CENTER *for* COMPETITIVE POLITICS
*Congress shall make no law...*

February 7, 2013

The Honorable Bill Avery
District 28
Room #1423
P.O. Box 94604
Lincoln, NE 68509

The Honorable Scott Price
District 03
Room #1202
P.O. Box 94604
Lincoln, NE 68509

Re: Practical Issues with Legislative Bill 79

Dear Chairman Avery, Vice-Chairman Price, and Members of the Committee:

On behalf of the Center for Competitive Politics, I am writing you today to respectfully submit the following comments regarding the practical impact of the provisions contained in Legislative Bill 79, currently being considered before the Government, Military, and Veterans Affairs Committee. Among other things, this legislation wisely repeals Nebraska's now unconstitutional Campaign Finance Limitation Act, but lowers the reporting requirements for individuals from $250 to the troublesomely low level of $100.

The Center for Competitive Politics is a nonpartisan, nonprofit 501(c)(3) organization 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 (FEC).

We commend the Legislature for taking action to consider L.B. 79, which repeals the state's Campaign Finance Limitation Act, recently deemed unconstitutional by the Nebraska Supreme Court in *State ex. Rel. Bruning v. Gale.*[1]

Unfortunately, the legislation's proposed revisions to the state's campaign contribution and expenditure reporting requirements generate a variety of serious issues. In short, the lowered reporting requirements imposed by L.B. 79 could deter smaller donors from contributing to candidates, subject individuals to harassment based on their political beliefs, increase reporting burdens on campaigns that are often run by volunteers, and make disclosure less meaningful.

I have outlined these four issues surrounding L.B. 79 in greater detail and advocated a more prudent course of action below.

## I. Implementing a reporting threshold as low as $100 could dissuade small donors from donating to candidates.

[1] *State ex. rel. Bruning v. Gale*, 817 N.W.2d 768 (Neb. 2012).

In an era of increasingly expensive elections, small donors are increasingly sought by candidates as a means of demonstrating a broad base of electoral support. Simply put, setting contribution and expenditure reporting levels at $100 is likely to make many small donors refrain from contributing money to support candidates.

Over the course of an "election period," it is relatively easy for an individual or family to eventually contribute $100 in support of a candidate – just over $8 per month for a twelve-month election period. This threshold not only affects big campaign donors, but it burdens members of the middle class and individuals of more modest means who want to give some small portion of their yearly earnings to the candidate or issue they are passionate about.

When faced with the knowledge that their full name and residential address will be reported to the government and made publicly available on the Internet for journalists, employers, and nosy neighbors to access, it is quite plausible that many of these would-be donors will decide not to donate, preferring instead to maintain their privacy.

## II. Disclosure information can result in the harassment of individuals by their political opponents and should be carefully balanced with the public's "right to know."

The desire to preserve privacy stems from a growing awareness by individuals and the Supreme Court that threats and intimidation of individuals because of their political views is a very serious issue. Much of the Supreme Court's concern over compulsory disclosure lies in its consideration of the potential for harassment. This is seen particularly in the Court's decision in *NAACP v. Alabama*, in which the Court recognized that the government may not compel disclosure of a private organization's general membership or donor list.[2] In recognizing the sanctity of anonymous free speech and association, the Court asserted that "it is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action."[3]

Much as the Supreme Court sought to protect African Americans in the Jim Crow South and those citizens who financially supported the cause of civil rights from retribution, donors and members of groups supporting unpopular candidates and causes still need protection today. It is hardly impossible to imagine a scenario in 2014 in which donors to controversial candidates and causes that make independent expenditures – for or against same-sex marriage; for or against abortion rights; or even persons associated with others who have been publicly vilified, such as the Koch family or George Soros, might be subjected to similar threats.

This may seem unrealistic, but it illustrates the fundamental problem with the approach taken. The assumption seems to be that citizens are dangerous to government, and the government must be protected from them. Little thought is given to protecting the citizens from government. Worse still is that little can be done once individual contributor information – their full names and street addresses – is made public under government compulsion, it can then

[2] *NAACP v. Alabama*, 357 U.S. 449 (1958).
[3] *NAACP v. Ala. ex rel. Patterson*, 357 U.S. at 462.

immediately be used by non-governmental entities and individuals to harass, threaten, or financially harm a speaker or contributor to an unpopular candidate or cause. We believe, therefore, that the problem of harassment is best addressed by limiting the opportunities for harassment, and that this is best done by crafting reporting thresholds that capture just those donors who are truly contributing large sums to political candidates and causes.

