CENTER for COMPETITIVE POLITICS

Congress shall make no law...

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April 14, 2017

The Honorable Joe Aresimowicz
Legislative Office Building
Room 4105
Hartford, CT 06106-1591

The Honorable Themis Klarides
Legislative Office Building
Room 4200
Hartford, CT 06106-1591

RE: Significant Constitutional and Practical Issues with House Bill 5589

Dear Speaker Aresimowicz, Minority Leader Klarides, and Members of the Connecticut House of Representatives:

On behalf of the Center for Competitive Politics ("Center"), we respectfully submit the following comments addressing significant constitutional and practical concerns with House Bill 5589,[1] which is currently on the House Calendar. Under the ruse of "transparency," this bill threatens fundamental First Amendment rights in a multitude of ways, and certain of its provisions are very likely unconstitutional.

The Center is a nonpartisan, nonprofit § 501(c)(3) organization dedicated to the promotion and protection of 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 level. In the past year, the Center has secured judgments in federal court striking down laws in Colorado and Utah on First Amendment grounds and, pursuant to federal law, been awarded attorney's fees. The Center is currently involved in litigation against California, Missouri, and the federal government.

In particular, H.B. 5589 explicitly imposes a limit on contributions to organizations making only independent expenditures. This provision directly contravenes the universal guidance of the federal courts and is almost certainly unconstitutional. The bill also imposes onerous requirements that appear designed to combat improper coordination, but which would impermissibly reach entirely innocent conduct. Additionally, the law seeks second-order disclosure, which has never been approved by the Supreme Court, and creates numerous practical issues, outside of the constitutional concerns. Similarly, the bill's disclaimer provisions likely fail exacting scrutiny, as do its attempts to undo fundamental freedoms under the guise of a so-called "foreign threat." These flaws and rhetorical excesses suggest that H.B. 5589 should be rejected.

I. As written, the bill directly contradicts holdings of the Supreme Court and every federal circuit court of appeals to have considered whether contribution limits may be imposed on independent spending groups.

As drafted, Section 17(a) of H.B. 5589 imposes a limit on the amount of money that an independent expenditure-only political committee, or any group that makes independent expenditures, may receive from

[1] An Act Concerning Campaign Finance Reform, H.B. 5589, 2017 Jan. Sess. (CT 2017) (File No. 577) ("H.B. 5589").

a single donor.[2] That limit is "seventy thousand dollars in the aggregate." If enacted into law, this provision would be facially unconstitutional.

In 2010, the Supreme Court decided *Citizens United v. Federal Election Commission*.[3] In that case, the Court determined that "[n]o sufficient governmental interest justifies limits on the political speech" of an entity making independent political advertisements.[4] Two years later, in *American Tradition Partnership v. Bullock*, the Court explicitly extended that reasoning to the states.[5] The question was considered so elementary that the Court ruled without requesting briefing or argument.

Combined, *Citizens United* and *American Tradition Partnership* determined that no government may impose limits on organizations that only make independent expenditures. The federal government has recognized this fact by permitting the registration of independent expenditure-only committees, often called "super PACs", that may "raise funds in unlimited amounts," so long as the super PAC does "not use those funds to make contributions, whether direct, in-kind, or via coordinated communications."[6]

Indeed, every circuit court of appeal that has addressed the application of *Citizens United* to super PAC contribution limitations has invalidated such limits. In *New York Progress and Prosperity PAC v. Walsh*,[7] the United States Court of Appeals for the Second Circuit – which has federal jurisdiction over Connecticut – inveighed against a statute that functioned as a $150,000 limit on contributions to super PACs. The Court, explicitly relying on *Citizens United*, found that "a donor to an independent expenditure committee…may not be limited in his ability to contribute to such committees."[8] The other federal circuit courts of appeal have unanimously come to the same conclusion.[9]

There are a number of thorny First Amendment questions posed by campaign finance laws, and many are subjects of disagreement or careful distinction. The question of whether contribution limits may be imposed on super PACs is not one of them. The ability to give unlimited sums to an organization designed only to make independent expenditures is so inherently ingrained in constitutional law that, even *before* the Court decided *Citizens United*, the Fourth Circuit struck down a contribution limit North Carolina had imposed upon independent expenditure PACs.[10]

