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## **Freedom vs. transparency in campaign finance reform**

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If you spend more than \$500 to speak out about Michigan government policies, Secretary of State Ruth Johnson wants to subject you to registration and reporting requirements that are comparable to those imposed on sex offenders. That's an odd way to encourage civic participation.

Under Secretary Johnson's recently proposed regulations, beginning 30 days before a primary or 60 days before a general election, anyone whose speech is deemed to be "endorsing or condemning [a] candidate's position or stance on issues" is subject to an extensive regulatory scheme. Worse, it isn't even clear what it *means* to "endorse or condemn" a "position or stance."

By this vague, overly restrictive standard, even this article criticizing Johnson's proposed rule would constitute regulated speech if it were published during that timeframe when she is running for re-election or election to another office. While there is a special exemption under the law for newspaper editorials and commentary, if this piece were published as a paid insert or flier, the sponsor would have to file burdensome reports for the expenditure. It is obvious how such a rule can be self-serving for those in power.

Moreover, the proposal doesn't even necessarily require that a communication name any specific candidates for office. Rather, a "clear inference" of endorsement or condemnation of a candidate's "position or stance on issues" will suffice. Thus, a flier that merely criticizes a well-known legislative proposal and generically urges the public to contact their representatives to express their opposition could be construed as a regulated campaign expenditure made for or against any candidate associated with the bill.

Applied in conjunction with Michigan's existing campaign finance laws, Johnson's proposed rule would require a group that spends over merely \$100 on this type of regulated speech to report their expenditures within 10 days to their local county clerk's office, including the names and addresses of all vendors, as well as the name, address, occupation, employer, and place of business of everyone who contributed more than \$100 to the expenditure.

The barrage of oppressive requirements gets even worse once a group raises or spends as little as \$500 in a year, upon which they must register as a political committee (PAC) within 10 days. At least four times a year, a PAC must publicly report the names and addresses of all of its contributors, regardless of the amount given, and if a contributor gives over \$100 in total, their occupation, employer and principal place of business must be reported as well. PACs also must publicly report the names and addresses of all of their payees who receive more than \$50 and the purpose of each expenditure.

The Michigan State Bar, which supports applying these rules to citizens' speech about judicial candidates, claims all of these requirements are merely "disclosure" that the United States Supreme Court upheld in its Citizens United ruling. How an organization that is supposed to uphold standards of professionalism in the law can arrive at this plain misreading of the court's opinion is incomprehensible. In fact, the court in Citizens United called PACs "burdensome," "onerous," "expensive to administer and subject to extensive regulations," and essentially "a ban on speech" if organizations were forced to speak about political issues only through PACs.

Johnson further claims "the public has a right to know who is behind" political advertising, implying that the current law permits the type of anonymous speech that fostered essential tracts like the pseudonymous Federalist Papers during this nation's founding. But Michigan law *already* prohibits anonymous speech by requiring all printed materials that refer to a candidate, election, or ballot measure to state the sponsor's true name and address, while the Federal Communications Commission also requires all radio and television ads to include the sponsor's name.

SB 661 would reaffirm current Michigan law, which reserves the burdens of registering and reporting as a PAC only to those groups whose speech clearly advocates the election or defeat of candidates. Consistent with the Supreme Court's rulings, this is the appropriate place at which to draw the line because it gives grassroots citizens' groups the breathing room to freely criticize or applaud what their government is doing.

The proposed legislation reaffirms the protections in the First Amendment that help keep elected officials accountable to the people. At stake is nothing less than Michiganians' fundamental right to speak out about their government officials without having to register and report to those officials.