THE IMPACT OF THE MICHIGAN GAMING ACT
ON POLITICAL CONTRIBUTIONS

Tauny L. Histed

INTRODUCTION................................................................. 1
I. BACKGROUND............................................................. 3
II. DISCUSSION.............................................................. 6
   A. Clear and Unambiguous Statutory Language............. 6
   B. Strict Interpretation of Criminal Statutes.............. 8
   C. Inclusion by Specific Mention.................................. 11
   D. Legislative History.................................................. 14
   E. Overbreadth........................................................... 14
      1. First Amendment Political Speech and Expression..... 14
III. OTHER STATES' STATUTES........................................... 22
CONCLUSION................................................................. 24

INTRODUCTION

The terms "political contributions" may cause thoughts of soft money, corruption, or campaign finance reform. In Michigan, if you are a casino licensee or spouse, parent, child, or spouse of a child of a licensee, you are prohibited from making political contributions as specified by statute. The scope of the prohibition is the focus of this paper. Suppose your father-in-law supplies casino chips to the Detroit casinos. As a result of that suppliers'

---

1 Tauny L. Histed is a King Scholar at Michigan State University-Detroit College of Law and joint J.D./MLRHR Candidate with Michigan State University's Labor and Industrial Relations program. Graduation expected May 2001 for Master's degree and June 2001 for J.D. Undergraduate work completed at Michigan State University. I would like to thank Richard D. McLellan from Dykema Gossett PLLC, Lansing, for his guidance in writing this paper.

2 See Mich. Comp. Laws § 432.207b(4) (2000). Section 7b(4) expressly states:
   A licensee or person who has an interest in a licensee or casino enterprise, or the spouse, parent, child, or spouse of a child of a licensee or person who has an interest in a licensee or casino enterprise, shall not make a contribution to a candidate or a committee during the following periods:
   (a) The time period during which a casino licensee or development agreement is being considered by a city or the board.
   (b) The term during which the licensee holds a license.
   (c) The 3 years following the final expiration or termination of the licensee's license.
   (d) During either of the following, whichever is shorter:
      (i) The period beginning on or after the effective date of this amendatory act.
license, you are prohibited from making political contributions to any candidate in any state, legislative, or local elective office. Additionally, if you are a managerial employee of the supply company, you are prohibited from making political contributions.

The specific issues this paper will explore is whether persons with an interest in a Michigan casino, or licensee, or the spouse, parent, child, or spouse of a child are prohibited from making contributions to types of committees not included in the language of the Michigan Gaming Control and Revenue Act. Specifically with respect to the spouses, parents, children, or children's spouses of those with a casino interest or licensee, the additional issue arises whether the statute is unconstitutionally overbroad.

This paper will evaluate the Michigan Gaming Control and Revenue Act’s provisions prohibiting persons with an interest in a Michigan casino or licensee or spouse, parent, child, or spouse of a child from contributing to committees for the influence of voters. It is my position that the prohibition of contributions from these specified persons to the four types of committees mentioned in the Gaming Act should not include contributions to committees not enumerated in the language of the Act. This position is supported by fundamental rules of statutory construction and interpretation, the principle of inclusion by specific mention, and a review of the legislative history of the Gaming Act. Further, the provisions regarding political contributions by a spouse, parent, child, or spouse of a child

(ii) The period beginning 1 year prior to applying for a license.

3 See MICH. COMP. LAWS § 432.207b(1)(a) (2000). "Candidate" means both of the following: (i) That term as defined in section 3 of the Michigan campaign finance act,... (ii) The holder of any state, legislative, or local elective office." Id.

4 See MICH. COMP. LAWS § 432.207b(2)(b) (2000). The statute specifically states:

(2) For purposes of this section, a person is considered to have an interest in a licensee or casino enterprise if any of the following circumstances exist:

(b) The person is an officer or a managerial employee of the licensee or casino enterprise as defined by rules promulgated by the board.

id.
are unconstitutionally overbroad. To date, this portion of the statute has not been tested in the courts. Most likely because no one wishes to risk a felony charge and prison time in order to challenge the statute.

In the Background, I will provide the framework of the contribution provisions of the Michigan Gaming Control and Revenue Act. Section II will discuss the Gaming Act in light of the relevant United States Supreme Court and Michigan case law. Section III will provide a comparison of other states' statutes regarding political contributions by persons with casino interests. The conclusion will review the public policy and legal issues raised in the discussion.

I. BACKGROUND

The Michigan Gaming Control and Revenue Act [hereinafter Gaming Act or Act] was approved by the voters of Michigan in November 1996. Among the Gaming Act's various purposes, and relevant to the topic of this paper, is the purpose to restrict "certain political contributions." The Act was amended in 1997 adding Section 7b which prohibits persons with an interest in a casino enterprise or a licensee or the "spouse, parent, child, or spouse of a child of a licensee or person who has an interest in a licensee or casino enterprise" from making a contribution to a candidate or a committee during specified periods of time. Section 7b defines a person with an interest in a licensee or casino as one that holds at least a one-percent interest in the licensee or casino; an officer or management employee; an officer of the person with a one percent interest; or an independent committee

---

7 See Mich. Comp. Laws § 432.201 (2000). Other purposes of the Gaming Act include licensing, regulation and control of gaming; distributing revenue from gaming; vesting authority for regulating casino gaming in the Michigan gaming control board; establishing a code of ethics; imposing taxes, fees, and penalties. See id.
of the licensee or casino. A licensee is considered a person holding a casino or supplier’s license, and the license is considered exclusive to the licensee. The supplier’s license will allow a licensee to supply “equipment and supplies to any licensee involved in the ownership or management of gambling operations.”

