



Judicial Committee of the New Jersey State Assembly

**Testimony of Sean Parnell
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Thank you for allowing me to submit testimony on A2595, a bill to require disclosure of the donor and membership lists of private organizations. I am testifying on behalf of the Center for Competitive Politics, a nonpartisan, nonprofit organization that works to promote and protect the First Amendment political rights of speech, assembly, and petition.

The Center has serious concerns that this bill would threaten core First Amendment freedoms, including the right of citizens to associate with one another and to speak out through collective associations without fear of retaliation.

The cause of disclosure is a popular one, and in some contexts disclosure is appropriate. Certainly in the case of contributions to candidates, or to political parties and committees that contribute directly to candidates, disclosure can serve as a helpful tool in fighting corruption.

But disclosure is meant to allow citizens to keep a watchful eye on the government and those elected to office, not to allow the government to keep tabs on the political involvement of its citizens. Yet that is precisely what A2595 would do.

This bill would force private organizations to reveal the names, addresses, occupations, and even the name and address of the employer of its membership and donor roster, if they seek to engage in any sort of communication that includes either facts or opinions about candidates. This is extremely broad and dangerous in two ways.

First, it publicly identifies the members and donors of organizations as contributors to political communications that they may in fact not support, because the statute does not limit disclosure to those members and donors who specifically intend their funds to be used to support political communications. A2595 would potentially subject members and donors to harassment, intimidation, and retribution for contributing to organizations that take what some view as unpopular stands, including those who may not support those specific stands and contribute for the organization's other work.

Second, the statute makes it extraordinarily difficult for organizations wishing to respect their members' and donors' privacy to address public policy issues. For example, a 501(c)(3) organization that includes in their newsletter the name of the legislator that introduced a particular piece of legislation could be determined to have communicated "political information" because it is a "fact" about a candidate.

Beyond these concerns, the fact is that this bill is quite likely unconstitutional.

The U.S. Supreme Court has previously recognized that the government may not compel the disclosure of the general membership or donor lists of private organizations, as A2595 seeks to do. In a landmark 1958 decision protecting the privacy of citizens to freely associate with one another and work towards common aims, the Court rejected the demand by the state of Alabama that the NAACP turn over its member and donor list.

It does not take much imagination to understand what was likely to be the fate of many of the NAACP's top donors and members in the Jim Crow South had the state of Alabama prevailed in their disclosure

efforts. Sadly, we live in a world where still today, donors and members to unpopular causes are threatened with retribution.

A2595 raises several other troubling issues, many of which also seem likely to face successful challenges in the courts as well.

Because the bill includes 501(c)(3) organizations in its disclosure requirements, and 501(c)(3) organizations are already explicitly banned from engaging in any sort of electioneering speech, it is obvious that A2595 is attempting to regulate the issue speech of nonprofit organizations. This bill would force organizations wishing to inform their members or comment publicly on public policy issues to choose between their constitutional right to speak on public policy and their constitutional right of their members to privately associate with one another. Such a forced choice seems unlikely to survive in the courts.

Another serious concern is the requirement that organizations file reports only 48 hours after the end of the reporting period. This extremely short time frame imposes a serious compliance burden on organizations, particularly smaller and less sophisticated groups that do not have the resources to easily afford accountants and attorneys who can produce, ensure the accuracy of, and submit reports in such a rapid fashion.

Finally, the bill imposes substantial burdens on 527, 501(c)(3) and 501(c)(4) organizations, but does not impose similar burdens on other 501(c) groups such as trade and professional associations or unions. This strongly suggests that the bill is an effort to deter only certain voices in the political process while allowing others to speak freely. In its *Citizens United* decision, the U.S. Supreme Court strongly indicated that attempts to pick and choose which types of organizations will face serious burdens when speaking and which will not, is inconsistent with the First Amendment.

A2595 represents an effort to strip New Jersey's citizens of their recently recognized First Amendment rights under the *Citizens United* decision. Rather than go down this path, New Jersey should instead consider legislation that would require disclosure only of those contributors who give, or are solicited for, contributions to fund political speech that expressly advocates the election or defeat of candidates for office. This would respect the First Amendment rights of New Jersey's citizens while disclosing contributors who seek to influence elections.

Thank you again for allowing me to submit testimony, and I'm happy to answer any questions you may have. I can be reached at (703) 894-6813 or sparnell@campaignfreedom.org.