II. The "coordinated spender" definition is likely unconstitutionally vague.

If enacted, the law will define a "coordinated spender" as any group "directly or indirectly formed…in an election cycle or the one immediately preceding by, at the request or suggestion of, or with the encouragement or approval" of a candidate, committee, or an agent thereof.[11] Such approval or

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[2] The language of the provision could possibly mean that a group making independent expenditures may only receive $70,000 *in total* in donations. Presumably this is a scrivener's error. If not, this only compounds the constitutional problems at issue.
[3] 558 U.S. 310 (2010).
[4] *Citizens United*, 558 U.S. at 365.
[5] 567 U.S. 516 (2012).
[6] This language is taken from the FEC's cover letter that must be filed by independent expenditure committees registering with the Commission. *See* "Form 1, Statement of Organization—Unlimited Contributions," Federal Election Commission. Retrieved on April 14, 2017. Available at: http://www.fec.gov/pdf/forms/ie_only_letter.pdf.
[7] 733 F.3d 483 (2d Cir. 2013).
[8] 733 F.3d at 487.
[9] *SpeechNow.org v. Fed. Election Comm'n*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*); *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684 (9th Cir. 2010); *Wisc. Right to Life Inc. v. Barland*, 664 F.3d 139 (7th Cir. 2011); *Republican Party v. Kind*, 741 F.3d 1089 (10th Cir. 2013); *Worley v. Cruz-Bustillo*, 717 F.3d 1238 (11th Cir. 2013).
[10] *N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274, 293 (4th Cir. 2008).
[11] H.B. 5589, § 3(c)(1).

encouragement need not be overt – there is a rebuttable presumption that a coordinated expenditure is one made with mere "tacit understanding" of a candidate.[12]

As a threshold matter, the Supreme Court has ruled that presumptions of coordination are invalid; only *actual* coordination can transform independent political speech into the sort of masked political contribution H.B. 5589 seeks to regulate. In *Colorado Republican Federal Campaign Committee v. Federal Election Commission*,[13] the Court scolded the federal government for adopting a policy of presuming that all party expenditures were coordinated expenditures. It explicitly noted that "[a]n agency's simply calling an independent expenditure a 'coordinated expenditure' cannot (for constitutional purposes) make it one."[14] If this is the rule for political parties, which are about as intimately connected to their candidates as one may imagine campaign-wise, the Court's ruling is unquestionably also true for independent groups.

H.B. 5589 fails to properly limit its scope to truly coordinated speech. Instead, it attempts to sweep in activity done with the mere "tacit understanding" of a candidate. Indeed, if a candidate acknowledges the existence of an independent expenditure committee that is supportive of her election to office, and does not disavow all of that group's activities, a case could be made that she "tacitly" approves of the group's existence or communications. The addition of the word "entirely" into the presently existing definition for "independent expenditure," which would require that such an expenditure be "made *entirely* without the consent" of a candidate, further demonstrates the danger that virtually all favorable communications about a candidate will be deemed coordinated expenditures.[15]

The bill's use of the phrase "indirectly formed" further compounds this problem.[16] The formation of an organization is typically a direct activity – often accompanied by the filing of paperwork listing a group's incorporator and board members. How one could "indirectly" form an organization is inherently unclear, and the bill provides no definition of what such an indirect formation would look like. Nearly any connection between a candidate and an organization's birth, no matter how minute or vague, may well constitute "indirect" formation. All that is intelligible, then, is that "indirect formation" presumably has nothing to do with the direct production of an independent expenditure – the only grounds on which the Supreme Court has permitted regulation of independent speech.[17]

Moreover, these overreaching provisions are inherently vague. The Supreme Court has explained that laws must at times be struck down as "void for vagueness [because]…[a provision's] prohibitions are not clearly defined."[18]

> First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning.
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> Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them…

[12] H.B. 5589, § 3(e)(1).
[13] 518 U.S. 604 (1996).
[14] 518 U.S. at 621-622.
[15] H.B. 5589, § 3(a)(1) (emphasis added).
[16] H.B. 5589, § 3(c)(1).
[17] "'The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate.'" *Citizens United*, 558 U.S. at 357 (quoting *Buckley v. Valeo*, 424 U.S. 1, 47 (1976) (*per curiam*)).
[18] *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972) (citations and internal quotation marks omitted).