In regulation of political contributions, all casino license applicants are required to identify:

whether an applicant or the spouse, parent, child, or spouse of a child of an applicant has made, directly or indirectly, any political contribution, or any loans, donations, or other payments to any candidate as defined in section 7b or officeholder elected in this state or to a committee established under the Michigan campaign finance act . . . within 5 years from the date of the filing of the application, including the identity of the board member, candidate, or officeholder, the date, the amount, and the method of payment.

In Michigan, committees are required to be formed by any “person” receiving $500 or more in a calendar year to influence voters regarding a candidate or ballot question.

Included in the definition of “person” who may receive a contribution is a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor

---

9 See Mich. Comp. Laws § 432.207b(2)(a)-(d) (2000). The statute specifically provides that:

(2) For purposes of this section, a person is considered to have an interest in a licensee or casino enterprise if any of the following circumstances exist:

(a) The person holds at least a 1% interest in the licensee or casino enterprise.

(b) The person is an officer or a managerial employee of the licensee or casino enterprise as defined by rules promulgated by the board.

(c) The person is an officer of the person who holds at least a 1% interest in the licensee or casino enterprise.

(d) The person is an independent committee of the licensee or casino enterprise.

Id.

10 See Mich. Comp. Laws § 432.207c(2)(a)-(d) (2000). The statute provides that “License” means either a casino license issued under this act or a supplier’s license issued under this act, . . . [and] ‘Licenses’ means a person who holds a license as defined in subdivision (c).” Id.


12 Mich. Comp. Laws § 432.207a(2) (2000). “A person who holds a supplier’s license is authorized to sell or lease, and to contract to sell or lease, equipment and supplies to any licensee involved in the ownership or management of gambling operations.” Id. Further, “Any person, including a junket enterprise, that supplies equipment, devices, supplies, or services to a licensed casino shall first obtain a supplier’s license.” Id. § 432.207a(6).

organization, company, corporation, association, committee, or any other organization of persons acting jointly. 15

Specific to the prohibition of political contributions to a committee in the Michigan Gaming Act, section 7b(1)(b) provides that the term "committee" means any of the following types of committees:

1. Candidate Committee. A committee identified by a candidate as his/her committee. 16

2. Political Party Committee. A state central, district, or county committee for a political party. 17

3. Independent Committee. A committee that (1) has been organized as an independent committee for at least six months before accepting or making contributions for an election; (2) receives contributions from at least twenty-five persons; and (3) contributes to at least three candidates during the calendar year of an election. 18

4. Caucus Committee. A committee organized by a chamber of the legislature. 19

The penalty for making a contribution prohibited in Section 7b is defined in Section 18 of the Gaming Act. By making a political contribution that violates Section 7b, a person

---

16 See id.
17 See MICH. COMP. LAWS § 169.20(2) (2000). "Candidate committee" means the committee designated in a candidate's filed statement of organization as that individual's candidate committee. Id.
18 See MICH. COMP. LAWS § 169.20(2) (2000). "Political party committee" means a state central, district, or county committee of a political party which is a committee. Id.
19 See MICH. COMP. LAWS § 169.20(2) (2000). "Independent committee" means a committee, other than a political party committee, that before contributing to a candidate committee of a candidate for elective office ... files a statement of organization as an independent committee .... Id.
is guilty of a felony, which is punishable by up to ten years in prison or a fine of up to $100,000, and the individual is barred from any future licensure under the Act.20

II. DISCUSSION

This section will provide a discussion of the political contribution provisions of the Michigan Gaming Control and Revenue Act in light of relevant United States Supreme Court and Michigan case law. Recall that the Act prohibits political contributions to four specific committees by "a licensee or person who has an interest in a licensee or casino enterprise, or the spouse, parent, child, or spouse of a child of a licensee or person who has an interest in a licensee or casino enterprise."21 Therefore, the discussion in this section applies to all "persons" mentioned in the statute, and the use of the term "persons" in this section is inclusive of all individuals identified in the statute.

