Don't Let Eldridge Bill Rig Political Game More

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The Massachusetts Disclosure Act filed by Sen. Jamie Eldridge (D-Acton) constitutes another misguided attack on our fundamental freedom of speech, and it also may represent yet another attempt to rig the political game in favor of unions in Massachusetts.

Senator Eldridge should be focusing his efforts to close the enormous loophole that favors only unions for political campaign donations. Under Massachusetts law, each union is permitted to donate $15,000 per year to any candidate running for office in Massachusetts. In contrast, individuals can only donate $500 per year, and corporations are forbidden from donating any money at all.

In the recent election for mayor of Boston, Mayor Marty Walsh's campaign benefited tremendously due to this loophole and collected over $500,000 in union donations over the personal individual limit of $500. This is where Senator Eldridge's focus should remain, but unfortunately there is little to no effort in the legislature to cross the unions, even if it's the right thing to do.

In many respects, Senator Eldridge's bill is a solution in search of a problem. Massachusetts campaign finance law already requires the disclosure of independent expenditures or election communications and donors must be made public if they give for those purpose. Further, if organizations are soliciting funds for the purpose of making independent expenditures that organization must register as a PAC in which all of its expenses and contributions are disclosed and 100 percent of its activity can be dedicated toward the election or defeat of candidates.

Forcing donors of organizations that engage in policy battles to disclose their identities, which is distinct and separate from what PACs do, is a road down which we should be very cautious to travel. The Supreme Court rightly ruled in an unanimous decision to protect the identities of those members when our country was in a tug of war for furthering civil rights.

In NAACP v. Alabama in 1958, the court barred Alabama from forcing the NAACP to disclose its members and for good reason. The justices, one would assume, would have struck down a similar effort to force the release of the NAACP's financial supporters, since members are typically donors. The justices would have rightly viewed it as an infringement of the constitutional right to free association and free speech.

Then, and it can be applied to now, the court said that the privacy of group membership and political activity were critical to the "effective advocacy of both public and private points of view, particularly controversial ones." It's important to understand that privacy can be critical for free speech. "Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs," Justice John Marshall Harlan wrote for a unanimous court.

The court went on to recite a number of potential retaliation and they can still be applied today — "economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility" — that could have seriously deterred people from supporting the NAACP during the civil rights struggles that shaped our country today.

In today's heated policy debate, it's not hard to imagine that union members who donated to organizations that advocate for right-to-work laws or the expansion of charter schools could find their careers in limbo if their identities were made public. The potential current-day examples are numerous.

Furthermore, there is a key point in Eldridge's bill that ultimately gives unions another unfair advantage; for this reason and many more, the bill should not be advanced. Eldridge's bill would amend the statute to prohibit many entities who make independent expenditures or electioneering communications from hiring — for six months — advertising firms, campaign staff, or consultants who worked for campaigns that benefited from those expenditures or communications. The bill would apply that prohibition, to "[a]n individual, corporation, group, association or other entity . . . ." However, the rest of the bill takes great pains to replace exactly that kind of language elsewhere in the campaign finance law with a phrase like "individual, group, association, corporation, labor union or other entity." It seems somewhat unusual that in a bill that is attempting to expand the scope of organizations to which campaign finance applies, that "labor unions" would be missing from a key component when they have been added in almost everywhere else.

When the Legislature expressly uses a phrase in one part of a statute but not in another, that difference is presumed to be an intentional decision. As such, the exclusion of labor unions from the six-month prohibition, when unions are mentioned with the rest of these groups everywhere else in Eldridge's bill, could easily be presumed by a court to have been intentional, thus giving unions yet an advantage not afforded to other groups.

The Legislature should reject Eldridge's proposal, which gives unions another unfair advantage, and instead work to close the loophole that allows unions to give up to $15,000 while individuals can only contribute $500 to candidates in Massachusetts.

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