

TEXAS LEGISLATURE

Judge lifts ban on outside money in House speaker's race

Court order will be in effect until a trial later this year.

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Texans, from individuals to corporations to political committees, can spend money to weigh in on the election of the next Texas House speaker under a temporary court order issued Tuesday.

U.S. District Judge Lee Yeakel barred the state from enforcing portions of the so-called speaker's statute, which restricts people outside the Texas House of Representatives from spending money to influence the election of the House leader. The court order will be in effect until a trial later this year can determine whether the law is an unconstitutional restriction on free speech, as opponents contend, or until the state gets the order overturned on appeal.

Only the 150 House members vote in the speaker election, but whom the House candidates will support has become an issue in many of their election campaigns.

Speaker Tom Craddick, R-Midland, who is seeking a fourth term as leader, hopes to change the makeup of the House, which twice last year rebelled against his top-down leadership style. He has several opponents, both Republican and Democrat, who want to replace him as speaker.

The court order opens up the possibility of organizations outside the candidates' campaigns advocating their position on the speaker election in fliers and commercials as well as through the lobbying of House candidates.

Lawyer Hiram S. Sasser III hailed the judge's preliminary order. He represents the American Civil Liberties Union and two conservative political groups that sued to have the law overturned.

"The most important legislative event that will occur is the speaker's election," he said. "If you don't get to weigh in on the speaker's race, you are cut out of the process."

Texas Assistant Attorney General James "Beau" Eccles declined to comment after the decision. During oral arguments, Eccles said the law does not prevent groups from exercising their free speech rights during the primary and general elections. He said the statute primarily governs "a tiny window" of critical time between the November general election and the beginning of the legislative session in January when the speaker is elected.

Eccles argued that a flier (Vote for X because he'll vote for Y for speaker, for example) would be legal during the primaries and general election. He added that the spending restrictions in the speaker's statute could be violated during the election season if, for example, a group flew lawmakers to Bermuda to lobby them on the race for speaker.

Eccles argued that the spending restrictions "may look unconstitutional" if not considered in the context of the whole Election Code.

Dallas lawyer James Ho, arguing for the plaintiffs, rejected the state's arguments.

"The state's position is both wrong and alarming," said Ho, noting that no other state has similar restrictions.

The ACLU, the Free Market Foundation and Texas Eagle Forum brought the suit, saying the law has a chilling effect on groups that want to spend money to influence who the next speaker will be.

The law was among changes made by the Legislature in the 1970s after the Sharpstown stock fraud scandal, in which former and sitting state officials were accused of making profitable bank-financed stock purchases in return for passing legislation favored by the financier, Houston businessman Frank Sharp. Even at the time, some lawmakers questioned whether the restrictions on what individuals and groups outside the House could spend were constitutional.

No one has ever been prosecuted for violating those sections of the law.

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