



December 13, 2016

**ANALYSIS OF NEW JERSEY  
CAMPAIGN FINANCE LEGISLATION A. 3639 AND A. 3902**

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The Center for Competitive Politics (CCP)<sup>2</sup> provides the following analysis of A. 3639 and A. 3902.<sup>3</sup> Upon information and belief, these campaign finance bills, which were introduced earlier this year, may be considered during the remainder of New Jersey's 217th Legislature.<sup>4</sup>

A. 3639 and A. 3902, which contain many of the same substantive provisions, would subject advocacy groups, labor unions (A. 3639), and trade associations (A. 3639) to unconstitutionally vague, broad, and invasive new “disclosure” requirements for merely providing factual information to their members and the public about matters of public concern. These chilling requirements would violate the freedom to associate of those organizations’ members and donors and would invite threats, harassment, and violence against those organizations’ members, donors, employees, and officers. Even if such terrible consequences did not materialize, A. 3639 and A. 3902 would still, at a minimum, impose prohibitive administrative and legal costs on these organizations. All of these consequences are ones that the New Jersey Election Law Enforcement Commission (“ELEC”), in applying binding U.S. Supreme Court rulings, has explained may not constitutionally be imposed on groups that do not have as their “‘major purpose’ the support or opposition of candidates.”<sup>5</sup>

The torrent of punitive burdens that these bills would rain down on the building blocks of civil society is a direct assault on participatory democracy. Both bills would have the opposite effect of their purported goal of enhancing political transparency. Instead, the bills would diminish

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<sup>2</sup> The Center for Competitive Politics is a nonpartisan, nonprofit 501(c)(3) organization that promotes and protects the First Amendment political rights of speech, assembly, and petition. It was founded in 2005 by Bradley A. Smith, a former Chairman of the Federal Election Commission. In addition to scholarly and educational work, the Center is actively involved in targeted litigation against unconstitutional laws at both the state and federal levels. For instance, we presently represent nonprofit, incorporated educational associations in challenges to state campaign finance laws in Colorado. We are also involved in litigation against the state of California.

<sup>3</sup> A. 3639 (217th Legis. Session), as introduced (*hereinafter*, “A. 3639”) and A. 3902 (217th Legis. Session), as introduced (*hereinafter*, “A. 3902”) were introduced on April 14, 2016 and June 16, 2016, respectively and referred to the Assembly Judiciary Committee. S. 2430, a companion bill to A. 3902, was introduced on June 27, 2016 and referred to the Senate State Government, Wagering, Tourism & Historic Preservation Committee.

<sup>4</sup> Each legislative session in New Jersey is for a term of two years, and all business from the first year may be continued into the second year. See “Our Legislature,” New Jersey Legislature. Retrieved on December 13, 2016. Available at: <http://www.njleg.state.nj.us/legislativepub/our.asp> (2016).

<sup>5</sup> ELEC, Adv. Op. No. 01-2011 (April 27, 2011) at 5.

accountability and make government more opaque by silencing civic organizations trying to monitor and publicize the actions of elected representatives.

Examples of commonplace activities that would trigger these draconian requirements, if either of these bills were to become law, include:

- Sending a legislative alert for members or the public to contact their elected state officials about a pending bill (such as A. 3639 or A. 3902)
- Circulating an informational document that presents opposing arguments for and against a state ballot measure
- Publicizing a mayor's town hall meeting
- Publishing city council members' voting records

## I. A. 3639

### A) Overview of A. 3639

A. 3639 would create a new category of regulated entities under New Jersey's campaign finance law known as "independent expenditure groups" (*hereinafter*, "IE groups"). The bill would define such groups as any organization formed or operating under sections 501(c)(4) (advocacy groups), (c)(5) (labor unions), (c)(6) (trade associations), and 527 (political organizations) of the federal Internal Revenue Code, so long as the organization:

engages in *influencing or attempting to influence* the outcome of any election or the nomination, election, or defeat of any person to any State or local elective public office, or the passage or defeat of any public question, or *in providing political information* on any candidate or public question,<sup>6</sup> and raises or expends \$5,000 or more in the aggregate for any such purpose, but does not coordinate its activities with any candidate or political party.<sup>7</sup>

