

Budget Deal Requires AG to Forward Complaints to Governor and Legislative Leaders

Throughout the 2019 Arizona legislative session, Representative Kelly Townsend (R-Mesa) has been attempting to pass a Red for Ed retaliation bill and to stifle nearly all political speech of school employees at school. AEA has opposed these efforts at every turn.

Her first two attempts came in the form of two pre-filed bills, HB2015 and HB2017. HB2015 would have prohibited school employees from using “school time to espouse a political ideology or religious belief, unless it is germane to the subject matter of the class or activity.” This prohibition would have expanded the range of restrictions already imposed on school employees in the existing version of A.R.S. § 15-511, which requires them to avoid using school resources “for the purpose of influencing the outcome of elections.” The consequences of a violation of this new prohibition would have been severe: a penalty of up to \$5,000 (along with having to reimburse any misused funds). AEA argued that this was an unconstitutional revenge bill and a solution in search of a problem. Townsend’s bill ultimately failed.

HB2017 would have subjected any school employee who coordinated the closure of a school, including a walkout for the purpose of calling for action to address the lack of school funding, to a potential penalty of \$5,000. This effort also failed.

The third attempt came in the form of a strike-everything amendment in the Senate to another one of Townsend’s bills, HB2032. This was an effort to essentially revive HB2015 by prohibiting school employee speech “during school time with the intent to influence or change a student’s political ideology or religious belief.” Again, school employees found to be in violation would have been subject to a penalty up to \$5,000. Townsend tried to get a further amendment to this bill to prohibit using “school contacts or privileges to promote partisan politics, sectarian religious views or propaganda of any kind and shall not use the person’s position for personal gain through political, social, religious, economic or other influence,” something that school district policies already uniformly prohibit. AEA opposed such amendments, and they, too, ultimately failed.

Finally, when legislative leaders were unable to get their budget deal through without the support of all Republican legislators, they agreed to add some language to the main budget bill (HB2747) in order to obtain Townsend’s support for the budget deal. The language requires the Attorney General to forward a “complaint” alleging a violation of A.R.S. § 15-511 to the Governor, the President of the Senate, and the Speaker of the House of Representatives within ten days after receipt of such a complaint. This language is odd because A.R.S. § 15-511 doesn’t set forth a process for making complaints to the Attorney General’s Office, and it doesn’t make clear what form or type of “complaint” (*e.g.*, a call or voicemail, an email, or a letter) would be required to trigger a report or what sorts of information such a “complaint” must contain before it is reportable (*e.g.*, the identity and contact information of the complaining party, the identity of the person alleged to have violated the statute, and how the person knows that a violation occurred). Because of the lack of clarity, the new reporting requirement is open to interpretation.

As a legal matter, the new language in the budget deal does little. It does not, for instance, add the new prohibitions on political speech that Townsend was looking for, and it does not change the process by which A.R.S. § 15-511 is enforced. The primary concern, which is more practical in nature, is that the Attorney General may come under more political and public pressure to file lawsuits in marginal or questionable cases. AEA will continue to monitor developments in this area as the new law becomes effective in the coming months. Please contact your AEA Organizational Consultant if you would like any information or guidance on election rules for school employees or if you have any advocacy needs.