A. Clear and Unambiguous Statutory Language

The Gaming Act does not include a "political committee" in its list of committees prohibited from receiving contributions from persons identified in the statute. A "political committee" is a legal form of political organization under the Michigan Campaign Finance Act, defined as a committee that is "not a candidate committee, political party committee, independent committee, or ballot question committee."22 The Gaming Act lists only four types of committees defined by the Michigan Campaign Finance Act.23 Therefore, the

(1) A person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $100,000.00, or both, and shall be barred from receiving or maintaining a license for doing any of the following:
   . . . . .
(f) Making a political contribution in violation of section 7b of this act.
Id.
21 MICH. COMP. LAWS § 207b(4) (2000); supra note 2.
22 MICH. COMP. LAWS § 169.211(2) (2000). "‘Political committee’ means a committee that is not a candidate committee, political party committee, independent committee, or ballot question committee." Id.
23 MICH. COMP. LAWS § 169.201 et seq. (2000).
Legislature was clear in their exclusion of a “political committee” in the language of the Gaming Act. Under the express language of the Act, persons identified in the Act should not be prohibited from contributing to a “political committee.”

In the area of statutory construction, the Michigan Court of Appeals, in Forster v. Delton School District,\(^{24}\) declared that “[a] cardinal rule of statutory construction is that courts may not speculate as to the probable intent of the Legislature beyond the words employed in the statute, and when language of a statute is clear and unambiguous, the statute must be applied and not interpreted.”\(^{25}\) In Forster, the plaintiff claimed that the standards of conduct for public officers and employees were violated when an officer, whose spouse was a teacher in the district, negotiated a new contract with the district teachers.\(^{26}\) The standards of conduct prohibit a public officer or employee from negotiating a contract “relating to a business entity” in which the officer has a personal or business interest.\(^{27}\) The Michigan Court of Appeals held that a spouse is not a “business entity” within the meaning of the statute.\(^{28}\) Further, the court declared if the Legislature intended to prohibit an officer or employee from negotiating a contract in which their spouse might be one of the beneficiaries, it could have expressly provided for the situation by adding the term “spouse” in the statute.\(^{29}\)

The Gaming Act provisions prohibiting four types of committees from receiving contributions from identified persons are clear and unambiguous. The Act should be applied as written and not interpreted. Under the express language of the Michigan Gaming Control and Revenue Act, persons with an interest in a Michigan casino or licensee, or spouse,

\(^{24}\) 176 Mich. App. 582; 440 N.W.2d 421 (1980).
\(^{26}\) See Forster, 176 Mich. App. at 587.
\(^{27}\) Id.
parent, child, or spouse of a child are not prohibited from contributing to a political committee. Further, if the Legislature intended to prohibit contributions to a "political committee," it could have expressly added it to the statute.

B. Strict Interpretation of Criminal Statutes

Strict construction of criminal statutes is a fundamental rule followed by the Michigan courts. The rationale for this rule of construction comes from the due process requirement of notice.\textsuperscript{30} It is the Legislature's duty to define criminal offenses and punishment, and judicial restraint in interpreting criminal statutes ensures separation of powers.\textsuperscript{31} Further, strict construction protects citizens from the discriminatory and arbitrary application of a vague statute.\textsuperscript{32} Finally, when punishment is unclear, strict construction guards against the imposition of harsher punishment.\textsuperscript{33}

A violation of Section 7b of the Gaming Act is a felony. Punishment is imprisonment of less than ten years and/or a fine of less than $100,000, and the guilty party is banned from receiving or maintaining a license.\textsuperscript{34} The statute is a criminal statute that must be strictly construed under fundamental rules of statutory interpretation employed by Michigan courts. The Michigan courts give effect to statutory plain language and will not extend criminal penalties to cases outside the clear language of the statute.

\textsuperscript{28} See id. at 588.
\textsuperscript{29} See id.
\textsuperscript{31} See Jahner, 433 Mich. at 498-99 (discussing the various reasons for the fundamental rules of statutory construction).
\textsuperscript{32} See id.
\textsuperscript{33} See id.
\textsuperscript{34} See MICH. COMP. LAWS § 432.218(1)(f) (2000); supra note 20.
Over eight decades ago, the Michigan Supreme Court declared a statutory interpretation rule for criminal statutes. In People v. Ellis,\textsuperscript{35} the court declared:

It is a fundamental rule of construction of criminal statutes that they cannot be extended to cases not included within the clear and obvious import of their language. And if there is doubt as to whether the act charged is embraced in the prohibition, that doubt is to be resolved in favor of the defendant. In other words, nothing is to be added by intendment.\textsuperscript{36}

In Ellis, the defendant had married a woman who was pregnant with his child and then deserted her.\textsuperscript{37} The defendant was charged under a criminal statute prohibiting wife desertion after a man married a woman to escape prosecution for bastardy.\textsuperscript{38} The defendant argued that the statute did not apply to his case because he did not marry the woman "for the purpose of escaping prosecution for bastardy" as prohibited by the statute.\textsuperscript{39} It was argued that the statute applied only when a proceeding in bastardy had been instituted at or prior to the time of his marriage.\textsuperscript{40} In applying the fundamental rule of strict construction, the court held that there must be a proceeding instituted prior to the marriage for a defendant to be charged under the statute.\textsuperscript{41}

The Michigan Court of Appeals applied the principle of strict construction to the Michigan Campaign Finance Act [hereinafter MCFA] when deciding People v. Weiss.\textsuperscript{42} The MCFA prohibits cash contributions over $20.01, and provides that "a person who knowingly violates this section is guilty of a misdemeanor."\textsuperscript{43} The court considered whether the phrase "knowingly violates" requires proof that a defendant knew his conduct was

\textsuperscript{35} 204 Mich. 152; 169 N.W. 930 (1918).
\textsuperscript{36} People v. Ellis, 204 Mich. 152, 161; 169 N.W. 930, 931 (1918).
\textsuperscript{37} See Ellis, 204 Mich. at 158.
\textsuperscript{38} See id.
\textsuperscript{39} Id. at 158-59.
\textsuperscript{40} See id. at 159.
\textsuperscript{41} See id. at 162.
illegal. The court reviewed the legislative history and applied traditional rules of strict construction to conclude that in order to “knowingly violate” the statute, one must have knowledge that the law requires contributions over $20.01 to be made by written instrument.  