Although A. 3639 would not formally regulate "IE groups" as political committees by name, in practice, an "IE group" would be subject to the same regulatory burdens, such as:

- Being required to register with the New Jersey Election Law Enforcement Commission and providing, among other information, the names, "*home address[es]*," and "name and mailing address of the individual's employer" of any individual who —
  - participates in forming the "IE group";
  - runs the group;
  - "direct[s] or suggest[s]" the group's fundraising; or

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<sup>6</sup> Although A. 3639 does not appear to define "public question," we assume the definition of this term under ELEC's existing regulations would continue to apply. Under those regulations, a "public question" is what is commonly known as a ballot measure or initiative. *See* N.J. Admin. Code § 19:25-1.7.

<sup>7</sup> A. 3639 § 1 (to be codified at N.J. Stat. § 19:44A-3(t)) (emphasis added).

- who participates in the group’s decisions “to expend funds for the purpose of influencing or attempting to influence the outcome of any election . . . or in providing political information on any candidate or public question.”<sup>8</sup>
- Being required to file quarterly reports on the same basis as political party committees and legislative leadership committees, which must itemize:
  - “all moneys . . . contributed to [the group] during the period . . . and all expenditures made, incurred, or authorized by [the group] during the period,” regardless of “whether or not such expenditures were made, incurred or authorized in furtherance of the election or defeat of any candidate, or in aid of the passage or defeat of any public question or to provide information on any candidate or public question.” Individual contributors’ names, “home address[es],” occupations, and the names and mailing addresses of their employers also must be reported.<sup>9</sup>
- Being required to file certain expedited reports under a convoluted array of thresholds, schedules, and unclear standards for the activities triggering such reports:
  - any time the group receives contributions or makes expenditures of more than \$300 “in influencing or attempting to influence the outcome of any election . . . or in providing political information on any candidate or public question.”<sup>10</sup>
    - For expenditures, this particular reporting requirement purports to only apply to expenditures “for a communication that *can be* interpreted by a reasonable person as advocating: (1) the election or defeat of a candidate for nomination or election to an elective public office, taking into account whether the communication mentions a candidate or takes a position on a candidate’s character, qualifications, or fitness for the public office; or (2) the passage or defeat of a public question.”<sup>11</sup> However, the reporting requirement for receiving “contributions” (which also includes reporting donors’ names, addresses, and employer information) is broader and appears to cover funds donated for any purpose whatsoever.<sup>12</sup> In addition, the basic registration and reporting requirements for “IE groups” appear to be triggered by the broader universe of activities discussed above.<sup>13</sup>
    - These reports must be filed “on the same schedule as required in current law for political committees and continuing political committees” – which appears to be a reference to the 13-day period preceding each election.<sup>14</sup>

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<sup>8</sup> *Id.* § 3 (to be codified at N.J. Stat. § 19:44A-8.1(a)(3)) (emphasis added).

<sup>9</sup> *Id.* § 2 (to be codified at N.J. Stat. § 19:44A-8(c)) (emphasis added).

<sup>10</sup> *Id.* § 2 (to be codified at N.J. Stat. § 19:44A-8(d)(1)).

<sup>11</sup> *Id.* § 2 (to be codified at N.J. Stat. § 19:44A-8(d)(2)) (emphasis added).

<sup>12</sup> *Id.* §§ 2 (to be codified at N.J. Stat. §§ 19:44A-8(d)(1) (reporting requirement)) and 1 (to be codified at N.J. Stat. § 19:44A-3(d) (defining “contributions”)).

