



New Jersey Senate State Government, Wagering, Tourism & Historic
Preservation Committee

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Thank you for allowing me to submit testimony on S2379, a bill to require increased registration and disclosure requirements for issue advocacy 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 S2379 would do.

The first section of the legislation makes it clear that these issue advocacy organizations operate “without the cooperation or prior consent of, or without consultations with, or without the request or suggestion of, a candidate of any person or committee acting on behalf of a candidate.” This definition clearly eliminates the corruption rationale that justifies mandating disclosure of contributions to candidates and candidate committees, and makes the provisions of this legislation highly questionable.

The language in the bill also makes it clear that ELEC can expand the definition to include “any other organization organized under federal law that the Election Law Enforcement Commission determines is essentially similar to such organizations.” This creates significant uncertainty among donors and organizations who wish to discuss public policy matters, and makes it difficult for groups to operate within the known scope of the law.

This bill would compel disclosure of individual donors of any size to issue advocacy groups, including their name and address as well as their employer’s name and address. It would also force private associations who donate \$5,000 or more in the aggregate during a calendar year to submit a written statement that includes the name, mailing address, and amount attributable to each member of the organization that paid the dues or fees, or made contributions to the association that, in total, aggregate \$2,100 or more of that contribution

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. S2379 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, this bill would face significant constitutional challenges.

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 S2379 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.

S2379 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 clear that S2379 seeks to regulate issue speech that is not connected to elections, a dubious proposition based on the Supreme Court's rulings on privacy, association, and issue speech.

This bill would also 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, in addition to increased reporting requirements two weeks before an election. 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.

S2379 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.