

January 16, 2018

Re: HB 1667

Before: NH House Election Law Committee

Chairperson Griffin and Members of the Committee,

I wish to speak to the first section (p. 1, lines 1-21) of HB 1667.

First, some historical perspective. I'll begin with a quote:

"All contributions by corporations to any political committee or for any political purpose should be forbidden by law; directors should not be permitted to use stockholders' money for such purposes; and, moreover, a prohibition of this kind would be, as far as it went, an effective method of stopping the evils aimed at in corrupt practices acts."

Teddy Roosevelt, Address to Congress, 1905

In 1907 President Roosevelt signed into law the Tillman Act, which prohibits contributions from corporate treasuries to political campaigns, and that has been federal law ever since.

It was the law in New Hampshire as well—until 1999. In that year, the section of RSA 664 describing prohibited political contributions from business organizations was struck down in the U.S. District Court's decision in *Kennedy v. Gardner*. The court found the prohibition to be overly broad.

I have included a descriptive section of the Court's ruling in the appendix to this testimony. In brief, the Court cited two sources of corporate political contributions: (1) "treasury funds," from the business's operating accounts and (2) "segregated funds," from individual donations solicited from corporate officers, directors, employees, and shareholders, i.e., corporate PACs. The court found that treasury funds, having derived from business activities, did not reflect popular support for the business's political views, and could be prohibited. Segregated funds, however, since they do to some extent reflect popular support, could not be.

It was the statute's overly broad language, language that did not distinguish between the two types of funds, that the Court objected to. The Court went on to suggest a fix. In its response to the State's reargument of the case, the Court stated: "There is, of course, a simple solution to this simple problem... ..the General Court can easily and effectively amend the statute to reflect its actual (constitutional) intent." The Court made it clear that the law was easily fixable if it banned donations from business's treasury funds only.

So what did the Legislature do? It simply struck completely the section of RSA 664 referring to business organizations and, in effect, made legal (or, at least, not illegal) direct contributions from businesses to New Hampshire political campaigns. And that has been the state of affairs for the past 17 years.

The intent of the first part (first 21 lines) of HB 1667 is to provide the fix called for by the Court that many years ago, barring once again direct contributions from businesses to political campaigns.

I strongly encourage the Committee to vote *Ought to Pass* on HB 1667.

Final note: I would also suggest that the Committee consider amending HB 1667 by striking the exemption for "sole proprietorships" (p. 1, line 9). Perhaps the drafters considered a sole proprietorship's funds to be the equivalent of corporate PAC money contributed by just one person. Because an individual can maintain any number of sole proprietorships, however, it seems this particular exemption is ripe for abuse. If Committee members are concerned about the constitutionality of such an amendment, or indeed of any part of HB 1667, I recommend they consult with the Attorney General's Office.

Thank you for considering my testimony,

Rick Bourdon, Open Democracy Action co-chair

Appendix

Source: Kennedy v. Gardner, 1999

A. Types and Sources of Political Contributions.

Generally, corporate political contributions come from two different sources. One is the corporation's operating or treasury accounts. Money in that type of account is derived from corporate business activities, such as the sale of goods and services or the sale of corporate stock. It is generally accepted that a corporation's ability to amass such funds reflects its business acumen, but not popular support (or even the support of its shareholders) for its political views. See, e.g., *Federal Election Commission v. Mass. Citizens For Life, Inc.*, 479 U.S. 238, 258 (1986) ("The resources in the treasury of a business corporation, however, are not an indication of popular support for the corporation's political ideas. They reflect instead the economically motivated decisions of investors and customers. The availability of these resources may make a corporation a formidable political presence, even though

the power of the corporation may be no reflection of the power of its ideas.").

The other potential source of corporate political contributions is a "segregated account." Typically, segregated accounts are funded by contributions solicited from corporate officers, directors, employees, and shareholders. These accounts also represent corporate money, but money that does reflect some degree of popular support for the corporation's political goals and ideas."