Strict construction also guards against a defendant being subjected to criminal penalties “unless his acts are clearly and unequivocally encompassed by [the statute’s] terms.” In People v. Lyons, the insurance agent-defendant converted his clients’ money for his own use, “lied to them about the location of their money[,] and . . . refused to return it on demand.” The defendant was charged with engaging in fraud or deceit “in connection with the offer, sale or purchase of any security.” Applying strict construction of the criminal statute, the court concluded that the defendant’s actions were not “in connection with the offer, sale or purchase” of the securities because the charges of fraud were based upon conversion of his clients’ money.

In relation to the canon of strict construction, courts are discouraged from broadening statutory interpretations or purposes when the “statutory words are clear and specific.” The Supreme Court of Michigan examined what constitutes a “stolen motor vehicle” under a Michigan statute prohibiting the receipt or transfer of a stolen motor vehicle. Specifically, the court in People v. Boscaglia considered whether a stolen cab is sufficient to make the truck a stolen motor vehicle. The Michigan Vehicle Code defines the

---

44 See id. at 560.
47 Lyons, 93 Mich. App. at 43.
48 Id. at 41.
49 See id. at 43-44.
51 See Boscaglia, 419 Mich. at 558.
term "motor vehicle" as every vehicle that is self-propelled. The court strictly construed the statute and held the truck was a vehicle that contained a stolen part, but was not a stolen motor vehicle.

In summary, under the rule of strict interpretation of criminal statutes, persons identified by statute should not be prohibited from contributing to a political committee. The Gaming Act expressly prohibits contributions to four legal forms of committees. "Political committees" are not mentioned, and therefore, they should be excluded from the prohibition.

C. Inclusion by Specific Mention

When a statute specifically mentions an act or exception, the statute is interpreted to exclude what is not mentioned (expressio unius est exclusio alterius). Similarly, when one thing is expressly mentioned in a statute, other similar things are impliedly excluded. This canon is strengthened when lists are enumerated in statutes. In People v. Jahn, the Michigan Supreme Court considered whether a person sentenced to life imprisonment for conspiracy to commit first-degree murder is eligible for parole consideration. In deciding this issue, the court answered the question, "Should the express exclusion of first-degree murder from parole eligibility be extended by implication to the crime of conspiracy to commit first-degree murder?" The "lifer law" contains a prohibition of parole for first-degree murder. Adhering to the statutory construction principle that the specific mention of one thing excludes what is not mentioned, the court declined to extend by inference the

---

53 See Boscoglio, 419 Mich. at 558.
54 See id. at 564.
56 See Jahn, 433 Mich. at 500 n.3.
58 See Jahn, 433 Mich. at 493.
59 Id. at 497.
parole prohibition to the separate and distinct crime of conspiracy to commit first-degree murder.\textsuperscript{61} Moreover, the court declared that it could not assume the intent of the Legislature was misrepresented when it limited the exceptions to the “lifer law.”\textsuperscript{62}

The Office of the Attorney General has applied the principle of \textit{expressio unius est exclusio alterius} when providing three opinions on point with the issues discussed in this paper. Although the Attorney General’s opinions are not binding on the court or statutory language, they are instructive. The most recent opinion considered whether under the Michigan Campaign Finance Act a separate segregated fund may make contributions to or expenditures for a “political committee.”\textsuperscript{63} The Attorney General reviewed the statutory language of the MCFA and concluded that the MCFA did not allow a separate segregated fund to make contributions to or expenditures for a “political committee” because “political committee” was not one of the four types of committees listed in the statute.\textsuperscript{64} The Attorney General stated that the “restriction in Section 55(1) on contributions to [the four specific types of] political committees is not ambiguous.”\textsuperscript{65} Further, the Attorney General indicated that the Legislature is free to amend the MCFA to bring “political committees” within its scope.\textsuperscript{66}

Another opinion examining the Michigan Campaign Finance Act is relevant as well. In a three-part opinion, one of the questions presented was whether a separate segregated fund established by one corporation may contribute to a separate segregated fund established