> Third…where a vague statute abuts 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.[19]

All of these concerns are implicated by H.B. 5589's coordinated spender definition, which ought to be revised and limited to the actual, knowing, and direct exchange of information between a candidate or her committee and an ostensibly independent organization. Given that organizations will be prohibited entirely from making independent expenditures if they are deemed to be "coordinated," such an easily understandable definition is necessary. Speech bans are, for obvious reasons, prohibited by the First Amendment, and that is all the more true when the targeted speech is "uttered during a campaign for political office" when "the First Amendment 'has its fullest and most urgent application.'"[20]

III. If enacted, the bill will remove protections designed to safeguard civil society from overregulation.

Current law requires the State Elections Enforcement Commission to make certain presumptions when determining whether an expenditure is truly made independently. House Bill 5589 expressly repeals a number of these safe harbors, all of which describe activity that does not "constitute evidence of consent, coordination[,] or consultation."[21] These presumptions protect against the overregulation of civil society and should be preserved.

Two of the presumptions simply involve a candidate fundraising for a group, or appearing at a group's events. In both cases, this would essentially prohibit candidates from appearing at events hosted by groups agreeing with their policy positions. Sponsorship of an event is a common action by groups that wish to promote their viewpoint. If the American Civil Liberties Union (ACLU) of Connecticut chooses to sponsor an event to honor investigative journalism, for example, and a candidate for office, who is an incumbent officeholder, agrees to be the keynote speaker, this ought not prohibit the ACLU from later supporting that candidate's re-election. In fact, the bill is worse than the example because it may arguably extend to situations where a candidate merely *attends* such an event. This is a demonstrably overbroad approach, and because the legal standard is coordination of an *expenditure*, and not some relationship between a candidate and an organization, it is also unlawful. The presumption in present law is correct and should be retained.

Worse, the bill also would repeal the presumption that a candidate or an agent of a candidate's mere membership in a group does not turn that group's independent speech into a coordinated expenditure. H.B. 5589 goes too far in suggesting that just because a campaign manager happens to hold a union card, the union might be prohibited from making independent expenditures.

Indeed, by negative implication, the removal of this membership presumption seems to suggest that state party committees may no longer safely make independent expenditures supporting candidates for office – as party candidates are presumably party "members" or have contributed and/or raised money for their party. As the Supreme Court observed in 1945, "[s]uch a distinction offers no security for free discussion" and will inevitably "compel[]…speaker[s] to hedge and trim."[22]

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[19] *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972).
[20] *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971)).
[21] Conn. Gen. Stat. § 9-601c(c).
[22] *Thomas v. Collins*, 323 U.S. 516, 535 (1945).

IV. Second-order disclosure is both constitutionally and practically problematic.

While the Supreme Court has generally approved of disclosure, it has only done so when the disclosure "increases the fund of information concerning those who support the candidates."[23] Disclosure is discretely limited because government monitoring of lawful political activity is dangerous, and requiring the reporting of financial contributions and transactions can be particularly pernicious because "financial transactions can reveal much about a person's activities, associations, and beliefs."[24] For this reason, government is not permitted to broadly demand and publicize the donor information of "every little Audubon Society…or a Golden Age Club."[25] "[C]ompelled disclosure of th[is] kind of information…can work a substantial infringement of the associational rights of those whose organizations take public stands on public issues" – indeed, given the breadth of disclosure required by the bill, groups wholly unconnected with speech mentioning a candidate near an election may nevertheless be covered.[26] Where there is such a "tenuous…nexus" with the government's interest, "the interest of a group engaging in nonpartisan discussion ascends to a high plane, while the governmental interest in disclosure correspondingly diminishes."[27]

To that end, federal law only requires the disclosure of those persons that directly contribute money for the purpose of furthering particular independent expenditures, an arrangement that the D.C. Circuit Court of Appeals recently praised in an analogous context.[28] In that case, the court posited "the following not unlikely scenario"[29]:

> A Republican donates $5,000 to the American Cancer Society (ACS), eager to fund the ongoing search for a cure. Meanwhile, Republicans in Congress, aware of a growth in private donations to ACS, push for fewer federal grants to scientists studying cancer in order to reduce the deficit. In response to their push, the ACS runs targeted advertisements against those Republicans, leading to the defeat of several candidates in the upcoming election. Wouldn't a rule requiring disclosure of ACS's Republican donor, who did not support issue ads against her own party, convey some misinformation to the public about who supported the advertisements?