Ultimately, the Court has made clear that this concern over harassment exists, whether the threats or intimidation come from the government or from private citizens, who receive their information because of the forced disclosure. In short, mandatory disclosure of political activity should require a strong justification and must be carefully tailored to address issues of public corruption and provide information of particular importance to voters. It is questionable that mandatory disclosure of information about an individual who donates as little as $8.50 a month to a candidate or cause is sufficient to meet this justification.

## III. Low reporting thresholds disproportionately burden campaigns run by volunteers.

One of the biggest problems with low reporting thresholds are their impact on small, grassroots campaigns, many of which are exclusively volunteer-run operations. The desire to implement a $100 threshold represents a serious underestimation of the burdens of reporting.

Reporting requires more than completing forms for the Nebraska Political Accountability and Disclosure Commission – often itself a burdensome task. It also requires maintaining detailed records and making determinations on whether contributions are legal. For many volunteer-run campaigns with part-time, inexperienced treasurers, the burdens of reporting are high and the potential penalties for an incorrect filing are higher.

Additionally, many campaigns, especially those for lower-level offices, are run by individuals who may not have access to high-speed internet or training in the proper completion of Nebraska's myriad reporting forms.

These small, grassroots organizations typically cannot operate under low thresholds like those proposed in L.B. 79. Lowering the reporting threshold from $250 to $100 would further implicate many more groups and individuals and in the process discourage them from getting involved in their government or from running for office at all.

## IV. The proposed $100 reporting thresholds for contributions and expenditures would actually result in less meaningful disclosure information.

In desiring to improve voters' access to campaign contributor information, ironically, the lowered $100 reporting threshold advanced by L.B. 79 is as likely to confuse as to enlighten voters.

By mandating disclosure at such a low amount, it is actually more difficult for voters to discern who major supporters of a candidate are. Reviewing the reports of any candidate for office in Nebraska already involves slogging through countless entries of small donors, who have

contributed $250 or more. If disclosure reports are to tip voters as to major sources of financial support, muddying up the report's contents with many relatively small donors runs counter to this aim. In effect, this amounts to "junk disclosure" – disclosure that is primarily used by other parties to look for potential donors and by nosy neighbors to search their fellow citizens' political activity and affiliations.

Some groups, such as extremist animal rights groups, have even used disclosure information to threaten donors.[4] For more background information on one small donor's experience with becoming a target of an extremist group because of publicly available disclosure information, please review the July 2007 Washington Post article, "I Got Inspired. I Gave. Then I Got Scared.," which appears at the end of these comments.

A simple test is this: in all of the stories about disclosure in the past two elections, did any express alarm about persons donating $100 to $250 or even $500 to $1,000? We suggest that the answer is no.

It is difficult to argue that public reporting on contributions and expenditures at such a low level of $100 advances the legitimate purposes of informing the public or preventing corruption.

## V. Alternatively, L.B. 79 should be amended to raise existing reporting thresholds in order to capture more meaningful campaign contribution activity.

Instead, any legislation going forward should substantially raise the reporting threshold and index it for inflation. Nebraska's existing threshold for reporting contributions and expenditures has been at its current level of $250 since at least 2000. The existing $250 threshold for independent expenditure reporting also dates prior to 2000. If anything, contrary to the changes made in L.B. 79, an upward adjustment is overdue.

Simply adjusting for inflation, $250 in 2000 would be roughly $333 today. However, these thresholds were far too low even when established. For example, there is no doubt that substantial majorities of Americans consider campaign contributions to be corrupting. This is shown repeatedly in polls. However, there is no evidence that Americans consider such low amounts to be corrupting. To this point, in 2010, the Center for Competitive Politics participated in the Cooperative Congressional Election Study, a nationwide survey of 55,400 adults. Among the questions that the Center included in the survey was this: "At what level do you think a contribution to a candidate for Congress becomes large enough to exert a corrupting influence on that candidate?" The median response was $10,000.[5]

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[4] Gigi Brienza, "I Got Inspired. I Gave. Then I Got Scared." *Washington Post*. Available at: http://www.washingtonpost.com/wp-dyn/content/article/2007/06/29/AR2007062902264.html (July 1, 2007).

[5] Jason M. Farrell and Nima Veiseh, "Public Perception and the 'Appearance of Corruption' in Campaign Finance: An Analysis of CCES National Survey Data," *Center for Competitive Politics Issue Review*. Available at: http://www.campaignfreedom.org/wp-content/uploads/2012/11/Public-Perception-and-the-Appearance-of-Corruption-in-Campaign-Finance-Report-Final.pdf. (December 16, 2011).