\textsuperscript{60} See id. at 495.
\textsuperscript{61} See id. at 500.
\textsuperscript{62} See id. at 504.
\textsuperscript{64} See OAG 6767 at 55.
\textsuperscript{65} Id.
\textsuperscript{66} See id.
by another corporation.\textsuperscript{67} Section 55 of the Michigan Campaign Finance Act allows contributions to or expenditures on behalf of the four types of committees listed: candidate committees, ballot question committees, political party committees, and independent committees.\textsuperscript{68} Acknowledging that a separate segregated fund may be organized as a "political committee" under the MCFA, the Attorney General decided, based upon the explicit mention of only four committees, that a separate segregated fund may not contribute to another corporation's separate segregated fund because it is not one of the four forms of committees listed in the Act.\textsuperscript{69}

The third opinion, also issued in 1978, considered whether Michigan law prohibits a corporation from establishing or maintaining a political committee for the support of state candidates.\textsuperscript{70} The opinion stated that, pursuant to Section 55 of the MCFA, contributions by a separate segregated fund established by a corporation may be made only to the four committees listed in the Act.\textsuperscript{71} The Attorney General, therefore, concluded the Act prohibits a corporation from establishing a political committee to support state candidates.\textsuperscript{72}

Under these rules of statutory interpretation utilized by the courts and the Office of the Attorney General, contributions to a political committee by persons identified in the Gaming Act should not be barred. The principle of inclusion by specific mention supports the position that "political committees" are impliedly excluded because they are not mentioned when similar forms of committees are specifically mentioned in the Act.

\textsuperscript{68} See OAG 5344 at 552.
\textsuperscript{69} See id.
D. Legislative History

A review of the legislative history of the Michigan Gaming Control and Revenue Act and amendments shows that the bill as introduced, all substitute versions, and the final bill as enrolled did not include "political committee" in the language of Section 7b. All versions of the bill limited the definition of the term "committee" to the four types that are currently listed in the Gaming Act. Therefore, the legislative history of the Michigan Gaming Control and Revenue Act does not indicate intent of the legislature to prohibit such persons identified from contributing to a political committee. If the Legislature intended to include "political committees" in the prohibitory language of the Gaming Act, they had an obligation to include a fifth type of committee. In a review of the legislative history, the addition of "political committee" to the list of the four types of committees was never indicated.

E. Overbreadth

This section of the paper will discuss the Gaming Act as it applies to persons other than the direct licensee or person with an interest in a casino. For example, a spouse, parent, child, spouse of a child, or managerial employee of a licensee or interested person. As written, the Gaming Act overreaches into these persons' constitutionally protected speech and expression.

1. First Amendment Political Speech and Expression

A statute is overbroad if it burdens or punishes constitutionally protected activities.\textsuperscript{73} Further, when conduct is involved, the overbreadth of a statute must be substantial in

\textsuperscript{71} See OAG 5279 at 392.
\textsuperscript{72} See id.
\textsuperscript{73} See City of Milwaukee v. Nelson, 439 N.W.2d 562, 568 (Wis. 1989).
relation to the statute's plainly legitimate sweep.\textsuperscript{74} The First Amendment states that
"Congress shall make no law respecting an establishment of religion, or prohibiting the free
exercise thereof; or abridging the freedom of speech, or of the press; or the right of the
people peaceably to assemble, and to petition the Government for a redress of grievances."\textsuperscript{75}
In \textit{Broadrick v. Oklahoma},\textsuperscript{76} the Court pointed out that any attempt to restrict or burden First
Amendment rights "must be narrowly drawn and represent a considered legislative judgment
that a particular mode of expression has to give way to other compelling needs of society."\textsuperscript{77}

In the area of political expression, courts rely on the United States Supreme Court
decision in \textit{Buckley v. Valeo}.\textsuperscript{78} In \textit{Buckley}, the Court considered numerous provisions of the
Federal Election Campaign Act of 1971.\textsuperscript{79} The Court indicated that the "First Amendment
protects political association as well as political expression. . . . [and that] [s]ubsequent
decisions have made clear that the First and Fourteenth Amendments guarantee 'freedom to
associate with others for the common advancement of political beliefs and ideas,' a freedom
that encompasses 'the right to associate with the political party of one's choice'."\textsuperscript{80}

The Court acknowledged that the right of association and right to participate in the
political process are not absolute.\textsuperscript{81} However, if a state can demonstrate an important
interest and provide a narrowly drawn statute that avoids the unnecessary infringement on
these rights, the statute may be sustained.\textsuperscript{82} Therefore, the \textit{Buckley} Court has declared that
the regulation of political contributions must be narrowly tailored to a compelling state

\textsuperscript{74} See \textit{Broadrick v. Oklahoma}, 413 U.S. 601, 615 (1973).
\textsuperscript{75} U.S. Const. amend. 1.
\textsuperscript{76} 413 U.S. 601 (1973).
\textsuperscript{77} \textit{Broadrick}, 413 U.S. at 611-12; see, \textit{Hemdon v. Lowry}, 301 U.S. 242, 258 (1937); \textit{Shelton v. Tucker}, 364
\textsuperscript{78} 424 U.S. 1 (1976).
\textsuperscript{79} See \textit{Buckley v. Valeo}, 424 U.S. 1, 6 (1976).
\textsuperscript{80} \textit{Buckley}, 424 U.S. at 15.
\textsuperscript{81} See \textit{id.} at 25.
interest.\textsuperscript{83} It has been held that the government has a compelling interest to eliminate corruption or the appearance of corruption in the political arena.\textsuperscript{84} Once the compelling interest is established, the analysis continues to determine if the statute passes constitutional muster by being narrowly tailored. Narrowly tailored statutes are those that remedy the harm without overreaching into protected conduct.

