



Before the Maryland House Ways and Means Committee:

Hearing on campaign finance legislation

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Written testimony of:

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I am submitting testimony on behalf of my organization, the Center for Competitive Politics, detailing the serious concerns we have about the several campaign finance bills pending in the House of Delegates that would seriously limit Marylanders' First Amendment rights.

CCP is a non-partisan, non-profit organization based in Alexandria, Virginia, that is focused on promoting and protecting the First Amendment political rights of speech, assembly, and petition. It was founded in 2005 by Bradley A. Smith, a former member and chairman of the Federal Election Commission.

In the wake of the U.S. Supreme Court's decision in *Citizens United v. Federal Election Commission*, there has been significant speculation as to how the new campaign finance landscape will affect future campaigns and a subsequent rush to enact legislation to "fix" a supposed problem.

First, it is important to note that long before the Court's decision in *Citizens United*, corporations, unions and other groups could spend an unlimited amount of money on independent expenditures—ads, direct mail and other public communications—advocating for or against candidates for state office.¹ This is a healthy exercise in our democratic process, but several bills pending in the House would restrict this First Amendment right, with little or no justification.

House Bill 616 would require a corporation making an independent expenditure of \$10,000 or more to obtain majority approval for its stockholders, effectively imposing a de facto ban on business corporation speech in clear conflict with *Citizens United*. The state Senate of Iowa recently amended its post-*Citizens United* legislation to include a requirement for majority director approval instead of majority shareholder approval, partly to satisfy constitutional concerns.

HB 616 would also prohibit a "person doing public business" from engaging in independent expenditures, which also violates a core holding of *Citizens United*. The Court ruled that independent expenditures, unlike direct contributions to candidates, cannot pose a *quid pro quo* risk of corruption or its appearance—one of the only justifications the Court has accepted for government regulation of political speech. **House Bill 690** would prohibit state contractors from making independent expenditures, and it's constitutionally questionable for the same reason.

House Bill 917 would prohibit all corporations from making campaign contributions. Maryland law currently allows corporations and unions to contribute to candidates under the same

¹ Public Citizen, "State Prohibitions on Campaign Spending from Corporate and Union Treasuries for State Candidates, 2009," accessed March 7, 2010; http://www.citizen.org/documents/Corporate_spending_on_state_candidates.pdf

contribution limits as individuals: \$4,000 per candidate, per cycle with a maximum aggregate contribution of \$10,000 to all candidates.² The legislature, if it decides to pass this legislation, should justify why only corporations—and not labor unions—should be banned from contributing to candidates.

While limiting the amount of money associations like corporations can contribute to support the candidates is often touted as important “reform,” it is rarely good policy. Research and experience on contribution limits all provide strong evidence that contribution limits are generally ineffective and also limit important First Amendment rights. Most research on this topic finds little if any connection between campaign contributions and elected officials’ decision making.

In 2002, several noted political scientists reviewed nearly 40 studies appearing in peer-reviewed journals between 1976 and 2002 and found that in most instances, “campaign contributions had no statistically significant effects on legislation...”³ From this, these academics concluded:

Overall, our findings parallel that of the broader literature. Indicators of party, ideology, and district preferences account for most of the systematic variation in legislators' roll call voting behavior. Interest group contributions account for at most a small amount of the variation. In fact, after controlling adequately for legislator ideology, these contributions have no detectable effects on legislative behavior.⁴

Further evidence that contribution limits do not have an impact on corruption can be seen in recent CCP research comparing all 50 states’ limits to public corruption, as measured by the U.S. Department of Justice’s Public Integrity Section. We found that there was no relationship between contribution limits and corruption—in fact, the three least-corrupt states in the country were Iowa, Nebraska, and Oregon, all of which have no limits.⁵

House Bill 986 would require that a corporation making an independent expenditure obtain board authorization of the expenditure—and obtain authorization from a two-thirds majority of shareholders. It seems clear that the latter part of the provision is designed simply to stifle corporate expenditures and would be blatantly unconstitutional. This bill would also require that any political expenditure paid for by a corporation “be true,” which would subject companies to government speech boards to engage in the impossible task of determining whether inherently subjective political speech is “true.”

² National Conference on State Legislatures, “State Limits on Contributions to Candidates,” Updated January 20, 2010; http://www.ncsl.org/print/legismgt/limits_candidates.pdf

³ Stephen Ansolabehere, John de Figueiredo and James M. Snyder “Why is there so little money in politics,” 17 *Journal of Economic Perspectives* 105 (2003).

⁴ *Ibid.*

⁵ Laura Renz, “Do Lower Contribution Limits Decrease Public Corruption,” p. 2, January 2009

At issue here are independent expenditures, by nature and as legally defined, made independently of candidates. Independent expenditures are an expression of free speech and rather than rush to enact misguided “fix” legislation, the legislature should instead view independent expenditures for what they are— an effective way for individuals, unions and businesses to speak out on important political issues facing the state and its citizens.

As the legislature continues to debate these issues, I would be happy to provide additional commentary or research on these essential First Amendment issues.