Although the reporting thresholds in question in L.B. 79 relate to state-level races and groups, the disparity between the $10,000 response and the existing threshold still suggests that the $250 benchmark is far too low. Accordingly, there is almost no serious argument that $250 runs the risk of any corruption, or that it helps voters to understand who a candidate's major supporters are. We would recommend adjusting this threshold to at least $500, or possibly more, to better identify only those genuinely significant contributors to a campaign or cause.

Whatever threshold is decided upon should be indexed for inflation so that it does not eventually become a burden, simply due to a decline in the value of the dollar.

* * *

Legislative Bill 79 seeks to improve transparency, but ultimately falls short in this effort by discouraging small donors, burdening volunteer-run campaigns, and making disclosure information less meaningful by overly capturing the activity of small, inconsequential donors. Coupled with the serious harassment issues inherent in the disclosure of contributor information, to truly improve transparency, it would be wise to amend this legislation by raising the current reporting thresholds from their existing $250 level in order to provide the concerned citizens of Nebraska with disclosure information that plainly reveals significant contributors to campaigns.

Thank you for allowing me to submit comments on Legislative Bill 79. I hope you will find this information helpful. Should you have any further questions regarding this legislation or any other campaign finance proposals, please do not hesitate to contact me at (703) 894-6835 or by e-mail at mnese@campaignfreedom.org.

Respectfully yours,

Matt Nese
Director of External Relations
Center for Competitive Politics

The Washington Post

# I Got Inspired. I Gave. Then I Got Scared.

By Gigi Brienza, July 1, 2007

Standing in a crowd on a cold and rainy New Hampshire day in January 2004, a few weeks before the presidential primary there, I listened to John Edwards give a moving speech about poverty in America. I went home to New Jersey and wrote him a $500 check.

My donation didn't propel Edwards to his target atop the Democratic ticket. It did, however, make me the target of an extremist animal rights organization, a consequence of transparency in campaign fundraising that still makes me wary when I open my mail.

About a year ago, I was contacted by the corporate security department at Bristol-Myers Squibb, where I worked at the time, alerting me to the fact that my name and home address appeared on a list of "targets" issued by the radical group Stop Huntington Animal Cruelty. The singular goal of that organization, which the FBI named in 2005 as one of the most serious domestic terrorism threats, is to put Huntington Life Sciences, a contract animal testing laboratory it accuses of abuse, out of business. Because Bristol-Myers Squibb, like many others, contracted with that lab in pharmaceutical development research, the animal rights group added my name to its target list. My address was printed under the message: "Now you know where to find them."

Among the 100 or so of my colleagues who appeared on the list along with me were an accountant, a human resources manager and some sales guys. I was a materials sourcing manager, buying things such as binding agents and aspirin for common medications: hardly the ingredients of controversy. At no time did I have any involvement with Huntington Life Sciences -- in fact, I didn't even know we had a relationship with the lab.

Despite that, I had the distinction of appearing on the list twice: once under Gigi Brienza, and once under my given first name, which is different. It was this double-naming that signaled to me at once that SHAC had culled my information from campaign contribution records, as I had made donations under both names in the 2004 presidential election cycle. The FBI has confirmed the connection. While my $500 donation to Edwards and a subsequent $250 donation to Ralph Nader in the general election certainly didn't represent campaign money to bolster the interests of Big Pharma, it was enough to put me on SHAC's list.

The group went after anyone it thought was complicit, however remotely, in animal cruelty. Laws intended to protect our democracy made its targeting efforts that much easier. In an effort to limit individual influence on the outcome of federal elections, the law requires disclosure of individual donations of $200 or more. When I wrote those checks, I added my name, address and

place of employment to a publicly searchable database on the Federal Election Commission's Web site.

Luckily, SHAC's members didn't find me and I stayed safe. Now most of the organization's leaders are in federal prison, convicted of employing terror tactics and harassment in its animal rights campaign. But the experience has left its mark.

In recent weeks, as I've sorted through donation requests from the presidential candidates, not only am I unsure about whom to support, I am also uncertain about whether to participate in the fundraising process. If I am moved to write a check, however, I will limit my contribution to $199.99: the price of privacy in an age of voyeurism and the cost of security in an age of domestic terrorism.

*The above article, "I Got Inspired. I Gave. Then I Got Scared.," can be accessed at*:
http://www.washingtonpost.com/wp-dyn/content/article/2007/06/29/AR2007062902264.html.