The Gaming Act reaches a substantial amount of political expressive activities through its prohibition on \textit{any} contributions by a spouse, parent, child, or spouse of a child of a person with an interest in a casino or licensee. Political expressive activity is a protected First Amendment right, which includes political contributions. However, in Michigan a spouse, parent, child, or spouse of a child is prohibited from making any political contributions to the four committees enumerated in the Gaming Act.\textsuperscript{85} Under the Act, spouses or family members cannot make any political contributions even if they are the spouse of an estranged child of a licensee. The statute provides for merely the blood relationship without any consideration of the status of the relationship. The Gaming Act, therefore, is an unconstitutional infringement on First Amendment rights of family members of those individuals who have an interest in a casino or are a licensee.

In \textit{Board of Airport Commissioners v. Jews for Jesus, Inc.},\textsuperscript{86} the Court struck down a resolution that expressly banned all First Amendment activities by any individual or entity as facially overbroad and stated "in these quintessential public forums, the government may not prohibit all communicative activity."\textsuperscript{87} A minister was distributing religious pamphlets outside the Los Angeles airport terminal when he was informed that his activities were a

\textsuperscript{82} See id.
\textsuperscript{83} See id.
\textsuperscript{84} See id. at 28-29.
\textsuperscript{85} See MICH. COMP. LAWS § 432.207b(4) (2000); supra note 2.
violation. The resolution prohibiting such activity was held to be facially overbroad because it did not “merely regulate expressive activity in the... area that might create problems such as congestion or the disruption of the activities” of the patrons of the airport, but rather “reached the universe of expressive activity.”

The Gaming Act prohibits any political contribution to four types of political committees or candidates. Analogous to Board of Airport Commissioners, the Act is prohibiting all communicative activity for spouses, parents, children, and spouses of children as well as managerial employees of licensees. Further, the Act is not targeted at only an area that may cause problems; arguably, if the Act prohibited contributions over a certain dollar amount it may pass constitutional muster because of the recognized interest to avoid corrupting the political process. However, these persons have been singled out and cannot exercise their First Amendment rights of political expression. Freedom of expressive association cannot be infringed solely because of an individual’s association with a disfavored group. The First Amendment rights of these individuals are infringed by the prohibition of contributions based upon someone else’s status. The Court has established that “‘guilt by association alone, without [establishing] that an individual’s association poses the threat feared by the Government,’ is an impermissible basis upon which to deny First Amendment rights.” The express language of the Act discussed in this paper plainly establishes the impermissible action of guilt by association without determination that the contributions would be on behalf of the licensee to corrupt the political process.

88 See Bd. of Airport Comm’rs, 482 U.S. at 573.
89 Id. at 574.
91 Healy, 408 U.S. at 186.
The effect of the statute is extremely far reaching. Recall that someone with an interest in a casino enterprise is defined as an officer or managerial employee of the licensee or casino. The effect of this statute is that a manager's son's wife would be denied her fundamental right of political expression. As a matter of public policy, the rights of individuals should not be infringed merely because of the occupational choice of their spouse's parent.

Further, the Court has recognized the right to associate is implicit in the right to engage in activities protected by the First Amendment.\textsuperscript{92} The right to associate with others applies to a "wide variety of political, social, economic, educational, religious, and cultural ends."\textsuperscript{93} The first line of decisions regarding freedom of association involves intimate human relationships, and the second form of association that the Court recognizes is expressive association.\textsuperscript{94} Citizens are free to associate "for the purpose of engaging in those activities protected by the First Amendment."\textsuperscript{95} States that interfere with an individuals' choice of whom they wish to associate with may violate both forms of freedom of association. This is particularly relevant to the case of contributions made by a licensee's child's spouse. The spouse has been denied his/her First Amendment freedom of political expression by the mere association with the child of an individual with an interest in a casino or licensee.

In \textit{Board of Directors of Rotary International v. Rotary Club of Duarte},\textsuperscript{96} the Court reviewed the constitutionality of the California Civil Rights Act that required the Rotary,

\textsuperscript{93} \textit{Roberts}, 468 U.S. at 622.
\textsuperscript{94} See \textit{id.} at 622.
\textsuperscript{95} \textit{id.}
\textsuperscript{96} 418 U.S. 537 (1987).
traditionally restricted to male membership, to admit women members. The Act was challenged as infringing upon the male members' freedom of association. The Court balanced the members' expressive association rights and the compelling state interests to eliminate gender discrimination. The Supreme Court found there to be no infringement on expressive association in allowing women to join. Intimate association was not abridged either because the relationships were not private enough and the organization was too large to warrant protection. In contrast to Rotary International, the Gaming Act violates association rights. The freedom of expressive association is hindered by the broad sweep of activity prohibited by the Act. Realistically, the child's spouse or managerial employee of a supplier to a casino is prohibited from making political contributions merely because they chose to marry the child of, or work for, the distributor to a casino. Additionally, intimate association is abridged by the prohibition being based on close, familial relationships. This is a clear example where the statute is not narrowly tailored.

