

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

HOUSE BILL 921
RATIFIED BILL

AN ACT TO REWRITE THE DEFINITIONS OF "POLITICAL COMMITTEE," "CONTRIBUTION," "EXPENDITURE," AND "CANDIDATE"; TO ADD A DEFINITION OF "INDEPENDENT EXPENDITURE"; TO REMOVE THE TERM "POLITICAL PURPOSE"; TO NARROW THE PROHIBITION ON CORPORATE AND OTHER POLITICAL EXPENDITURES TO CONSTITUTIONAL BOUNDS; TO MERGE THE FIRST QUARTERLY REPORT WITH THE PRE-PRIMARY REPORT; TO AMEND THE STATUTES WITH REGARD TO REPORTING CONTRIBUTIONS AND EXPENDITURES; AND TO MAKE OTHER CHANGES RELATED TO REPAIRING THE CAMPAIGN STATUTES AFTER THE DECISION OF THE FOURTH U.S. CIRCUIT COURT OF APPEALS IN NORTH CAROLINA RIGHT TO LIFE, INC., V. BARTLETT.

The General Assembly of North Carolina enacts:

– REDEFINING "POLITICAL COMMITTEE" AND RELATED CHANGES.

Section 1.(a) G.S. 163-278.6(14) reads as rewritten:

"(14) The term 'political committee' means a combination of two or more individuals, or any person, committee, association, ~~or~~ organization, ~~the primary or incidental purpose of which is to support or oppose any candidate or political party or to influence or attempt to influence the result of an election or which accepts contributions or makes or other~~ entity that makes, or accepts anything of value to make, contributions or expenditures and has one or more of the following characteristics:

- a. Is controlled by a candidate;
- b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;
- c. Is created by a corporation, business entity, insurance company, labor union, or professional association pursuant to G.S. 163-278.19(b); or
- d. Has as a major purpose expenditures for the purpose of influencing or attempting to influence to support or oppose the nomination or election of any candidate at any election, or which one or more clearly identified candidates.

Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party.

An entity is rebuttably presumed to have as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates if it contributes or expends or both contributes and expends during an election cycle more than three thousand dollars (\$3,000). Contributions to referendum committees and expenditures to support or oppose ballot issues shall not be facts considered to give rise to the presumption or otherwise be used in determining whether an entity is a political committee.

If the entity qualifies as a 'political committee' under sub-subdivision a., b., c., or d. of this subdivision, it continues to be a

~~political committee if it receives contributions to repay loans or cover a deficit, or which makes expenditures to satisfy obligations of an election already held. The term includes, without limitation, any political party's State, county or district executive committee, or maintains assets or liabilities. A political committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report."~~

Section 1.(b) G.S. 163-278.6 is amended by adding a new subdivision to read:

"(7c) The term 'election cycle' means the period of time from January 1 after an election for an office through December 31 after the election for the next term of the same office. Where the term is applied in the context of several offices with different terms, 'election cycle' means the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year."

Section 1.(c) Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-278.34A. Presumptions.

In any proceeding brought pursuant to this Article in which a presumption arises from the proof of certain facts, the defendant has the burden of offering some evidence to rebut the presumption. The State bears the ultimate burden of proving the essential elements of its case."

Section 1.(d) G.S. 163-278.16(a) reads as rewritten:

"(a) Except as provided in G.S. 163-278.6(14) and G.S. 163-278.12, no contribution may be received or expenditure made by or on behalf of a candidate, political committee, or referendum committee:

- (1) Until the candidate, political committee, or referendum committee appoints a treasurer and certifies the name and address of the treasurer to the Board; and
- (2) Unless the contribution is received or the expenditure made by or through the treasurer of the candidate, political committee, or referendum committee."

– REDEFINING "CONTRIBUTION" AND "EXPENDITURE"; DEFINING "INDEPENDENT EXPENDITURE"; AND CHANGING THE SPECIAL REPORTING REQUIREMENT FOR CONTRIBUTIONS AND INDEPENDENT EXPENDITURES.

Section 2.(a) G.S. 163-278.6(6) reads as rewritten:

"(6) The terms 'contribute' or 'contribution' mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, from any person or individual, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution, in support of or in opposition to any candidate, political committee, referendum committee, or political party. ~~contribution.~~ These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or ~~goods notwithstanding goods.~~

Notwithstanding the foregoing meanings of 'contribution,' the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term 'contribution' does not include an 'independent expenditure.'"

Section 2.(b) G.S. 163-278.6(9) reads as rewritten:

"(9) The terms 'expend' or 'expenditure' mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, ~~from any person or individual,~~ whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make an expenditure, ~~in support of or in opposition to to support or oppose the nomination, election, or passage of any candidate, political committee, referendum committee, or political party.~~ one or more clearly identified candidates, or ballot measure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term 'expenditure' also includes any payment or other transfer made by a candidate, political committee, or referendum committee. The special definition of 'expenditure' in G.S. 163-278.12A applies only in that section."