Presently, Connecticut law already poses this problem by requiring the disclosure of an entity's top five contributors on the face of a communication. But, if enacted, H.B. 5589 would compound this problem by mandating the publication and disclosure of second-order contributions. Specifically, the bill would force an independent expenditure group to report the five largest donors to any contributor that has received $25,000 or more in covered transfers in the past year.[30] Additionally, contributors that make contributions of $25,000 or more in a year to a Connecticut super PAC must provide that same information to the State Elections Enforcement Commission.[31]

Such a "Russian Nesting Doll" scheme of attributing contributions to second-order contributors does not serve the government's interest in disclosure. Nor does the bill limit this disclosure to only the reporting of second-order disclosure of Connecticut citizens or Connecticut artificial persons. In practice, hunting down this information will be burdensome for independent expenditure groups, and produce

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[23] *Buckley v. Valeo*, 424 U.S. 1, 81 (1976) (*per curiam*).
[24] *Calif. Bankers Ass'n v. Shultz*, 416 U.S. 21, 78-79 (1974).
[25] *United States v. Nat'l Comm. for Impeachment*, 469 F.2d 1135, 1142 (2d Cir. 1972).
[26] *Buckley v. Valeo*, 519 F.2d 821, 872 (D.C. Cir. 1975) (*en banc*).
[27] *Buckley*, 519 F.2d at 872-873.
[28] *Van Hollen v. Fed. Election Comm'n*, 811 F.3d 486 (D.C. Cir. 2016).
[29] *Van Hollen*, 811 F.3d at 497.
[30] H.B. 5589, § 5(c)(1).
[31] H.B. 5589, § 5(c)(4).

chilling effects that will only make it harder for independent expenditure groups to raise money and speak out.

Donors that give to organizations, and relinquish control of their contributions, should not be tagged as the sponsors of communications they did not support and did not ask for. Such disclosure does not tell the residents of Connecticut more about the financial constituencies of candidates, and would, in fact, be misleading. Put simply: the second-order disclosure provision is an invasion of privacy that yields no benefit for the people of Connecticut.

V. There does not appear to be a valid reason for the state-compelled "stand-by-your-ad" disclaimer.

The government's ability to compel speech is, under the First Amendment, extremely limited.[32] Yet, H.B. 5589 would compel the chief executive officer (or equivalent) of an independent speaker to appear in any video or audio broadcast communication and provide her name and title, among other content. Video messages will require a photo or filmed image of the CEO.[33]

The state is only empowered to dictate a script that a person must read if it can provide a constitutionally valid reason for doing so. Similar "stand-by-your-ad" provisions exist in federal law under the Bipartisan Campaign Reform Act, requiring candidates to make the familiar "…and I approve this message" statement that we hear every four years from presidential candidates. But that provision was not challenged – and therefore not upheld – in *McConnell v. Federal Election Commission*.[34] Thus, such compelled speech must work to promote a vital governmental interest, and it is unclear what government interest is being advanced by this provision in H.B. 5589.[35]

Why is the government requiring independent speakers to force an entity's officer to appear in person in the communication? It is already presumed that an organization's officers support communications being made by that entity. Is there a governmental interest in knowing the physical appearance or accent of a § 501(c)(4) or labor union's chief executive officer? What additional *relevant* information is being provided to the electorate, especially where the identity of an organization's officers is already a matter of public record? A reasonable observer might think that this provision in the bill merely seeks to deter political speech, a clearly improper purpose.