Similarly, in City of Houston v. Hill, the municipal ordinance that made it unlawful to "assault, strike, or in any manner oppose, molest, abuse or interrupt police officers in the execution of their duty" was held to be unconstitutionally overbroad because it was not narrowly tailored to specific words or conduct. A statute that makes a substantial amount of protected conduct unlawful may be held invalid even if there is a legitimate application. The Gaming Act is not narrowly tailored to specific acts. In fact, the statute is not tailored to any specific acts or words. This is an intentional drafting of the

---

66 See Rotary Int'l, 481 U.S. at 548.
99 See id.
100 See id. at 546.
ordinance to allow for the broad prohibition of contributions to committees or candidates that may have a remote chance of being linked to political corruption. The broad sweep of legitimate conduct under the Act is unconstitutional because individuals are denied their constitutional right of political expression.

In summary, because the Act fails to be narrowly drawn, advocates guilt by association, and reaches a substantial amount of protected conduct by violating rights of political expression, the Gaming Act is unconstitutionally overbroad. The public policy of avoiding actual or the appearance of corruption in political contribution is noble and valid. This policy, however, may not advocate the impingement of citizens' First Amendment rights.

2. Michigan Attorney General Opinions

As stated above, the opinions of the Michigan Attorney General are not binding on the courts or statutory interpretation. They are, however, instructive for their analysis and conclusions. The Attorney General has considered the specific issue of overbreadth discussed in this section of the paper. In December 1998, the Office of the Attorney General considered the constitutionality of prohibiting political contributions by casino operators, suppliers, and other persons. The Attorney General answered five questions pertaining to the Gaming Act, and one question directly on point with my discussion. Specifically, the

105 The five questions addressed to the Attorney General were: 1) Whether the subsections prohibiting casino and supplier licensees and other related persons from making political contributions to certain specified persons for a period of one year prior to applying for a license violates the ex post facto clause of the U.S. Constitution. The Attorney General concluded no violation of the ex post factor clause. 2) Whether the prohibitions to political contributions by a spouse, parent, child, or spouse of a child or a licensee or person with an interest in a licensee or casino enterprise restricts political expression in violation of the First Amendment. The AG opined that there is a violation of the First Amendment. 3) Whether the prohibitions of political contributions by a spouse, parent, child, or spouse of a child or licensee or of a person with an interest in a licensee or casino, restrict political expression in violation of the First Amendment. The conclusion was that the prohibitions for licensees and other persons are valid. 4) Whether political contributions prohibited for
question presented was "whether sections 7b(4) and (5) of the Act, to the extent that they prohibit political contributions by a spouse, parent, child, or spouse of a child or a licensee or person with an interest in a licensee or casino enterprise, restricts political expression in violation of the First Amendment" of the United States Constitution. The opinion analyzed the Gaming Act under the two-prong test outlined in Buckley. First, whether there was a compelling state interest; second, whether the statute was narrowly construed in order to further the compelling state interest.

The Attorney General declared that the Gaming Act passed constitutional muster on the first prong. The State of Michigan has a compelling interest to eliminate corruption and the appearance of corruption in the political process. The statute, however, did not succeed in the second portion of the test. Citing Buckley, the Attorney General declared that "only those regulatory provisions which employ a means closely drawn to avoid unnecessary abridgement of associational freedoms will pass constitutional muster." Finding that the statute extends to persons "who may have no stake whatever in the casino-related political process," the opinion concluded that the provisions are an unconstitutional violation of the First Amendment.

The Office of the Attorney General relied upon the 1998 decision in May 2000 when it considered whether the statutory provision requiring spouses and children of persons holding a casino interest to register with the Secretary of State was invalid in light of the

---

one year prior to applying for a license is constitutional under the First Amendment. The AG opined that the restriction for casino license applicants was not in violation of the First Amendment, but that a violation occurred when restricting the supplier licensees from contributing one year prior to application. 5) Whether an adopted law must be amended by three-fourths of the legislature. The conclusion was in the affirmative. See generally, OAG 7002.

106 OAG 7002 at *7.
107 See id. at *9 (citing Buckley v. Valeo, 424 U.S. 1, 44-45 (1976)).
108 See id. at *10.
109 Id. at *12 (quoting Buckley v. Valeo, 424 U.S. 1, 26 (1976)).
1998 opinion discussed above. 111 The Attorney General concluded that the registration provision was invalid for want of regulatory purpose since the contribution provisions were declared to be unconstitutional in 1998. 112

This section has provided discussion supporting the position that persons identified in the statute should be able to contribute to “political committees” since they are not a prohibited committee identified in the Act. Moreover, the Act as it pertains to individuals related by blood, marriage, or work relationship is unconstitutionally overbroad since it fosters guilt by association and is not narrowly tailored.