<sup>13</sup> Compare *id.* § 2 (to be codified at N.J. Stat. § 19:44A-8(d)(2)) with *id.* § 1 (to be codified at N.J. Stat. § 19:44A-3(t)).

<sup>14</sup> *Id.* § 2 (to be codified at N.J. Stat. §§ 19:44A-8(d)(2) and -8(a)(1)); see also “2015 Compliance Manual for Political Committees,” New Jersey Election Law Enforcement Commission. Retrieved on December 13, 2016. Available at: [http://www.elec.state.nj.us/pdf/files/forms/compliance/man\\_pc.pdf](http://www.elec.state.nj.us/pdf/files/forms/compliance/man_pc.pdf) (March 2015), p. 22.

- any time between the end of a quarterly reporting period and before an election if the group receives contributions from “one or more sources” totaling more than \$500.<sup>15</sup>
- any time between March 31 and the primary election or between September 30 and the general election if the group makes “one or more expenditures” totaling more than \$800, “or incurs any obligation therefor [*sic*], to support or defeat a candidate in an election, or to aid the passage or defeat of any public question.”<sup>16</sup>
  - Unlike the expenditures report triggered by the \$300 threshold, the expenditures report triggered by the \$800 threshold does not appear to be limited to expenditures “for a communication that *can be* interpreted by a reasonable person as advocating . . . the election or defeat of a candidate . . . .”<sup>17</sup>
- Being subject to the same organizational, depository, and recordkeeping requirements and strict deadlines for depositing contributions as PACs.<sup>18</sup>
- Being prohibited from accepting contributions from certain entities that have contracts with any state executive or legislative branch agency, county, municipality, local board of education, or fire district, as well as from certain persons and entities affiliated with such contractors.<sup>19</sup>

## **B) Constitutional Problems With A. 3639**

A. 3639 suffers from the duo of interrelated vagueness and overbreadth violations that comprise much of First Amendment law. As the U.S. Supreme Court has stated, “[W]here a vague statute ‘abut[s] upon sensitive areas of basic First Amendment freedoms,’ it ‘operates to inhibit the exercise of [those] freedoms.’ Uncertain meanings inevitably lead citizens to ‘steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked.’”<sup>20</sup> Even when a law “merely” imposes registration and reporting requirements on political speakers, the Supreme Court has ruled that such requirements still “burden the ability to speak,” and are subject to an “exacting scrutiny” standard of judicial review.<sup>21</sup>

Accordingly, as ELEC has explained, “Under the constitutional parameters for the protection of First Amendment rights of political expression established by the U.S. Supreme Court . . . a communication must contain explicit words of advocacy of election or defeat of a candidate in order to be subject to the campaign recordkeeping and reporting requirements of federal or State reporting legislation.”<sup>22</sup>

<sup>15</sup> *Id.* § 2 (to be codified at N.J. Stat. § 19:44A-8(e)).

<sup>16</sup> *Id.*

<sup>17</sup> Compare *id.* with *id.* § 2 (to be codified at N.J. Stat. § 19:44A-8(d)(2)) (emphasis added).

<sup>18</sup> *Id.* §§ 4, 5, and 10.

<sup>19</sup> *Id.* §§ 13-23; see also N.J. Admin. Code § 19:25-24.1 (defining “business entity”).

<sup>20</sup> *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972) (internal citations omitted).

<sup>21</sup> *Citizens United v. FEC*, 558 U.S. 310, 366 (2010).

<sup>22</sup> ELEC, Adv. Op. No. 10-2001 (October 4, 2001) at 2 (citing *Buckley v. Valeo*, 424 U.S. 1, 40-45 (1976)).

