advocacy *Buckley* standard into state law but does not provide any additional detail or description of the standard. Instead, that detail is currently set forth in administrative rule rather than state statute.

On paper, Wis. Admin. Code § GAB 1.28 greatly expands the scope of political purpose beyond express advocacy and would also include certain issue advocacy communications. However, in response to several lawsuits, the G.A.B. has stipulated not to enforce subpart (3)(b) of the current rule. Therefore, under current law, the scope of regulated communication is limited to subpart (3)(a):

The communication contains terms such as the following or their functional equivalents with reference to a clearly identified candidate and unambiguously relates to the campaign of that candidate:

1. "Vote for;"
2. "Elect;"
3. "Support;"
4. "Cast your ballot for;"
5. "Smith for Assembly;"
6. "Vote against;"
7. "Defeat;" or
8. "Reject."

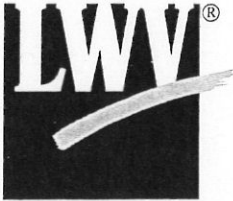
Wis. Admin. Code § GAB 1.28(3)(a).

Senate Bill 654

The definition of political purpose is updated by adopting into statute the language from GAB 1.28(3)(a). This language is consistent with the U.S. Supreme Court's holding in *Buckley v. Valeo* and the Wisconsin Supreme Court's decision in *Elections Board v. Wisconsin Manufacturers & Commerce*. See Section 3.

State law is also modified to make clear that only express advocacy – not issue advocacy – is subject to campaign finance regulation. See Section 5. This is necessary to prevent the G.A.B. from attempting to adopt regulations that expand the scope of communications subject to regulation beyond those containing express advocacy.

We urge your support for these important reforms that codify constitutionally-protected speech for the business community.



LEAGUE OF WOMEN VOTERS® OF WISCONSIN

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March 5, 2014

To: Senate Committee on Elections and Urban Affairs

Re: Opposition to Senate Bill 654 and Senate Bill 655 – content and process

The League of Women Voters of Wisconsin strongly opposes SB 654 and SB 655, based on our core belief that our state and nation thrive when citizens are well informed and actively engaged as participants in their government. The responsibility of good government rests on the shoulders of its citizens, who must be well informed. Indeed, eight of nine U.S. Supreme Court Justices in the *Citizens United* decision wrote of the need for stronger disclosure laws. SB 654 would take us in the opposite direction, making it more difficult, in fact virtually impossible, for citizens to know who is funding the so-called “issue ads” designed to influence our elections.

SB 655 increases from \$25 to \$500 the spending limit that determines when a group has to register as a campaign committee. This would result in fewer groups required to report their expenditures and less information available to citizens. The bill also extends the time during which lobbyists may make campaign contributions, increasing the potential and likelihood that such contributions will be used to influence legislation.

The legislation you are considering today has many other provisions, but there was very little time between when it was introduced and today’s public hearing, making it impossible for many concerned groups and citizens to provide input. These bills would have serious effects on voters’ ability to be active and informed participants in government, and to rush such legislation through the process is inexcusable.

The League of Women Voters opposes SB 654 and SB 655, and we urge you to do the same.



WISCONSIN REALTORS® ASSOCIATION

March 5, 2014

TO: Committee on Elections and Urban Affairs
FROM: Joe Murray, Wisconsin REALTORS Association
RE: SB 654

Background

Express advocacy is a communication that expressly advocates the election or defeat of a clearly identified candidate. Support for or opposition to a specifically identified candidate often involves words such as “elect,” “defeat,” “vote for,” “vote against.” Express advocacy is not literally limited to these “magic words” and includes the functional equivalent of express advocacy when a communication is susceptible of “no reasonable interpretation other than as an appeal to vote for or against a specific candidate.”

A communication that does not expressly advocate the election or defeat of a clearly identified candidate is “issue advocacy.” By definition, issue advocacy communications avoid any explicit discussion of an identified candidate’s election or defeat and, instead, provide information on an issue or policy question associated with a public official or candidate often, though not always, as part of a grassroots lobbying effort.

To provide full protection for political speech and a speaker’s First Amendment rights, it is very important for “political purpose” to be drafted and interpreted narrowly. Updating the statutory definition of political purpose will make it clear that only communications that are express advocacy are regulated under state campaign finance laws.

The Problem

The former Elections Board and now the Government Accountability Board (GAB) have attempted to regulate issue advocacy through proposed administrative rules.

In March 2010, the GAB approved an amendment to the state’s disclosure rules to broadly interpret “political purpose” and expand the scope of regulation. The new rule went into effect on August 1, 2010. Two weeks later, facing a lawsuit filed by conservative and liberal groups, the GAB reached a settlement with the plaintiffs. The GAB agreed to settle the lawsuit by agreeing to not enforce the new rules.