III. OTHER STATES’ STATUTES

In reviewing a few other states’ statutes regarding political contributions by persons associated with a casino interest, I found some interesting distinctions between Michigan, Louisiana, and New Jersey law. This section will provide a comparison of Michigan law to Louisiana and New Jersey statutes.

One marked difference between the Michigan Gaming Act and Louisiana’s election code is the absence of the language prohibiting political contributions by parents, children, and children’s spouses. The Louisiana statute prohibits political contributions to any candidate and any political committee. 113 The prohibition, however, is only extended to the spouse, senior management, or key employees of the licensee or person with an interest in a

110 Id. at *14.
112 See OAG 7053 at *6-7.
No person to whom this Subsection is applicable . . . shall make a contribution, loan, or transfer of funds, including but not limited to any in-kind contribution, . . . to any candidate, any political committee of any such candidate, or to any other political committee which supports or opposes any candidate.

Id.
casino. Similar to Michigan, the penalties for the violation of the statute are criminal, but also include the assessment of civil penalties. As a result, Louisiana law, purporting the same purposes as Michigan, to avoid corruption of the political process, is more narrowly construed than Michigan.

New Jersey also has statutory prohibitions for political contributions as they relate to a casino enterprise. The New Jersey statute prohibits an applicant or holder of a casino license or "holding, intermediary or subsidiary company . . . officer, director, casino key employee or principal employee . . . [or] any person or agent on behalf of any such applicant, holder, company or person" from contributing to any candidate or any committee in the state. Similar to the Michigan and Louisiana statutes, New Jersey also imposes criminal penalties. A valid point of distinction between Michigan and New Jersey is that New Jersey uses the terms "intermediary" and "agent" and links the behavior of any person to the casino applicant or licensee. Therefore, the focus is on the person's actions as they relate to the licensee. As a result, a spouse or child would not be prohibited from political contributions merely because of their relationship with the licensee. Rather, they would be

---

115 See L.A. REV. STAT. § 18:1505.2(L)(5)(c) (2000). "The criminal penalties provided in R.S. 18:1505.6(C) shall be applicable to any violation of this Subsection." Id.

The legislature recognizes that it is essential to the operation of effective democratic government in this state that citizens have confidence in the electoral process and that elections be conducted so as to prevent influence and the appearance of influence of candidates for public office and of the election process by special interests, particularly by persons substantially interested in the gaming industry in this state.

Id.
118 N.J. STAT. § 5:12-138 (2001); See also, V.I. CODE ANN. tit. 32, § 509(a) (2001) (The Virgin Islands statutory language is virtually identical to the New Jersey statute.).

Any person who makes or causes to be made a political contribution prohibited by the provisions of this act is guilty of a crime in the fourth degree and subject to the penalties therefor, except that the amount of a fine may be up to $100,000.00 . . . .
prohibited from acting on behalf of the licensee in making political contributions. In this manner, the New Jersey statute is more narrowly constructed than Michigan.

Finally, it is interesting to note that both the New Jersey and Louisiana statutes prohibit the contributions to any candidate and any committee. This is in contrast to the Michigan statute that enumerates only four of the legally recognized committees under Michigan law. The distinction provides an illustration of how the Michigan Legislature could draft an amendment to prohibit contributions to all political committees.

**CONCLUSION**

Persons identified by the Gaming Act should not be charged with a felony under Section 18 for contributing to a “political committee.” According to the legislative history, the Legislature never intended to include “political committees” in the list of committees that shall not receive contributions from persons with an interest in a casino or licensees or those persons with identified relationships with licensees. The Gaming Act specifically mentions four types of committees, but not “political committees.” If the Legislature would like the Gaming Act to prohibit contributions by persons with an interest in a casino to “political committees,” they are free to amend the Act.

The fundamental principles of statutory plain language, inclusion by specific mention, and strict interpretation and construction of criminal statutes provide authority for concluding that the Gaming Act does not prohibit identified persons from contributing to a “political committee.” Unless the Gaming Act is amended to prohibit contributions to a political committee, the Gaming Act should not be interpreted to sweep within its prohibition any conduct clearly not encompassed in the statute’s terms.

*Id. See also, V.I. CODE ANN. tit. 32, § 481 (2000) (The Virgin Islands statutory language is virtually identical to the New Jersey statute.).*
The compelling state interest of eliminating corruption or the appearance of corruption from the political process is well established. The Gaming Act cites this as a valid purpose. However, the second prong of the First Amendment analysis is not met by the Gaming Act. The Act is not narrowly tailored to address only political contributions by persons with a casino interest that may tend to corrupt the political system. First, the statute unconstitutionally prohibits all contributions instead of placing a limit on the contribution amount, which was upheld in *Buckley*. Second, the Act overreaches into protected political expression of individuals who are branded as guilty simply by their association to a person with an interest in a casino or licensee. It is doubtful that this statute will be tested in the Michigan courts, since the person would risk a felony charge and/or conviction with imprisonment. Therefore, it is up to the Legislature to amend the Act or the Gaming Commission to put forth a declaratory ruling resolving the issues discussed in this paper. It is, however, unlikely that the Legislature or Commission will do so without enormous political pressure.