Admittedly, in the 15 years since ELEC’s pronouncement on this particular point, the U.S. Supreme Court has slightly expanded the universe of political speech that may be subject to regulation (under both vagueness and overbreadth concerns) to include certain “electioneering communications” that “refer[] to a clearly identified candidate” within certain limited pre-election time windows,<sup>23</sup> as well as communications that are the “functional equivalent” of express advocacy.<sup>24</sup> As to the latter, the Court held that “an ad is the functional equivalent of express advocacy *only if* the ad is susceptible of *no reasonable interpretation other than* as an appeal to vote for or against a specific candidate.”<sup>25</sup> Arguably, this “functional equivalent” standard may “only [be] triggered if the speech meets the bright line requirements of [an electioneering communication] in the first place.”<sup>26</sup>

A. 3639 fails the constitutional constraints imposed by the First Amendment on account of both overbreadth and vagueness. First, A. 3639 defines the types of communications that would subject a speaker to regulation as an “independent expenditure group” to include those that “influenc[e] or attempt to influence the outcome of any election,” or that “provid[e] political information on any candidate or public question.”<sup>27</sup> This standard goes far beyond New Jersey’s current regulation of “political communications”<sup>28</sup> and “independent expenditures,”<sup>29</sup> which ELEC has determined may apply only to express advocacy and not “issue advocacy.”<sup>30</sup> More importantly, the standard in A. 3639 also goes far beyond what the U.S. Supreme Court has permitted.

The bill’s regulation of any communications “providing political information on any candidate or public question” covers an incredibly exhaustive, overbroad universe of speech. The bill would rely on the existing statutory definition of “political information,” which includes “any statement . . . which reflects the opinion of the members of the organization on any candidate or candidates for public office, on any public question, or which contains *facts* on any such candidate, or public question whether or not such facts are within the personal knowledge of members of the organization.”<sup>31</sup>

Thus, an advocacy group, labor union, or trade association could be subject to the onerous registration, reporting, and administrative requirements and donor prohibitions described above even if it merely provides *purely factual information* about any elected official<sup>32</sup> or ballot measure, such as:

- Sending a legislative alert for members or the public to contact their elected state officials about a pending bill (such as A. 3639)

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<sup>23</sup> See *McConnell v. Fed. Election Comm’n*, 540 U.S. 93 (2003) and 52 U.S.C. 30104(f)(3)(A).

<sup>24</sup> *Fed. Election Comm’n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (“*WRTL II*”).

<sup>25</sup> *Id.* at 469-470 (emphasis added).

<sup>26</sup> *Id.* at 474 n.7.

<sup>27</sup> A. 3639 § 1 (to be codified at N.J. Stat. § 19:44A-3(t)).

<sup>28</sup> N.J. Admin. Code § 19:25-10.10.

<sup>29</sup> *Id.* § 19:25-12.7. The current definition of an “independent expenditure” depends on whether a communication is made to “support or defeat a candidate.” *Id.* Because A. 3639 uses the standard of whether a communication “influenc[e]s or attempt[s] to influence” an election, the bill presumably intends this to be a different standard than that in the existing law.

<sup>30</sup> ELEC, Adv. Op. No. 01-2011 (April 27, 2011) at 3-4.

<sup>31</sup> See A. 3639 § 1 and N.J. Stat. § 19:44A-3(h) (emphasis added).

<sup>32</sup> Elected officials generally would meet the definition of a “candidate.” See A. 3639 § 1 (to be codified at N.J. Stat. § 19:44A-3(c)).

- Circulating an informational document that presents opposing arguments for and against a state ballot measure
- Publicizing a mayor's town hall meeting
- Publishing city council members' voting records

As the U.S. Supreme Court has held, campaign finance reporting requirements “could be justified based on a governmental interest in ‘provid[ing] the electorate with information’ about the sources of election-related spending.”<sup>33</sup> However, the types of speech that A. 3639 would regulate go far beyond anything that could reasonably be regarded as “election-related.” And although A. 3639 provides for a \$5,000 expenditures threshold before those requirements would be triggered, the threshold does not appear to be limited to any time period. Thus, an organization could easily trigger this threshold by engaging in these types of communications over a period of several years.