As the Ninth Circuit noted in a similar context, legislation "like the one here at issue…must be, and have been, viewed as serious, content-based, direct proscription of political speech."[36] If the on-screen disclaimer "add[s] little…to the [viewer or listener's] ability to evaluate the" message, the State of Connecticut ought to steer clear of compelling private actors to deliver state-sponsored language.[37]

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[32] *See Harris v. Quinn*, 134 S. Ct. 2618, 2639 (2014) (acknowledging the inherent danger posed by government compelled speech); *Talley v. Calif.*, 362 U.S. 60, 67 (1960) (striking down a 'stand by your ad' requirement on handbills absent any adequate governmental interest); *Am. Civil Liberties Union of Nev. v. Heller*, 378 F.3d 979, 988 (9th Cir. 2004) ("Requiring a political communication to contain information concerning 'the identity of the speaker' is 'no different [from requiring the inclusion of] other components of the document's content that the author is free to include or exclude.'") (quoting *McIntyre v. Ohio Elections Comm.*, 514 U.S. 334, 348 (1995)) (brackets in original).

[33] H.B. 5589, § 19(h)(2).

[34] *Heller*, 378 F.3d at 988 n.7 (9th Cir. 2004) (noting "*McConnell* did not decide the validity of the Bipartisan Campaign Reform Act ("BCRA") § 305(a)(3), which amended 47 U.S.C. § 315(b) to require identification of broadcast advertisements of candidate sponsorship in very limited circumstances).

[35] *Citizens United*, 558 U.S. at 366-367 (disclaimer requirements are "subjected t[o]…'exacting scrutiny,' which requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest") (quoting *Buckley*, 424 U.S. at 64, 66).

[36] *Heller*, 378 F.3d at 992.

[37] *McIntyre*, 514 U.S. at 348-349.

VI. The prohibition on making contributions or independent expenditures by "foreign-influenced" entities is overbroad.

Citizens United, which was reaffirmed just a few years ago in the aforementioned *American Tradition Partnership* case, declared that the government "may not suppress" corporate speech.[38] In doing so, the Supreme Court merely expanded upon longstanding precedent, reaffirming that "[t]he inherent worth of…speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual."[39]

This right may not be extinguished merely because a foreign national purchases a share in a corporation on the open market.[40] While the federal ban on foreign contributions to political committees has been upheld, any given foreign shareholder is not contributing to the making of a corporation's expenditures merely because he or she purchases a minor ownership stake.

For publicly-traded companies, it is highly unlikely that the corporation receives the purchase price of a particular share, which is bought and sold on the market, typically from another shareholder. It may have been decades since that share was initially issued and the corporation benefited from that transaction. Moreover, that initial purchase was probably funded by investment banks or similar entities – not a given individual. H.B. 5589 makes no attempt to thread this needle.

If the purchase of a share does not provide the money used to fund an independent expenditure, it is difficult to see why a corporation ought to be completely silenced because of a transaction entirely outside of its control. It is an unusual calculus that holds that the political rights of the 95 percent American ownership of a corporation may be extinguished because of a mere five percent foreign ownership. "In the First Amendment context, fit matters."[41]

Just as importantly, it is difficult to determine the precise identities of all shareholders. Often, shares are held via intermediaries, such as a pension fund – a fact acknowledged by Justice Stevens in his dissent in *Citizens United*.[42] Shares are also often held in "street name" – the name of a broker or a fiduciary, not the actual owner of a particular share. Proving the negative – that a foreign national has not managed to somehow gain a five percent stake – may well be nigh impossible. That difficulty is compounded where no *particular* foreign national need own that stake, a fact that may be gleaned from SEC filings, but instead where an *aggregate* of such individuals is sufficient, as is the case in the bill's second definition of a "foreign-influenced entity," where "two or more foreign owners" acquire "twenty per cent" or more "of total equity or outstanding voting shares."[43]

