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H.3045 AND H.4203

TESTIMONY BEFORE THE CONSTITUTIONAL LAWS SUBCOMMITTEE OF HOUSE JUDICIARY

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A recent federal district court ruling in *Citizens for Responsibility and Ethics (CREW) v. the Federal Election Commission (FEC) and Crossroads GPS* summarizes the importance of financial disclosures to the integrity of our elections. "Campaign finance law has long recognized the value of disclosure as a means of enabling the electorate to make informed decisions about candidates, to evaluate political messaging, to deter actual, or the appearance of, corruption, and to aid in enforcement of the ban on foreign contributions, which may result in undue influence on American politicians." The League regards this as one of the more important issues that comes before the General Assembly.

The two bills before this subcommittee are essential to the right of citizens of South Carolina to know who is attempting to influence our votes. Their provisions do not intrude on the free speech rights of donors, an opinion that is not mine alone but is shared by federal district courts and the Supreme Court of the United States.

H.4203 requires disclosure of donors to groups that explicitly acknowledge that their primary purpose is to influence elections. A 2010 federal court ruling invalidated our existing law requiring that disclosure for excessive vagueness. Reinstating this tried and true protection for voters with a clear and unambiguous standard to define the organizations that are covered should not be a hard decision. The current bill would do this in a manner consistent with other states that have successfully required these disclosures. At present, South Carolina and Indiana are the only states that lack an enforceable requirement of this kind. This is yet another case in which our state is at a very unfortunate extreme in national comparisons.

H. 3045 addresses what has been a very difficult but exceedingly important point in campaign finance law, disclosures related to electioneering by 501(c)4 groups not explicitly established for that purpose. Until very recently this bill might have been found in conflict with federal case law. Cases including *Citizens United* and *Buckley v. Valeo* have been interpreted to make electioneering disclosure requirements so narrow in the case of "social welfare" groups that they were scarcely worth enacting. We are very pleased that this is no longer the case.

The earlier federal interpretation was embodied in the FEC's 11 C.F.R. § 109.10(e)(6), which required disclosure only of donors who explicitly donate funds to support a specific electioneering action. This was easily evaded by simply not stating an intended use for a donation. However, the United States District Court for the District of Columbia has now recognized in *CREW v. FEC and Crossroads GPS* that this narrow standard is unacceptable, is not necessary to preserve the constitutional right of free speech and does not serve the public

interest. The Supreme Court in September 2018 refused to hear appeal of this ruling, effectively concurring with the district court in leaving it in place.

In H.3045, "election communications" that bring an independent expenditure committee under the requirements of the law are defined in terms of paid communications that must reach a total of at least \$500 a year. This bill establishes a threshold of \$1000 for disclosure of donations to organizations that engage in electioneering in amounts in excess of \$500 a year. In *CREW v. FEC* and *Crossroads GPS* a threshold as low as \$200 was found acceptable and described as "not trivial." The amount in this bill is far greater and therefore provides more latitude to organizations and their donors. H.3045 also requires important expenditure disclosures from the covered committees, information that helps to establish and communicate to the public not just the justification for requiring disclosure of donors but the nature of the advocacy undertaken.

H. 4203 and H.3045 are badly needed. Third party expenditures now outweigh the influence of more accountable direct contributions to campaigns. Within a week of the SCOTUS response to *CREW v. FEC* and *Crossroads GPS*, Issue One reported that four organizations pumped at least \$357 million into elections between 2010 and 2016. Those organizations were *Crossroads GPS*, the Koch network's *Americans for Prosperity*, the U. S. Chamber of Commerce and the National Rifle Association.

In South Carolina, respected and honorable candidates with a long record of service to our state have suffered from substantial dark money attacks and have even lost their seats as a consequence. Surely this massive infusion of money into our politics demands accountability. The League asks that you forward these bills with a favorable recommendation.

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