A. 3639 also is not limited to imposing registration and reporting requirements on “IE groups.” As discussed above, it also subjects such organizations to New Jersey’s so-called “pay-to-play” contribution prohibitions. Such contribution prohibitions must be justified by “a ‘sufficiently important’ governmental interest in ‘the prevention of corruption and the appearance of corruption.’”<sup>34</sup> A. 3639 fails this test because its contribution prohibitions are not sufficiently narrowly tailored. For example, an organization that becomes an “IE group” by virtue of “providing political information” about local elected officials in Sussex County would be prohibited from accepting donations from someone who has contracts with a fire district in Cape May. Even if distributing factual information about local elected officials or ballot measures could be said to present a danger of corruption (which it does not), engaging in such activities in one New Jersey county has as much to do with a local fire district’s vendors in another county as the proverbial “price of tea in China.”

Lastly, and importantly, A. 3639 also fails the overbreadth doctrine because it would subject organizations to these onerous requirements and prohibitions even if “providing political information” is only a small fraction of the group’s activities. As ELEC has noted, in order to be required to register and report as a political committee, “an entity must have as its ‘major purpose’ the support or opposition of candidates in order to comply with constitutional requirements set forth [by the U.S. Supreme Court] in *Buckley [v. Valeo]* . . . . The Commission does not believe that the recent federal case law compels the Commission to apply a different analysis . . . .”<sup>35</sup> ELEC’s pronouncement on this particular point was made in 2011, and continues to be an accurate statement of the applicable law.<sup>36</sup> If an organization may not constitutionally be regulated as a

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<sup>33</sup> *Citizens United*, 558 U.S. at 367 (quoting *Buckley*, 424 U.S. at 66). CCP does not necessarily agree with this policy rationale or governmental interest the Court has articulated, and notes that research calls into question this proposition. *See, e.g.*, David M. Primo, Ph.D., “Full Disclosure: How Campaign Finance Disclosure Laws Fail to Inform Voters and Stifle Public Debate,” Institute for Justice. Retrieved on December 13, 2016. Available at: [http://www.ij.org/images/pdf\\_folder/other\\_pubs/fulldisclosure.pdf](http://www.ij.org/images/pdf_folder/other_pubs/fulldisclosure.pdf) (October 2011).

<sup>34</sup> *Id.* at 345 (quoting *Buckley*, 424 U.S. at 25).

<sup>35</sup> ELEC, Adv. Op. No. 01-2011 (April 27, 2011) at 5-6.

<sup>36</sup> The “major purpose” standard, admittedly, has not been followed universally in the various U.S. district courts and courts of appeals. *See Corsi, et al. v. Ohio Elections Comm’n*, U.S. Sup. Ct. No. 12-1442, Pet. for Writ of Certiorari (filed Jun. 11, 2013) at 13-16, *cert. denied* 134 S. Ct. 163 (2013). However, we are not aware of any rulings on this issue by the U.S. Court of Appeals for the Third Circuit (in whose jurisdiction New Jersey lies) or the U.S. Supreme Court, since ELEC issued Advisory Opinion No. 01-2011. Thus, ELEC’s statement of U.S. Supreme Court precedent has not been superseded.

political committee unless its “major purpose” is to “support or oppos[e]” candidates, then certainly A. 3639 also may not seek to regulate groups as political committees for merely “providing political information” as one of the group’s incidental activities.

A. 3639 also fails the vagueness doctrine by relying on standards with “[u]ncertain meanings” that fail to articulate any “clearly marked” bright-line “boundaries” under which speech about an elected official or ballot measure may be subject to regulation.<sup>37</sup> Specifically, the bill’s regulation of speech that “influenc[es] or attempt[s] to influence the outcome of any election” goes far beyond the regulation of express advocacy, the “functional equivalent” of express advocacy, and “electioneering communications” that the U.S. Supreme Court has approved.<sup>38</sup> The requirement to report communications “that *can be* interpreted by a reasonable person as” election advocacy is also materially different, and far more expansive, than the “*no reasonable interpretation other than as*” election advocacy standard that the Court has approved.<sup>39</sup> The two standards under which speech would be regulated by A. 3639 cover an indeterminable universe of speech, and impermissibly leave speakers at the mercies, whims, and prejudices of government regulators.