Section 2.(c) G.S. 163-278.6 is amended by adding a new subdivision to

read:

"(9a) The term 'independently expend' or 'independent expenditure' means an expenditure to support or oppose the nomination or election of one or more clearly identified candidates that is made without consultation or coordination with a candidate or agent of a candidate whose nomination or election the expenditure supports or whose opponent's nomination or election the expenditure opposes. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. A contribution is not an independent expenditure. As applied to referenda, the term 'independent expenditure' applies if consultation or coordination does not take place with a referendum committee that supports a ballot measure the expenditure supports, or a referendum committee that opposes the ballot measure the expenditure opposes."

Section 2.(d) G.S. 163-278.12 reads as rewritten:

"§ 163-278.12. ~~Contributions and expenditures by an individual other than a candidate. Special reporting of contributions and independent expenditures.~~

(a) Subject to G.S. 163-278.16(f) and 163-278.14, it shall be permissible for an individual other than a candidate to individuals and other entities not otherwise prohibited from doing so may make contributions or expenditures in support of, or in opposition to, any candidate, political committee, or referendum committee other than by contribution to a candidate, political committee, or referendum committee. independent expenditures. In the event an individual or other entity making independent expenditures but not otherwise required to report them makes contributions or expenditures, other than by contribution to a candidate, political committee, or referendum committee, independent expenditures in excess of one hundred dollars (\$100.00), then, within 10 days after making such a contribution or expenditure, he that individual or entity shall file a statement of such contribution or independent expenditure with the Board in accordance with the terms and conditions of G.S. 163-278.11. appropriate board of elections in the manner prescribed by the State Board of Elections.

(b) Any entity other than an individual that is permitted to make contributions but is not otherwise required to report them shall report each contribution in excess of one hundred dollars (\$100.00) with the appropriate board of elections in the manner prescribed by the State Board of Elections.

(c) In assuring compliance with subsections (a) and (b) of this section, the State Board of Elections shall require the identification of each entity making a donation of more than one hundred dollars (\$100.00) to the entity filing the report if the donation was made for the purpose of furthering the reported independent expenditure or contribution.

(d) Contributions or expenditures required to be reported under this section shall be reported within 30 days after they exceed one hundred dollars (\$100.00) or 10 days before an election the contributions or expenditures affect, whichever occurs earlier."

- REDEFINING THE TERM "CANDIDATE".

Section 3. G.S. 163-278.6(4) reads as rewritten:

"(4) The term 'candidate' means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, ~~or~~ has otherwise qualified as a candidate in a manner authorized by ~~law~~, law, or has received funds or made payments or has given the consent for anyone else to receive funds or transfer anything of value for the purpose of exploring or bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value. Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held."

- REMOVING THE TERM "POLITICAL PURPOSE".

Section 4.(a) G.S. 163-278.6(16) is repealed.

Section 4.(b) G.S. 163-278.16(g) reads as rewritten:

"(g) ~~All printed matter for a political purpose~~ from a political party or political committee which ~~identifies a candidate that party or committee is opposing~~ opposes the nomination or election of a clearly identified candidate shall indicate in type no smaller than 12 point the name of the political party or political committee and the name of the candidate that is intended to benefit from the printed matter."

Section 4.(c) G.S. 163-278.36 reads as rewritten:

"§ 163-278.36. Elected officials to report funds.

~~All contributions—donations to, and all expenditures—payments from any 'booster fund,' 'support fund,' 'unofficial office account' or any other similar source which are made to, in behalf of, or used in support of any person holding an individual's candidacy for elective office, or in support of an individual's duties and activities while in an elective office for any political purpose whatsoever during his term of office shall be deemed contributions and expenditures as defined in this Article and shall be reported as contributions and expenditures as required by this Article. The annual report reports due in January and July of each year shall show the balance of each separate fund or account maintained on behalf of the elected office holder."~~

Section 4.(d) G.S. 163-278.19(a) reads as rewritten:

"(a) ~~Except as provided in G.S. 163-278.19(b), subsections (b), (d), (e), and (f) of this section~~ it shall be unlawful for any corporation, business entity, labor union, professional association or insurance company directly or indirectly:

(1) ~~To make any contribution to a candidate or political committee or expenditure~~ (except a loan of money by a national or State bank or federal or State savings and loan association made in accordance with the applicable banking or savings and loan association laws and regulations and in the ordinary course of business) ~~in aid or in behalf~~

~~of or in opposition to any candidate or political committee in any election or for any political purpose whatsoever; or to make any expenditure to support or oppose the nomination or election of a clearly identified candidate;~~

- (2) ~~To pay or use or offer, consent or agree to pay or use any of its money or property for or in aid of or in opposition to any candidate or political committee or for or in aid of any person, organization or association organized or maintained for political purposes, or for or in aid of or in opposition to any candidate or political committee or for any political purpose whatsoever; and for any contribution to a candidate or political committee or for any expenditure to support or oppose the nomination or election of a clearly identified candidate; or~~
- (3) ~~To reimburse, compensate, reimburse, or indemnify any person or individual for money or property so used or for any contribution or expenditure so made;~~

and it shall be unlawful for any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company to aid, abet, advise or consent to any such contribution or expenditure, or for any person or individual to solicit or knowingly receive any such contribution or expenditure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. Any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company aiding or abetting in any contribution or expenditure made in violation of this section shall be guilty of a Class 2 misdemeanor, and shall in addition be liable to such corporation, business entity, labor union, professional association or insurance company for the amount of such contribution or expenditure, and the same may be recovered of him upon suit by any stockholder or member thereof."