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[38] *Citizens United*, 558 U.S. at 319.
[39] *Bellotti v. First Nat'l Bank of Boston*, 435 U.S. 765, 777 (1978).
[40] *See* H.B. 5589, § 15(33). As discussed previously, the use of the word "indirectly" is inherently vague, and "indirect ownership" of shares in a corporation provides no intelligible principle. For the purposes of this section, we will assume the bill only applies to actual ownership of equity or voting shares.
[41] *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1456 (2014) (Roberts, C.J., controlling op.).
[42] *Citizens United*, 558 U.S. at 477 (Stevens, J. dissenting) ("Modern technology may help make it easier to track corporate activity, including electoral advocacy, but it is utopian to believe that it solves the problem. Most American households that own stock do so through intermediaries such as mutual funds and pension plans…which makes it more difficult both to monitor and to alter particular holdings").
[43] H.B. 5589, § 15(33)(B). For instance, the SEC requires the filing of a form, Schedule 13D, when a foreign owner purchases five percent or more of outstanding shares. While this, presumably, would make it somewhat easier to track the single owner requirement, there would be no effective mechanism for determining if, for example, seven foreigners each snapped up three percent of outstanding shares.

The bill's third definition of a "foreign-influenced entity," likely added to ensure the bill would reach nonprofit corporations and labor unions, also overreaches.[44] This provision claims that, if any foreign national or a generally foreign-owned entity "participates in any way, directly or indirectly, in the process of making decisions with regard to the political activities of such entity in the United States," then that entity has forfeited its First Amendment rights. "Indirect participation" in "political activities" essentially captures the universe of involvement in speaking about public affairs. These vague and overbroad terms function to present a simple choice to nonprofits, unions, and other non-stock entities: (1) never hire any foreigners and place them anywhere in a position of influence or (2) pointedly disclaim speaking on anything remotely political. This xenophobic provision ought to be immediately excised from the bill. If Connecticut wishes to ensure that only American citizens make political decisions for nonprofit entities, the solution is not vague language of this sort. Instead, it should follow the lead of the Federal Election Commission and its long experience in this area.[45]

Inevitably, many corporations, large and small, nonprofit and for-profit, labor unions, and other groups will simply choose to forego speech rather than attempt to comply with a law that appears intended to make compliance impossible. This is a constitutional harm in itself.[46] Where the government has no power to ban speech, it may not regulate it out of existence instead.[47] Conjuring a poison pill – the identity of certain owners of a small portion of a company's shares, or the hiring of a British national to copy-edit an advertisement – will functionally ban the speech of any corporation of significant size. Such a chilling effect is constitutionally problematic, as the First Amendment needs "breathing space to survive, [and the] government may regulate in the area only with narrow specificity."[48]

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Many provisions of House Bill 5589 run directly contrary to recent decisions of the U.S Supreme Court and the Second Circuit, and will functionally ban large swaths of protected speech. If passed, H.B. 5589 will undoubtedly stifle political discourse. Accordingly, it ought not be enacted. Thank you for allowing the Center to submit these comments. Should have any further questions regarding this legislation or any other campaign finance proposals, please do not hesitate to contact me at (703) 894-6800 or by e-mail at mnese@campaignfreedom.org.

Respectfully submitted,

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[44] H.B. 5589, § 15(33)(C).
[45] *See e.g.* AO 2009-14 (Mercedes-Benz USA/Sterling); AO 2006-15 (TransCanada); AO 2000-17 (Extendicare Health Services, Inc.), AO 1999-28 (Bacardi-Martini, USA, Inc.), AO 1995-15 (Allison Engine Company Political Action Committee), AO 1992-16 (Nansay Hawaii, Inc.), AO 1992-07 (H&R Block, Inc.), AO 1990-08 (The CIT Group Holdings, Inc.), AO 1989-29 (GEM of Hawaii, Inc.), AO 1982-34 (Sonat Inc. Political Action Committee), AO 1981-36 (Japan Business Association of Southern California), AOs 1980-111 (Portland Cement Association), AO 1980-100 (Revere Sugar Corp.), and AO 1978-21 (Budd Citizenship Committee).
[46] The arbitrary nature of the five percent and 20 percent thresholds also pose opportunities for gamesmanship. Politically active foreigners could use stock purchases as a vehicle to silence disfavored corporations.
[47] *E.g. Grosjean v. Am. Press Co.*, 297 U.S. 233 (1938) (striking down a tax imposed upon newspapers on First Amendment grounds).
[48] *Buckley*, 424 U.S. at 41, n.48 (quoting *NAACP v. Button*, 371 U.S. at 433).