### C) Additional Specific Examples of A. 3639’s Overbreadth Problems

It is one thing to discuss in the abstract constitutional doctrines of vagueness and overbreadth, but these problems really hit home when one considers some real-life consequences that A. 3639 is likely to create.

#### 1. The Bill’s “Disclosure” Requirements Will Facilitate Threats and Harassment Against Employees and Donors.

In today’s highly polarized and, unfortunately, sometimes violent political environment, we have seen (from all sides of the political spectrum):

- Death threats made against individuals for their political contributions to candidates<sup>40</sup>
- Death threats made against individuals for their political contributions to ballot measure committees<sup>41</sup>
- Threats and harassment against employees of advocacy groups at their workplaces and homes due to their groups’ positions<sup>42</sup>

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<sup>37</sup> *Grayned*, 408 U.S. at 109.

<sup>38</sup> *Buckley*, 424 U.S. at 40-45; *WRTL II*, 551 U.S. at 469-470; *McConnell*, 540 U.S. 93.

<sup>39</sup> *WRTL II*, 551 U.S. at 469-470 (emphasis added).

<sup>40</sup> *See, e.g.*, Casey Sullivan, “After Clinton Donation, Legal Recruiter Complains of Death Threat,” *Bloomberg Law*. Retrieved on December 13, 2016. Available at: <https://bol.bna.com/after-clinton-donation-legal-recruiter-complains-of-death-threat/> (October 11, 2016).

<sup>41</sup> *See, e.g.*, Brad Stone, “Prop 8 Donor Web Site Shows Disclosure Law Is 2-Edged Sword,” *The New York Times*. Retrieved on December 13, 2016. Available at: <http://www.nytimes.com/2009/02/08/business/08stream.html> (February 7, 2009).

<sup>42</sup> *See, e.g.*, Donna Lieberman and Irum Taqi, “Testimony of Donna Lieberman and Irum Taqi on Behalf of the New York Civil Liberties Union Before the New York City Council Committee on Governmental Operations Regarding Int. 502-b, in Relation to the Contents of a Lobbyist’s Statement of Registration,” New York Civil Liberties Union. Retrieved on December 13, 2016. Available at: <http://www.nyclu.org/content/contents-of-lobbyists-statement-of-registration>; Tracie Sharp and Darcy Olsen, “Beware of Anti-Speech Ballot Measures,” *The Wall Street Journal*. Retrieved on December 13, 2016. Available at: <http://www.wsj.com/articles/beware-of-anti-speech-ballot-measures-1474586180> (September 22, 2016).

- Death threats made against newspapers for their political endorsements<sup>43</sup>
- Death threats made against delegates to both major political parties' nominating convention<sup>44</sup>

A. 3639 would facilitate these types of threats and harassment by requiring donors to nonprofit groups to be publicly identified with activities deemed to be “political” on campaign finance reports, even if: (1) those activities consist merely of providing factual information to the public and the groups’ members about their state and local government and issues of public concern; or (2) if political activities are only an incidental part of a group’s overall activities, and the donors did not contribute specifically to support those political activities. Notwithstanding all this, A. 3639 would require donors’ home addresses and employer information, as well as the home addresses of many of the groups’ officers and employees, to be publicly reported.

The overbreadth of A. 3639’s “disclosure” requirements fail to be “justified based on a governmental interest in ‘provid[ing] the electorate with information’ about the sources of election-related spending.”<sup>45</sup> Rather, the “disclosure” requirement appears to be calculated at burdening, intimidating, and punishing civic groups into silence. This is especially true for groups involved in controversial social issues, such as Planned Parenthood, New Jersey Right to Life, the Human Rights Campaign, or the National Organization for Marriage, just to name a few examples.

