



House Floor Amendment 1 to Kentucky Senate Bill 75: A Threat to Nonprofit Groups' Speech and Kentuckians' Privacy

On March 6, 2017, Rep. James Kay filed House Floor Amendment 1 (“H.F.A. 1”) to Senate Bill 75. While S.B. 75 on its own represents a common sense increase to Kentucky’s severely outdated campaign contribution limit laws, H.F.A. 1 would attack the speech rights of groups and the privacy of citizens who support those groups. The vague language in the proposal would give enormous discretion to bureaucrats to administer it, increasing the risk of biased enforcement. This amendment threatens First Amendment rights to free speech by creating new, burdensome, and misguided government reporting requirements for nonprofit groups. Because of the amendment’s complex provisions, many groups will find it impossible to operate.

Furthermore, the provisions of H.F.A. 1 would chill protected speech by mandating the disclosure of donors to organizations that never endorse, support, or oppose a candidate and speak solely about issues. Even groups that publish a strictly nonpartisan voter guide could be subjected to filing burdensome reports. The proposal would generate misleading, “junk” disclosure and enable harassment of citizens based on their beliefs and affiliations. The vague language, if adopted, would likely trigger a legal challenge, risking expensive litigation and the possibility that Kentucky might have to pay enormous legal fee awards to successful plaintiffs.

In consideration of these serious issues, the amendment should be rejected in its entirety. Consider some of the key flaws in H.F.A. 1 to S.B. 75:

- 1) **Government Reporting of Kentuckians’ Private Information** – H.F.A. 1 would force nonprofits that spend over \$3,000 on communications – even information simply posted on a website that mentions or lists one or more candidates or incumbents – to file extensive reports with the government. To avoid this, for 120 days in each election year, the group would have to pull the plug on all affected pages on its website. The other bleak choice is that nonprofits may be required to report the names and home addresses of all their donors over \$100 to the government for inclusion in a permanent, online database. That means a boss, coworker, nosy neighbor, or anyone with an Internet connection could violate the privacy of a group’s supporters.
- 2) **Regulatory Red Tape** – H.F.A. 1 proposes reporting burdens for communications that have nothing to do with election campaigns. As a result, many communications that have no connection to an election would be regulated as campaign speech. If, for example, a small nonprofit wants to spend \$3,500 on a mailing or billboard encouraging legislators to support a bill to strengthen Second Amendment rights in Kentucky, and that mailing mentions or depicts any current lawmakers, who are also candidates, 60 days before any election, such as a primary, it would be covered by the proposal. The only way for a group to avoid filing such reports would be to cancel the planned communication.
- 3) **Regulation of Genuine Issue Speech** – Consider a group that wishes to urge candidates to support charter schools. To do so, the group runs an ad before an uncontested primary election. The ad names several candidates and urges those candidates to support charter schools. The ads do not criticize or praise any of the named candidates, nor do the ads draw any contrast between the named candidates and their opponents in the general election. Under this amendment, the ad would be considered an “electioneering communication,” subjecting the group to an array of extensive reporting requirements, including required reporting of the names and home addresses of all of its supporters over \$100 to the government for permanent publication in an online database.

- 4) **Absurd Results** – The amendment would regulate speech that has nothing to do with an election. For instance, imagine the governor records a public service announcement supporting a charity collecting clothing for the poor. The group spends \$5,000 airing the announcement during one of the 120 days a year covered by H.F.A. 1. Unwittingly, the group just made an “electioneering communication” and could be required to identify all its supporters over \$100. Likewise, a nonpartisan voter guide published by groups like Vote Smart would trigger the law, which could force the group to file complex reports and list all its national donors.
- 5) **Carte Blanche Granted to Kentucky Registry of Election Finance** – This amendment gives the Registry immense regulatory power to determine what is and isn’t an “electioneering communication” and “promulgate...any administrative regulations necessary to carry out the provisions of” H.F.A. 1. Such power may lead to abusive or biased enforcement of Kentucky’s campaign finance law. Recent examples in Wisconsin, Montana, and at the IRS, in which citizens (and legislators) were targeted for their political beliefs and associations, offer chilling examples of the abuses that are possible.
- 6) **Junk Disclosure** – H.F.A. 1 creates “junk disclosure” that will mislead the public and create embarrassment for donors. Citizens will often be unfairly linked with communications they did not know about and may even oppose. For example, consider a Kentucky wheat farmer, a proud, life-long Democrat, who donates to the Kentucky Farm Bureau. This farmer then could find himself listed as a supporter of Republican candidates in news accounts because the Bureau ran a radio ad about a tax reform bill that mentioned Republican legislators. Or consider a Republican carpenter who supports her labor union only to be associated with opposing Republican candidates because her union urged opposition to a right-to-work bill supported by Republicans. In both situations, neither of these individuals knew about or agreed with the organization’s position, but rather opted to donate to these groups because on balance they think these organizations provide a voice for their views. To publicly identify these individuals with communications of which they had no advance knowledge, and which they may even oppose, is both unfair to these citizens *and* misleads the public. It is junk disclosure.
- 7) **Harassment** – The reporting requirements proposed in H.F.A. 1 could lead to the harassment of donors based on their beliefs. In today’s polarized political environment, more and more individuals have suffered threats, harassment, and property damage as a result of such information.

For example, the United States District Court for the Central District of California recently held a trial on the threats faced by organizations during these tumultuous times. Donors to the Americans For Prosperity Foundation (“AFPF”) “faced threats, attacks, and harassment, including death threats.” Those threats extended broadly to AFPF’s “employees, supporters and donors.” A “technology contractor working inside AFPF headquarters posted online that he was ‘inside the belly of the beast’ and that he could easily walk into [the Chief Executive Officer’s] office and slit his throat.” This is not an isolated case. During the debate over same-sex marriage in California in 2008, the personal information of supporters of traditional marriage was exposed due to similar disclosure requirements as those proposed in this amendment. Some traditional marriage supporters recounted being told, “Consider yourself lucky. If I had a gun I would have gunned you down along with each and every other supporter.” If the private information of donors to similar groups in Kentucky was forcibly reported to the government, these citizens would also be at risk. To be clear, this amendment would extend the same type of disclosure to supporters of any nonprofit that mentions a candidate for office within specified time periods before any election.

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Should you have any further questions regarding this amendment, please do not hesitate to contact CCP External Relations Director Matt Nese at (703) 894-6800 or by e-mail at mnese@campaignfreedom.org.

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