The WRA and other organizations that support limited regulation have prevailed in these matters, however, it’s time consuming and expensive to defend against the GABs efforts to broadly interpret political purpose and expand the scope of regulations.

SB 654 codifies current law handed down from the US Supreme Court based on the First Amendment to the United States Constitution. Updating the statutory definition of “political purpose” will make it clear that only communications that are express advocacy are regulated under state campaign finance laws.

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Testimony of

**Barbara Lyons, Executive Director
Heather Weininger, Legislative Director
Wisconsin Right to Life**

**Opposed to
SB 654**

**Before the Senate Committee on
Elections and Urban Affairs**

March 5, 2014

I am Heather Weininger, Legislative Director for Wisconsin Right to Life, and Barbara Lyons, Executive Director of Wisconsin Right to Life is also joining me. We are testifying in opposition to SB 654. Thank you Mrs. Chairwoman for the opportunity to voice Wisconsin Right to Life's strong opposition to this legislation.

SB 654

In 2010 Wisconsin Right to Life, Inc. filed a challenge to Wisconsin law, including the law that the legislation would amend. A ruling on our preliminary-injunction motion is pending in the United States Court of Appeals for the Seventh Circuit, following a January 18, 2013, oral argument. Any changes to Wisconsin law at this time will at best disrupt our challenge, and may well render it moot, so please know that until the Seventh Circuit rules, we cannot even consider supporting any changes to any Wisconsin law we challenge.

Wisconsin Right to Life has adamantly conveyed this position to state legislators and other organizations in Wisconsin. While we understand that some state legislators have been urging organizations to "compromise," and while we're all in favor of compromise when it is appropriate, any compromise at this time may render moot three and a half years of work. We will be able to revisit this issue at some time after the Seventh Circuit ruling; when that will be may depend on the ruling.

The fundamental problems with Wisconsin law are that it is **vague** and **overbroad**. This legislation does not solve the problems with Wisconsin law.

Our attorneys have explained to the Seventh Circuit why Wisconsin law is **vague**. We submit that both Wisconsin law and the proposed legislation are vague under *Buckley v. Valeo*, 424 U.S. 1, 77 (1976), because they refer to what is for the "purpose of influencing" elections. In addition, Wisconsin law and SB 654 are vague under *FEC v. Wisconsin Right to Life, Inc. v. FEC*, 551 U.S. 449, 474 n.7 (2007), because they apply what *Citizens United v. FEC*, 130 S.Ct. 876, 895 (2010), calls the appeal-to-vote test – formerly known as the functional equivalent of express advocacy – to speech other than Federal Election Campaign Act electioneering communications. After *Citizens United*, 130 S.Ct. at 889, 915, removed the appeal-to-vote test as a constitutional limit on government power, all that remains of the appeal-to-vote test is the conclusion in *Wisconsin Right to Life*, 551 U.S. at 492-94 (Scalia, J., concurring), that the test is vague as to any speech, including FECA electioneering communications.

Also, our attorneys have given the Seventh Circuit information that Wisconsin law is **overbroad**, because it triggers registration, recordkeeping, and ongoing reporting requirements – the very burdens that *Citizens United*, 130 S.Ct. at 897-98, recognizes are "onerous" political-committee burdens – for organizations that are neither "under the control of a candidate" nor have "the major purpose" of nominating or electing candidates. This is unconstitutional under *Buckley*, 424 U.S. at 79. The proposed legislation does not fix that problem.

While SB 654 attempts to limit regulation of speech to *Buckley* express advocacy, phrases such as “purpose of influencing” and “functional equivalents” mean the proposal reaches beyond *Buckley* express advocacy. Even if one fixed these and other vagueness problems with Wisconsin law, the law would still trigger political-committee burdens for organizations that are neither “under the control” of, nor have “the major purpose” of nominating or electing, candidates under *Buckley*, 424 U.S. at 79, so Wisconsin law would still be unconstitutional.

We submit that a favorable ruling in the current *Wisconsin Right to Life* challenge to Wisconsin law will solve the problems with Wisconsin law. An injunction will prevent Wisconsin from enacting such unconstitutional law again. For example, a holding that Wisconsin may trigger political committee burdens only when *Buckley* allows them would benefit not only Wisconsin Right to Life, but also organizations such as Wisconsin Manufacturers and Commerce, which also does not have “the major purpose” under *Buckley*. By contrast, if Wisconsin amends its law and renders the *Wisconsin Right to Life* challenge moot, there will be no injunction, and some future legislature or some future GAB will be able to enact law with all of the constitutional problems of current law.

Thank you for your time. Wisconsin Right to Life strongly urges you to not support this legislation.