– PERMITTING CONTRIBUTIONS AND INDEPENDENT EXPENDITURES BY NONBUSINESS CORPORATIONS; REMOVING REDUNDANT STATUTES CONCERNING CORPORATE AND INSURANCE COMPANY CONTRIBUTIONS; AND MAKING CONFORMING CHANGES.

Section 5.(a) G.S. 163-278.19 is amended by adding a new subsection to read:

"(f) This section does not prohibit a contribution or independent expenditure by an entity that:

- (1) Has as an express purpose promoting social, educational, or political ideas and not to generate business income;
- (2) Does not have shareholders or other persons which have an economic interest in its assets and earnings; and
- (3) Was not established by a business corporation, by an insurance company, by a business entity, including, but not limited to, those chartered under Chapter 55, Chapter 55A, Chapter 55B, or Chapter 58 of the General Statutes, by a professional association, or by a labor union and does not receive substantial revenue from such entities. Substantial revenue is rebuttably presumed to be more than ten percent (10%) of total revenues in a calendar year."

Section 5.(b) G.S. 163-269 and G.S. 163-270 are repealed.

Section 5.(c) G.S. 163-278.13 reads as rewritten:

"§ 163-278.13. Limitation on contributions.

(a) ~~No individual or political committee~~ individual, political committee, or other entity shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of four thousand dollars (\$4,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any ~~individual or other political committee~~ individual, other political committee, or other entity of any money or any other contribution in any election in excess of four thousand dollars (\$4,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of four thousand dollars (\$4,000) for that election.

(d) For the purposes of this section, the term 'an election' means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not on the ballot in a second primary, that second primary is not 'an election' with respect to that candidate.

(e) This section shall not apply to any national, State, district or county executive committee of any political party. For the purposes of this section only, the term 'political party' means only those political parties officially recognized under G.S. 163-96.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(f) Any individual, candidate, political committee, or referendum committee who committee, or other entity that violates the provisions of this section is guilty of a Class 2 misdemeanor."

Section 5.(d) G.S. 163-278.13B(a)(1) reads as rewritten:

"(1) 'Limited contributor' means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, that lobbyist's principal as defined in G.S. 120-47.1(7), or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes."

Section 5.(e) G.S. 163-278.15 reads as rewritten:

"§ 163-278.15. No acceptance of contributions made by corporations, foreign and domestic.

No candidate, political committee, political party, or treasurer shall accept any contribution made by any corporation, foreign or domestic, regardless of whether such corporation does business in the State of North Carolina. This section does not apply with regard to entities permitted to make contributions by G.S. 163-278.19(f)."

– CLARIFYING WHAT IS COVERED BY ARTICLE 22A AND WHAT IS ACTIVITY THAT CONSTITUTES INDIRECT CONTRIBUTIONS BY CORPORATIONS, ETC.

Section 6.(a) Part 1 of Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-278.5. Scope of Article; severability.

The provisions of this Article apply to primaries and elections for North Carolina offices and do not apply to primaries and elections for federal offices or offices in other States. Any provision in this Article that regulates a non-North Carolina entity does so only to the extent that the entity's actions affect elections for North Carolina offices.

The provisions of this Article are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the Article that can be given effect without the invalid provision."

Section 6.(b) G.S. 163-278.19 is amended by adding a new subsection to read:

"(a1) A transfer of funds shall be deemed to have been a contribution or expenditure made indirectly if it is made to any committee or political party account,

whether inside or outside this State, with the intent or purpose of being exchanged in whole or in part for any other funds to be contributed or expended in an election for North Carolina office or to offset any other funds contributed or expended in an election for North Carolina office."

– MERGING THE FIRST QUARTER REPORT AND THE PRE-PRIMARY REPORT.

Section 7.(a) G.S. 163-278.9(a)(2) is repealed.

Section 7.(b) G.S. 163-278.9(a)(5a) reads as rewritten:

"(5a) Quarterly Reports. – During even-numbered years during which there is an election for that candidate or in which the campaign committee is supporting a candidate, the treasurer shall file a report by mailing or otherwise delivering it to the Board no later than seven working days after the end of each calendar quarter covering the prior calendar quarter, except ~~that the that~~:

a. The report for the first quarter shall also cover the period in April through the seventeenth day before the primary, the first quarter report shall be due seven days after that date, and the second quarter report shall not include that period if a first quarter report was required to be filed; and

b. The report for the third quarter shall also cover the period in October through the seventeenth day before the election, the third quarter report shall be due seven days after that date, and the fourth quarter report shall not include that period if a third quarter report was required to be filed."

Section 7.(c) This section becomes effective January 1, 2000, and applies to all reports due on or after that date.

Section 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of April, 1999.

Dennis A. Wicker
President of the Senate

James B. Black
Speaker of the House of Representatives

James B. Hunt, Jr.
Governor

Approved _____ .m. this _____ day of _____ , 19