## 2. Extending New Jersey’s “Pay-to-Play” Law to “IE Groups” Is Likely to Make Fundraising and Donating to Nonprofit Groups Cost-Prohibitive.

Not only is A. 3639 overbroad in applying New Jersey’s “pay-to-play” law to donors in local jurisdictions where an “IE group” has no activities (as discussed above), but the bill also will make it prohibitively expensive in general for nonprofit groups to fundraise, and for donors to give, in the state.

Based on this author’s personal experience with advising clients on state “pay-to-play” laws, the legal costs of vetting prospective donors to organizations that trigger “IE group” status to ensure that they are not prohibited state or local government contractors could routinely approach \$1,000, and could often cost thousands of dollars. Vetting on the donor side also would require similar legal costs. Thus, fundraising in New Jersey could become cost-prohibitive for many nonprofit organizations. Alternatively, organizations may see their donor pool dry up as potential donors decide that the costs of legal compliance associated with donating to nonprofit groups in the state are simply too high. Again, these costs are an unreasonable imposition for civic groups that merely provide factual information to the public and their members about issues of state and local government, or that incidentally advocate for or against candidates or ballot

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<sup>43</sup> See, e.g., Kelsey Sutton, “Arizona Republic receives death threats after Clinton endorsement,” *Politico*. Retrieved on December 13, 2016. Available at: <http://www.politico.com/blogs/on-media/2016/09/arizona-republic-receives-death-threats-for-clinton-endorsement-228889> (September 29, 2016).

<sup>44</sup> See, e.g., Alan Rappoport, “From Bernie Sanders Supporters, Death Threats Over Delegates,” *The New York Times*. Retrieved on December 13, 2016. Available at: [http://www.nytimes.com/2016/05/17/us/politics/bernie-sanders-supporters-nevada.html?\\_r=0](http://www.nytimes.com/2016/05/17/us/politics/bernie-sanders-supporters-nevada.html?_r=0) (May 16, 2016); Eli Stokols and Kyle Cheney, “Delegates face death threats from Trump supporters,” *Politico*. Retrieved on December 13, 2016. Available at: <http://www.politico.com/story/2016/04/delegates-face-death-threats-from-trump-supporters-222302> (April 22, 2016).

<sup>45</sup> *Citizens United*, 558 U.S. at 367. See also note 33, *supra*.

measures. These costs fail to be justified by “a ‘sufficiently important’ governmental interest in ‘the prevention of corruption and the appearance of corruption.’”<sup>46</sup>

### 3. The Requirement for 527 Organizations to Also Register and Report in New Jersey is Gratuitous.

As overtly political groups, 527 organizations are already required to publicly report with the IRS their donors of \$200 or more if they are not reporting under state campaign finance laws.<sup>47</sup> Thus, A. 3639’s requirement for 527 organizations to file mostly duplicative reports in New Jersey is a gratuitous transaction cost imposed on such groups simply for exercising their right to speak that serves no legitimate governmental interest.

## II. A. 3902

A. 3902 appears to be modeled largely on A. 3639, although A. 3902 would not impose quite so many harms as its more evil twin. Specifically, A. 3902 does not purport to apply to 501(c)(5) and (c)(6) organizations (labor unions and trade associations, respectively).<sup>48</sup> Additionally, A. 3902 does not appear to extend New Jersey’s “pay-to-play” law to “IE groups” or “independent expenditure committees” (which is the terminology A. 3902 prefers to use for the same concept). However, like A. 3639, A. 3902 would still subject “independent expenditure committees” (*hereinafter*, “IE committees”) to the same general registration, reporting, and administrative burdens as political committees.<sup>49</sup>

Under A. 3902, an organization would have to register and report as an IE committee if it “engages in *influencing or attempting to influence* the outcome of any election . . . or in *providing political information* on any candidate or public question” and it “raises or expends \$3,000 or more in the aggregate for any such purpose annually.”<sup>50</sup> While A. 3902’s \$3,000 threshold is slightly lower than A. 3639’s \$5,000 threshold, at least the \$3,000 threshold resets annually under A. 3902, whereas the \$5,000 threshold looms indefinitely under A. 3639 (as discussed above).

Regardless of these subtle differences, for the purposes of the constitutional and substantive flaws in these two bills, these differences are immaterial. Accordingly, CCP incorporates by reference and applies all of its analysis of A. 3639 to A. 3902, with the exception of the discussion of A. 3639’s expansion of New Jersey’s “pay-to-play” law.

## III. Increase in Contribution Limits

Both A. 3639 and A. 3902 would modestly increase New Jersey’s existing limits on contributions to candidates, joint candidate committees, legislative leadership committees,

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<sup>46</sup> *Id.* at 345 (quoting *Buckley*, 424 U.S. at 25).

<sup>47</sup> See, e.g., “Instructions for Form 8872,” Internal Revenue Service. Retrieved on December 13, 2016. Available at: <https://www.irs.gov/pub/irs-pdf/i8872.pdf> (October 2014).

<sup>48</sup> See A. 3902 § 1 (to be codified at N.J. Stat. § 19:44A-3(t)).

<sup>49</sup> See *id.* (to be codified at N.J. Stat. § 19:44A-3(t), (n), and (i)); see also *id.* §§ 2 (to be codified at N.J. Stat. §§ 19:44A-8(b)(2) and (c) (quarterly reports), -8(a)(1) and (d) (expedited reports), and -8(d)(2) (recordkeeping requirements), 3 (to be codified at N.J. Stat. § 19:44A-8.1 (registration), 5 (to be codified at N.J. Stat. § 19:44A-11) (organizational requirements), and 9 (to be codified at N.J. Stat. § 19:44A-12) (contributions deposit deadline).

<sup>50</sup> *Id.* § 1 (to be codified at N.J. Stat. § 19:44A-3(t)) (emphasis added).

political party committees, and other political committees.<sup>51</sup> CCP and this author generally support increasing contribution limits,<sup>52</sup> and commend the bills' sponsors for these provisions.

However, these modest enhancements to the First Amendment rights of donors, candidates, political parties, and PACs are far outweighed by the great constitutional and practical harms these bills would otherwise impose on nonprofit civic groups and their members, donors, and staff. Whether fair or not, in the present populist political environment, the narrative that is likely to emerge in light of these disparate provisions is that these bills are a cynical attempt by politicians and elected officials to “rig the system” in their own favor and against so-called “outside groups.” Thus, to the extent the proposed contribution limit increases are an attempt to induce legislative support for what are otherwise repugnant new burdens on constitutionally protected speech and the freedom of association, New Jersey legislators should not fall for this trap.

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<sup>51</sup> See A. 3639 §§ 7-9 and A. 3902 §§ 6-8.

<sup>52</sup> See “Campaign Contribution Limits: A Cap on Free Speech,” Center for Competitive Politics. Retrieved on December 13, 2016. Available at: [http://www.campaignfreedom.org/wp-content/uploads/2014/07/2014-07-18\\_Policy-Primer\\_Contribution-Limits.pdf](http://www.campaignfreedom.org/wp-content/uploads/2014/07/2014-07-18_Policy-Primer_Contribution-Limits.pdf) (July 18, 2014) and Eric Wang, “An alternative to nonstop political fundraising,” *The Washington Times*. Retrieved on December 13, 2016. Available at: <http://www.washingtontimes.com/news/2016/feb/8/eric-wang-an-alternative-to-non-stop-political-fun/> (February 8, 2016).